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

JENNIFER TYREE, CELINA MONTOYA, ZACHARY BLAYE and RONALD MOLINA individually and on behalf of all others similarly situated,	)	No. 18-CV-1991
Plaintiffs,	)	Judge Feinerman
v.	)	
ROB JEFFREYS, in his official capacity as acting Director of the Illinois Department of Corrections,	)	
Defendant.	)	

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Jennifer Tyree, Celina Montoya, Zachary Blaye and Ronald Molina, individually and on behalf of all others similarly situated, through their undersigned counsel, complain against Defendant Rob Jeffreys, acting director of the Illinois Department of Corrections ("the Department" or "IDOC") as follows:

Nature of the Case

1. This case arises under 42 U.S.C. §1983 and alleges violations of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution.

2. In particular, Plaintiffs challenge the constitutionality of the Illinois Department of Corrections' ("IDOC") policies restricting contact between parents who are on mandatory supervised release ("MSR") for sex offenses and their minor children.

3. Plaintiffs, individually and on behalf of the class they seek to represent, allege that the IDOC's policies interfere with their fundamental right to maintain their parent-child relationships and thus violate their procedural and substantive due process rights under the Fourteenth Amendment of the United States Constitution. Plaintiffs seek class-wide injunctive and declaratory relief.

Jurisdiction and Venue

4. Jurisdiction for Plaintiffs' federal claims is based on 28 U.S.C. §§ 1331 and 1343(a).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), in that a substantial part of the events giving rise to the Plaintiffs' claims arose in this district.

The Parties

6. Defendant Rob Jeffreys is sued in his official capacity as director of the Illinois Department of Corrections. In his capacity as the director of IDOC and pursuant to state law, he has final authority to set the Department of Corrections' policies with regard to contact between parents who are on MSR and their minor children.

7. Plaintiffs Jennifer Tyree, Celina Montoya, Zachary Blaye and Ronald Molina are parents of minor children who are subject to the challenged policies.

Relevant Procedural History

8. This case was initially filed on March 19, 2018. ECF No. 1. In their initial complaint, Plaintiffs challenged the constitutionality of Defendant's then-existing

policies, which imposed an automatic six-month ban on any and all contact between parents on MSR for sex offenses and their own minor children, and absolutely prohibited all parents on MSR for sex offenses from residing with their minor children. *See*, ECF No. 1 at ¶13–16.

9. Plaintiffs filed a motion for a temporary restraining order and preliminary injunction to halt continued enforcement of this policy. ECF No. 3. This Court entered a preliminary injunction on June 13, 2018. ECF No. 33.

10. In this amended complaint, Plaintiffs contend that the IDOC's policies and practices with regard to contact between parents on MSR for sex offenses and their minor children both prior to and after entry of the preliminary injunction violate their Fourteenth Amendment rights.

The Original Policy

11. Illinois law gives the Illinois Department of Corrections discretion to decide whether an individual released on MSR for a sex offense can live with and/or have contact with his or her minor child.

12. In particular, 730 ILCS 5/3-3-7 (b-1)(9) provides that people required to register as sex offenders must "refrain from all contact, directly or indirectly, personally, by telephone, letter, or through a third party, with minor children *without prior identification and approval of an agent of the Department of Corrections*" while on parole or MSR. (emphasis added).

13. In accord with this state law, the Prisoner Review Board ("PRB"), which is an independent body responsible for setting MSR conditions, imposes the following

MSR condition on persons who are required to register as sex offenders: "You shall refrain from all contact, directly or indirectly, personally, by telephone, letter, or through a third party, with minor children *without prior identification and approval of an agent of the Department of Corrections*." (emphasis added).

14. Until the preliminary injunction was entered, the Department had a blanket policy prohibiting any and all contact (including in-person visitation, phone calls, text messages, and letters) between all parents on MSR for sex offenses and their minor children for a period of at least six months after release from prison.

15. The Department also has the responsibility and authority to investigate and approve "host sites" for people released on MSR.

16. The Department has a blanket policy (both before and after entry of the preliminary injunction order) prohibiting people on MSR for sex offenses from residing at host sites where their own minor children live.

The Policy Following Entry of an Injunction

17. This Court's preliminary injunction order (ECF No. 33) provides that persons released on MSR for sex offenses are entitled to an initial appointment with a therapist "within 14 days of release" and that "within 21 days of the initial appointment, the therapist and the parolee's parole agent will determine whether there is reasonable cause to believe that the parolee's child(ren) would be endangered by parent-child contact with the parolee." *Id*. If parent-child contact is restricted or prohibited, the parole agent and therapist "must give the reasons for the restriction or prohibition briefly in writing" and the "restriction or prohibition

will automatically be reviewed by the therapist and parole agent every 28 days." *Id*. The order further provides that a "parolee may seek review of any restriction or prohibition from the Deputy Chief of Parole, and the Deputy Chief (or his/her designee, so long as the designee is not the parole agent directly supervising the parolee) will respond in writing within 21 days." *Id*.

18. In response to entry of the injunction, the Department of Corrections has created a new written policy and a set of forms for use in connection with requests for parent child contact. The new written policy was distributed to individuals on MSR for sex offenses in November and December 2019.

19. In practice, the new policy implemented after entry of the injunction still results in unreasonable interference with parent-child relationships in violation of the Fourteenth Amendment. This is so for several reasons, including the following:

- The default policy is still a blanket ban on any and all parent-child contact upon release from custody. This automatic ban is imposed without regard to the individual characteristics of the parolee, the relationship between the parolee and the child, the nature of the parolee's offense, the results of a pre-release evaluation conducted pursuant to Illinois law, or the parolee's participation in therapy prior to release;

- Decisions restricting parent-child contact are rendered by the "containment team," which is composed entirely of individuals directly involved in the supervision of the parolee (the parole agent, treating therapist, and the parole agent's supervisor), rather than by a neutral and detached outside party;

- There is no opportunity for decisions restricting parent-child contact to be reviewed by or appealed to a neutral arbiter outside of the Department of Corrections;

- The criteria for imposing restrictions on parent-child contact are unwritten and unduly open-ended. The containment team can deny parent-child contact based on its conclusion that there is "risk" posed by

parent-child contact. There is nothing constraining the containment team's discretion to decide that there is too much risk;

- Treating therapists are permitted to withhold approval for parent-child contact for any length of time they see fit. Parent-child contact can be prohibited indefinitely if the treating therapist believes the parolee has had "insufficient therapy sessions" to make a judgment about whether parent-child contact poses a risk to the child;

- Treating therapists are permitted to withhold approval for parent-child contact on the basis that a parolee has not taken and/or passed a polygraph examination, even if the parolee cannot afford to pay for a polygraph examination;

- Requests for parent-child contact are often delayed for months or longer based on delays in parole agents' obtaining and processing paperwork;

- Parolees are denied an opportunity to appeal until after their parole agent provides them with written documentation setting forth the reasons for the restriction on their contact with their children. It routinely takes several months for parolees to receive written documentation of the restrictions on their contact with their children;

- The Department requires a parent to prove that he or she poses "no risk" before it will allow a parent to reside with his or her minor child;

- Even when parent-child contact is approved, the Department still interferes unreasonably in parents' relationships with their children by prohibiting parents from giving their children gifts; disciplining their children in any way; or having physical contact with their children.

Facts Relevant to the Named Plaintiffs

Ronald Molina

20. Ronald Molina is the father of a 16-year-old son, G.S.

21. Molina was convicted of criminal sexual assault in 2008. The victim of his offense was a 15-year-old female. At the time of the offense, Molina was 23 years old.

22. Prior to his incarceration, Molina had regular contact and visitation with his son.

23. Throughout his incarceration, Molina remained in regular contact with his son through phone calls, visits and letters.

24. Molina has never been accused of abuse or misconduct toward his child. He has never been found by a court to be unfit to be a parent, and no proceedings have ever been instituted to terminate his rights as a parent.

25. Molina was released from IDOC onto MSR on September 28, 2018. Since his release, Molina has been absolutely prohibited from having contact with his son.

26. G.S.'s mother wants Molina and G.S. to have a relationship and visitation.

27. After learning about this lawsuit, Molina asked his parole agent, Joseph DeMauro, whether he could have contact with his son in approximately February or March 2019.

28. After this conversation, Agent DeMauro spoke to Molina's therapist, Gerald Blain, about Molina's request. Blain stated that he would like Molina to take a polygraph examination prior to his approving contact with his son.

29. Agent DeMauro verbally told Molina that he would have to take a polygraph examination before contact with his child would be allowed, but DeMauro did not give Molina any written documentation setting forth why his request for contact with his son was still being denied.

30. Molina cannot currently afford a polygraph examination. He works, but he has to pay for weekly therapy sessions, housing, utilities, food, gas, and

maintenance of his car. This does not leave him with sufficient funds to pay for the polygraph examination, which costs approximately $300.

31. Molina repeatedly asked his parole agent for the paperwork he would need to appeal the decision to restrict him from having contact with his child.

32. In December 2019, approximately eleven months after his initial conversation with Molina about contact with his son, Agent DeMauro gave Molina a packet of papers, which included a form for a request for contact with children.

33. Molina filled out the paperwork right away and placed a call to the 800-number that parolees use to communicate with their agents to request that DeMauro retrieve the request paperwork.

34. Agent DeMauro did not get the paperwork from Molina until January 26, 2020.

35. To date, Molina has not been given any written documentation of why he is still being prohibited from having contact with his child and thus has not been permitted to appeal the decision.

36. In his deposition, Dr. Blain testified that Molina has been a regular participant in therapy for approximately nine to ten months and had been cooperative with treatment.

37. Dr. Blain further testified that he did not have any specific reservations about Molina's having contact with his child other than the fact that Molina has not taken a polygraph examination. Dr. Blain did not identify any risk to Molina's child that would occur if they had contact.

38. Dr. Blain testified that although he does not believe Molina's being in touch with his child by phone would pose a risk to the child, he has not approved phone calls because he doesn't want to give other people in group therapy the impression that they can circumvent the polygraph requirement.

39. To date, Molina remains absolutely prohibited from having any contact with his child.

Zachary Blaye

40. Zachary Blaye is the father of a 13-year-old son, Z.M.

41. Blaye was convicted of criminal sexual assault in 2009. The victim of Blaye's offense was an adult woman.

42. While incarcerated, Blaye stayed closely in touch with his son. Blaye spoke to Z.M. on the phone four or five times a week throughout his incarceration. Blaye has maintained a good relationship with his son's mother, who is supportive of Blaye having a relationship with Z.M.

43. Blaye has never been accused of abuse or misconduct toward his child. He has never been found by a court to be unfit to be a parent, and no proceedings have ever been instituted to terminate his rights as a parent.

44. Blaye was released from IDOC onto MSR on June 10, 2019.

45. During his first meeting with his parole agent, Steve DeYoung, Blaye asked whether he could talk to his son. DeYoung stated that Blaye was prohibited from seeing or speaking with his son. Agent DeYoung advised Blaye to discuss the matter with his sex offender therapist.

46. Blaye enrolled in sex offender therapy promptly and began attending therapy at Emages, Inc. in June 2019. He asked his therapist, Dr. Eleanor Harris, whether he could have contact with his son. Dr. Harris responded that he would have to wait six months and could request a safety plan after six months.

47. The week of Z.M.'s 13th birthday (June 26, 2019), Blaye asked whether he could call his son from the therapist's office to wish him a happy birthday. Dr. Harris said no.

48. Between June 2019 and November 2019, Blaye was not given any written explanation as to why his request for contact with his child was being denied and thus did not have an opportunity to appeal the decision.

49. Blaye was completely prohibited from having any contact with his son until after counsel in this lawsuit took the deposition of Agent DeYoung on November 19, 2019.

50. Shortly after the deposition, Blaye was given the opportunity to see a different therapist, Dr. Patricia Grosskopf, who prepared a safety plan and approved Blaye to have phone contact with his son beginning in early December 2019.

51. On January 27, 2020, more than six months after his release, Blaye was finally permitted to have his first in-person visit with his son.

Jennifer Tyree

52. Jennifer Tyree was convicted in 2015 of aggravated criminal sexual abuse. She was sentenced to serve seven years in the Illinois Department of Corrections at

50 percent, plus a two-year term of MSR. The victim of her offense was a 17-year-old male student at a school where she was a teacher.

53. Tyree was released from prison on MSR in August 2018.

54. Tyree is the mother of three children. At the time of her release, two of her children were minors, a son, C.T., and a daughter, A.T.

55. While Tyree was incarcerated, she had regular contact with her children. They visited her once or twice a month; she mailed them letters and cards approximately once a week; and she talked to them on the phone regularly.

56. While Tyree was out on bond for nearly three years awaiting trial on the charge of criminal sexual abuse, she had custody of and lived with her children. Even after her conviction, she was allowed to continue living with her children before she began serving her prison sentence.

57. While Tyree was in prison, her children lived with their father (Tyree's ex-husband). Tyree's ex-husband is supportive of her maintaining a close relationship with their children.

58. When Tyree was released from prison, she was prohibited from having any contact whatsoever with her children for seven weeks.

59. Tyree's son, C.T., wanted to live with his mother. Tyree's ex-husband was supportive of C.T.'s living with Tyree. On January 17, 2019, a Menard County judge ordered that C.T. should live with Tyree until he turns 18. The judge was aware of Tyree's criminal background and the fact that she was on MSR. He still believed it was in C.T.'s best interests to reside with his mother.

60. Tyree's parole agent still refused to allow C.T. to move in with Tyree.

61. There is no evidence that Tyree poses a danger to her children. Tyree has never been accused of abuse or misconduct toward her children. She has never been found by a court to be unfit to be a parent, and no proceedings have ever been instituted to terminate her rights as a parent.

62. Before her release, Tyree exhausted all available administrative remedies within the Department of Corrections. In particular, she filed a grievance (No. 35.1.17) on December 29, 2016, asking that the Department of Corrections change its policy of prohibiting all contact between sex offenders and their children while on MSR and create a policy that would allow "sex offenders on a case-by-case basis to be reviewed to go home to [their] children." On January 11, 2017, counselor Kunzgman-Watkins at Logan Correctional Center denied the grievance, writing that "these regulations are to be adhered to by all offenders according to set policies" as "explained in the [parole school] memo." Tyree timely appealed this decision to the Administrative Review Board. The Administrative Review Board responded to the appeal on June 23, 2017. The ARB affirmed the denial of the grievance finding that it was an appropriate "administrative decision."

Celina Montoya

63. Celina Montoya and her husband have three children. Their youngest daughter, L.M., is 15 years old.

64. Montoya was convicted in 2015 of one count of criminal sexual assault. The victim of her offense was a 14-year-old male student at a school where she was a

teacher. Montoya was sentenced to serve four years in the Illinois Department of Corrections at 85 percent, plus an indeterminate MSR period of three years to natural life.

65. While Montya was incarcerated, she had consistent contact with her children and her husband. They visited her at the prison; Montoya wrote them letters; and she talked to them on the phone. Montoya, who was a math teacher before her conviction, often helped her daughter with her school work over the phone while she was incarcerated.

66. For more than a year before she was incarcerated, Montoya voluntarily attended sex offender therapy with a treatment provider who work with the Department of Corrections to provide therapy to individuals on MSR. The treatment providers wrote a letter on Montoya's behalf stating that they would support her living with her daughter when she is released on MSR.

67. Montoya also obtained an assessment by Dr. Blain. It was his conclusion that Montoya posed a "very low to low range of risk" for re-offense, and he recommended that Montoya be permitted to live with her family and that her contact with her children not be restricted.

68. While she was incarcerated, Montoya filed a motion in the Circuit Court of Lake County in January 2017 asking her sentencing judge to amend her mittimus to provide that she has "permission to have contact with her minor children while on MSR." In response, she received a handwritten document labeled "Agreed Order"

signed by her sentencing judge that states she will be "permit[ted] to have contact with her biological children" while on MSR.

69. While imprisoned at Logan Correctional Center, Montoya sought permission to serve her MSR while living at her home with her husband and her daughter, both of whom wanted her to live with them. Field Services responded that it would not approve her home as a "host site" because her minor daughter lives there.

70. The Department eventually approved Montoya to serve her MSR at her family's home. However, pursuant to the Department's policies, L.M. had to move out of the house and stay with other relatives when her mother came home.

71. Montoya was released from prison onto MSR in April 2019.

72. For approximately five months, Montoya was prohibited from residing with her daughter.

73. Montoya has never been accused of abuse or misconduct toward her children. She has never been found by a court to be unfit to be a parent, and no proceedings have ever been instituted to terminate her rights as a parent.

74. Prior to her release from prison, Montoya exhausted all available administrative remedies. In particular, she filed a grievance on January 17, 2017 (No. 39.1.17), requesting that she be allowed to have a parole plan that allows her to live with and have contact with her daughter. Counselor Kunzeman-Watkins denied the grievance on January 23, 2017. Montoya appealed the decision on January 25, 2017. On appeal, Grievance Officer J. Martin found the grievance to be "without merit" on February 3, 2017. Montoya then appealed to the Administrative Review

Board on February 9, 2017. The ARB responded that the issue was "not grievable." After this, Montya wrote directly to IDOC Director John Baldwin, who did not respond.

Class Allegations

75. Pursuant to Fed. R. Civ. P. 23(b)(2), the named Plaintiffs seek certification of this complaint as a class action.

76. The named Plaintiffs seek to represent a class defined as follows:

- All parents of minor children who are on Mandatory Supervised Release for a sex offense under the supervision of the Illinois Department of Corrections.

77. The Class seeks a declaration that the policies described above are unconstitutional and an injunction prohibiting the Department from continuing to enforce the policies.

78. The proposed class is numerous. According to the Department, there are approximately 550 individuals currently on MSR for sex offenses who are under the supervision of the Department's Sex Offender Supervision Unit. Any individual within this group who is a parent of a minor child is subject to the challenged policies. Moreover, membership in the proposed class is growing as additional individuals are released from prison onto MSR.

79. There are questions of law and fact common to all class members, including but not limited to the following:

- What are the Department's rationales for the challenged policies;
- Whether there is any compelling interest served by the Department's policies;

- How the Department has implemented the Court's preliminary injunction order;
- Whether the challenged policies violate the constitution on their face;
- Whether there exist less restrictive alternatives to the current policies that also serve the public interest.

80. All individuals falling within the class definitions have been subject to the same policies. Given the commonality of the questions pertinent to all class members, a single declaratory judgment would provide relief to each member of the class.

81. Defendant has acted and continues to act in a manner adverse to the rights of the proposed class, making final declaratory relief appropriate with respect to the class as a whole.

82. Plaintiffs and the class they seek to represent have been directly injured by the policies and practices challenged herein; and members of the class are currently at risk of future harm from the continuation of these policies and practices.

83. Plaintiffs will fairly and adequately represent the interests of the class; and the Plaintiffs' claims are typical of the claims of all members of the proposed class.

84. Plaintiffs' counsel are experienced in civil rights litigation, including *Monell* claims, (b)(2) class actions, and constitutional matters on behalf of individuals on MSR. Plaintiffs' counsel will fairly and adequately represent the interests of the class.

COUNT I
42 U.S.C. §1983 – FOURTEENTH AMENDMENT
Procedural Due Process

85. Plaintiffs, individually and on behalf of the class they seek to represent, reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

86. The Department of Corrections' policies as described herein violate the Fourteenth Amendment guarantee of procedural due process.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);

b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);

c) Enter judgment declaring that the policies described herein as applied to Plaintiffs and the members of the class violate the Fourteenth Amendment of the U.S. Constitution;

d) Enter a preliminary and then permanent injunction prohibiting Defendant from continuing the unconstitutional policies and practices identified herein;

e) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and

f) Grant such other relief as this Court deems just and proper.

COUNT II
42 U.S.C. §1983 – FOURTEENTH AMENDMENT
Substantive Due Process

87. Plaintiffs, individually and on behalf of the class they seek to represent, reallege and reincorporate, as though fully set forth herein, each and every allegation contained above.

88. The Department of Corrections' policies, which deprive people required to register as sex offenders of their fundamental rights to contact and live with their children while on MSR, are not narrowly tailored to serve a compelling government interest, and therefore violate the Fourteenth Amendment guarantee of substantive due process.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

a) Issue an order certifying this action to proceed as a class pursuant to Fed. R. Civ. P. 23(b)(2);

b) Appoint the undersigned as class counsel pursuant to Fed. R. Civ. P. 23(g);

c) Enter judgment declaring that the policies described herein as applied to Plaintiffs and the members of the class violate the Fourteenth Amendment of the U.S. Constitution;

d) Enter a permanent injunction prohibiting Defendant from continuing the unconstitutional policies and practices identified herein;

e) Award Plaintiffs their reasonable attorneys' fees and cost pursuant to 42 U.S.C. § 1988, and other applicable law; and

f) Grant such other relief as this Court deems just and proper.

Respectfully submitted,

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/s/ Mark G. Weinberg
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