IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JENNIFER TYREE, *et al.*, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	18 CV 1991
v.	)	Judge Feinerman
ROB JEFFREYS, in his official capacity as Director of the Illinois Department of Corrections,	)	
Defendant.	)	

PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION PURSUANT TO FED. R. CIV. P. 23(B)(2) AND FOR APPOINTMENT OF CLASS COUNSEL PURSUANT TO FED. R. CIV. P. 23(G)(1)

Plaintiffs, through counsel, respectfully request that this Court enter an order pursuant to Federal Rule of Civil Procedure 23(b)(2) certifying this case as a class action on behalf of all parents of minor children who are on Mandatory Supervised Release for a sex offense under the supervision of the Illinois Department of Corrections. Plaintiffs further request that this Court enter an order appointing the undersigned attorneys as class counsel. In support thereof, Plaintiffs state as follows.

INTRODUCTION

Plaintiffs have challenged the constitutionality of the Illinois Department of Corrections' policies concerning contact between minor children and their parents who are on Mandatory Supervised Release ("MSR") for sex offenses. Plaintiffs

Jennifer Tyree, Celina Montoya, Ronald Molina and Zachary Blaye bring this case individually and on behalf of all parolees who are subject to the challenged policies. ECF No. 92 at ¶76. Plaintiffs claim that the challenged policies unreasonably interfere with constitutionally protected parent-child relationships in violation of the Fourteenth Amendment. *Id*. at ¶¶85–88. Plaintiffs seek injunctive and declaratory relief on behalf of the class against Rob Jeffreys, the director of the Illinois Department of Corrections. *Id*.

Plaintiffs' claims are ideally suited to proceed as a class action under Federal Rule of Civil Procedure 23(b)(2). As set forth below, the proposed class satisfies each element of Rule 23(a) because (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 of the named Plaintiffs are typical of the claims of the class; and (4) the named Plaintiffs will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Moreover, this matter meets the requirements for class certification under Rule 23(b)(2) because Defendant has acted in a manner that applies generally to the class as a whole, rendering class-wide injunctive and declaratory relief appropriate under Fed. R. Civ. P. 23(b)(2).

ARGUMENT

I. The Court Should Certify the Proposed Class

For a district court to certify a class action, the named plaintiffs and the proposed class must satisfy the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) and the requirements of at least one subsection of Rule

23(b). *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992). Here, because the named Plaintiffs and the proposed class meet all four Rule 23(a) requirements and the requirements of Rule 23(b)(2), the class should be certified.

A. The Proposed Class Meets All of the Requirements of Fed. R. Civ. P. 23(a) and 23(b)(2)

1. Numerosity

Federal Rule of Civil Procedure 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). A class "including more than 40 members" generally meets this standard. *Barragan v. Evanger's Dog and Cat Food Co.*, 259 F.R.D. 330, 333 (N.D.Ill. 2009); *Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 612 (N.D. Ill. 2012) (same); *accord* William B. Rubenstein, et al., Newberg on Class Actions, § 3:12 (5th ed. 2011) ("a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone.")

Here, the proposed classes easily satisfy this standard. Exact numbers are not presently available, but according to Defendant's discovery responses, there are "approximately 550 parolees" currently under the supervision of the Illinois Department of Corrections Sex Offender Supervision Unit. Ex. 1, Def. Response to Interrogatories at ¶1. If only eight percent of the people on parole for sex offenses are parents of minor children, the class would meet the numerosity requirement. Moreover, membership in the class is constantly growing as individuals complete their prison terms and become eligible for release on MSR.

2. Commonality

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This Court has observed that a "common nucleus of operative fact is usually enough to satisfy the commonality requirement." *Rosario*, 963 F.2d at 1018; *Streeter*, 256 F.R.D. at 612 (same).

An injunctive challenge to a government policy that applies generally to all members of the class is a textbook example of a case that satisfies the commonality requirement and warrants class certification. Indeed, this Court has repeatedly recognized that "[a] class action is … an appropriate vehicle to address what is alleged to be a systemic problem." *Coleman v. County of Kane*, 196 F.R.D. 505, 507 (N.D. Ill. 2000) (finding commonality in case challenging sheriff's policy regarding bond fees); *Corey H. v. Board of Educ. of City of Chicago*, No. 92 C 3409, 2012 WL 2953217, at *7 (N.D. Ill. Jul. 19, 2012) ("Plaintiffs have attacked … systemic failures and district-wide policies that apply to every member of the certified class …"); *Olson v. Brown,* 594 F.3d 577 (7th Cir. 2010) (finding a class action was an appropriate vehicle to challenge jail policies concerning responding to inmates' grievances and opening inmates' legal mail); *Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 612–13 (N.D. Ill. 2009) (certifying class of detainees challenging the Cook County jail's strip search policy).

Here, the named Plaintiffs and all of the class members are challenging the constitutionality of the same policies—namely, restrictions on contact with and/or living with their minor children while on MSR for a sex offense. Accordingly, all of

the core factual and legal questions are appropriate for resolution on a class-wide basis. These common questions include the following:

- What are the rationales for the IDOC's policies;
- What role parole agents, therapists, and parole supervisors play in deciding whether parent-child contact will be restricted;
- What criteria the IDOC uses to determine whether parent-child contact will be restricted;
- Whether the IDOC's policies satisfy the dictates of due process under the Fourteenth Amendment;
- Whether there exist less restrictive alternatives to the current policies that also serve the public interest.

Because there are common questions of law and fact pertaining to all members of the class, this matter meets the commonality requirement of Fed. R. Civ. P. 23(a)(2).

3. Typicality

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 standard for determining typicality is not an identity of interest between the named plaintiffs and the class, but rather a "sufficient homogeneity of interest." *Jones v. Blinziner*, 536 F. Supp. 1181, 1190 (N.D. Ind. 1982) (citing *Sosna v. Iowa*, 419 U.S. 393, 403 n.13 (1975)). "[T]he typicality requirement is liberally construed." *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D. Ill. 1996). A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and [is] based on the same legal theory." *De La*

Fuente v. Stokely-Van Camp, Inc., 713 F.2d 225, 232 (7th Cir. 1983). This requirement "is meant to assume that the named representative's claims 'have the same essential characteristics as the claims of the class at large.'" *Oshana v. Coca–Cola Co.*, 472 F.3d 506, 514 (7th Cir. 2006).

Where, as here, the named plaintiffs' injuries arise from a generally applicable law, practice or policy affecting all members of the class, typicality exists even if there are factual differences in precisely how the policy was applied to each plaintiff. *Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 612-13 (N.D. Ill. 2009) (certifying class of detainees strip searched upon entry to Cook County Jail, despite the Sheriff's argument that there were differences in the circumstances of each search "because 'the likelihood of some range of variation in how different groups of … detainees were treated does not undermine the fact that the claims of each class [member] share a common factual basis and legal theory.'"); *Areola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008) (typicality satisfied where plaintiff was in the "same boat" as other Cook County Jail detainees who had been denied crutches); *Bullock v. Sheahan*, 225 F.R.D. 227, 230 (N.D. Ill. 2004) ("[p]otential factual differences" relating to individual searches held insufficient to defeat typicality in a jail strip search case).

In this case, the named Plaintiffs' claims are typical of the class as a whole. Plaintiffs Jennifer Tyree, Celina Montoya, Zachary Blaye and Ronald Molina are parents of minor children who are on MSR for sex offenses. As such, they have been and continue to be subjected to the policies applicable to every member of the

class—namely restrictions on their contact with and their residing with their own children imposed at the discretion of the "Containment Team" (*i.e.*, their treating therapists, their parole agents, and the parole agents' supervisors). Moreover, each named Plaintiff and each class member has the same legal theories—that is, that the challenged policies violate the Fourteenth Amendment guarantees of substantive due process and procedural due process. Accordingly, the named Plaintiffs satisfy Rule 23(a)(3)'s typicality requirement. *See Fonder v. Sheriff of Kankakee County*, No. 12-CV-2115, 2013 WL 5644754, at *6 (C.D. Ill. Oct. 15, 2013) (typicality satisfied where "Plaintiff is challenging the same strip search policy as the class he seeks to represent"); *Olson*, 284 F.R.D. at 411 (typicality satisfied where class representative and members of proposed class had their legal mail opened improperly by correctional officers).

4. Adequacy

Rule 23(a)(4) requires that the named Plaintiffs "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequate representation inquiry consists of two parts: "(1) the adequacy of the named plaintiffs as representatives of the proposed class' myriad members, with their differing and separate interests, and (2) the adequacy of the proposed class counsel." *Gomez v. St. Vincent Health, Inc.*, 649 F.3d 583, 592 (7th Cir. 2011). Both of these elements are met here.

a. Plaintiffs Are Appropriate Representatives of the Interests of the Class

The named Plaintiffs will fairly and adequately protect the interests of the class. The named Plaintiffs brought this case because they were subject to the unconstitutional policies challenged in this case and sought to protect their relationships with their children from undue interference by the IDOC. Both the named Plaintiffs and class members have a common interest in protecting their familial bonds and reforming the IDOC's policies governing parent-child contact. The named Plaintiffs and the class members raise the same claims and seek the same relief, and the class representatives do not have interests antagonistic to the interests of the class. The named Plaintiffs have been intimately involved in all aspects of the litigation to date and remain committed to changing the IDOC's policies and obtaining an injunction to prevent future violations of constitutional rights. Accordingly, each named Plaintiff has a strong personal stake in the proceedings that will "insure diligent and thorough prosecution of the litigation." *Rodriguez v. Swank*, 318 F. Supp. 289, 294 (N.D. Ill.1970), aff'd 403 U.S. 901 (1971).

b. Adequacy of Representation

The named Plaintiffs are represented by experienced civil rights counsel who are well qualified to represent the interests of the members of the class and have devoted substantial time and resources to vigorously prosecuting this case. Mr. Weinberg and Ms. Nicholas have successfully litigated numerous constitutional cases in which broad equitable relief was sought, including class actions. *See*, *e.g.*, *Murphy v. Raoul*, 16 C 11471, 380 F. Supp. 3d 731 (N.D. Ill., 2019) (Kendall, J.)

(certified class action; obtained permanent injunction governing IDOC procedures for releasing sex offenders on MSR); *RCP Publications Inc. v. City of Chicago*, 15 C 11398 (certified class action; obtained permanent injunction prohibiting enforcement of City's sign-posting ordinance and class-wide damages); *Adair v. Town of Cicero*, No. 18 C 3526, 2019 U.S. Dist. LEXIS 110949 (N.D. Ill. July 3, 2019) (pending certified class action on behalf of women detained in Town of Cicero police lockup); *Koger v. Dart*, 114 F. Supp. 3d 572 (N.D. Ill., 2015) (obtained declaratory judgment holding ban on newspapers in the Cook County Jail unconstitutional); *Pindak v. Dart*, 10 C 6237 (N.D. Ill. 2016) (Pallmeyer, J.) (obtained a permanent injunction ordering the sheriff to train deputies concerning First Amendment rights); *Norton v. City of Springfield*, 806 F. 3d 411 (7th Cir. 2015) (obtained a injunction barring the City of Springfield from enforcing its municipal panhandling ordinance).

Because the named Plaintiffs have demonstrated a commitment to vigorously pursuing class-wide relief and because they are represented by competent and experienced counsel, they satisfy Rule 23(a)(4)'s adequacy requirements.

5. Plaintiffs Satisfy Fed. R. Civ. P. 23(b)(2) Because this Case Seeks Declaratory and Injunctive Relief from Policies that Impact the Entire Proposed Class

The final requirement for class certification is that the named Plaintiffs meet the requirements of at least one of the subsections of Rule 23(b). Subsection (b)(2) requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief

or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). Courts have long recognized that civil rights class actions are the paradigmatic 23(b)(2) suits, "for they seek classwide structural relief that would clearly redound equally to the benefit of each class member." *Marcera v. Chinlund*, 595 F.2d 1231, 1240 (2d Cir. 1979), vacated on other grounds, 442 U.S. 915 (1979); see also *Alliance to End Repression v. Rochford*, 565 F. 2d 975, 979 n.9 (7th Cir. 1977) ("Rule 23(b)(2) … is devoted primarily to civil rights class actions which allege violations of constitutional rights.") (*citing* Advisory Committee Notes to the 1966 Amendments to Rule 23.) As stated in the leading treatise on class actions:

> Rule 23(b)(2) was drafted specifically to facilitate relief in civil rights suits. Most class actions in the constitutional and civil rights areas seek primarily declaratory and injunctive relief on behalf of the class and therefore readily satisfy Rule 23(b)(2) class action criteria.

A. Conte & H. Newberg, Newberg on Class Actions § 25.20 (4th ed. 2002). Because this case seeks class-wide injunctive and declaratory relief, it is appropriate for certification as a class action under Fed. R. Civ. P. 23(b)(2).

II. The Court Should Designate Plaintiffs' Counsel as Class Counsel Under Rule 23(g)(1)

Federal Rule of Civil Procedure 23(g) requires that the district court appoint class counsel for any class that is certified. Fed. R. Civ. P. 23(g)(1). The attorneys appointed to serve as class counsel must "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). The appointed class counsel must be listed in a court's class certification order. Fed. R. Civ. P. 23(c)(1)(B).

The Rule provides four factors for a court to consider in appointing class counsel: (1) "the work counsel has done in identifying or investigating potential claims in the action;" (2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;" (3) "counsel's knowledge of the applicable law"; and (4) "the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

The undersigned attorneys satisfy each of these requirements. First, Plaintiffs' counsel have worked on this case for more than a year, including speaking to numerous families affected by the challenged policies, drafting two complaints, defending a motion to dismiss, litigating motions for a preliminary injunction and temporary restraining order, conducting extensive legal research concerning the class members' claims, and conducting thorough discovery. Second, as set forth in §I(A)(4)(c) above, Plaintiffs' counsel have significant experience in handling §1983 class actions and other complex civil rights litigation, including the very kind of claims asserted in this case. Accordingly, they are highly knowledgeable about the applicable law and are prepared to vigorously pursue relief on behalf of the class. Finally, Plaintiffs' counsel have dedicated and will continue to commit substantial resources to the representation of this class. In sum, Plaintiffs' counsel fully satisfy the criteria for class counsel set forth in Rule 23(g), and Plaintiffs respectfully request that the Court appoint them as such.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant the motion for class certification and appoint the undersigned attorneys as Class Counsel.

Respectfully submitted,

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/s/ Mark G. Weinberg
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EASTERN DIVISION

ROBIN FRAZIER, et al.,	)	
	)	
Plaintiffs,	)	18 CV 1991
	)	
v.	)	District Judge Gary S. Feinerman
	)	
JOHN BALDWIN, in his official capacity as Director of the Illinois Department of Corrections,	)	
	)	
Defendant.	)	

DEFENDANT ROB JEFFREYS' RESPONSES TO PLAINTIFFS' INTERROGATORIES TO DEFENDANT BALDWIN[1]

NOW COMES the defendant, by and through his attorney, KWAME RAOUL, Attorney General of the State of Illinois, and hereby responds to Plaintiff's Interrogatories as follows:

1. How many people are currently under the supervision of the Illinois Department of Corrections ("the Department") Parole Division for sex offenses? If known, how many of the individuals identified are parents of minor children?

RESPONSE: Defendant objects to the request on the grounds that it is overbroad and vague as to "sex offenses," that it is compound, and on the grounds that it is unduly burdensome and calls for information outside Defendant's knowledge as to "how many of the individuals identified are parents of minor children." Subject to and without waiving said objections, Defendant states that approximately 550 parolees are currently under the supervision of the Illinois Department of Corrections Sex Offender Supervision Unit.

[1] On approximately July 1, 2019, Rob Jeffreys replaced John Baldwin as the director of the Illinois Department of Corrections.