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

COLUMBO GALINDO, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	
v.	)	No. 20-cv-2137
ROB JEFFREYS, in his official capacity as the Director of the Illinois Department of Corrections,	)	
Defendant.	)	

PLAINTIFFS' 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 individuals who have been convicted of sex offenses and completed their court-imposed sentence of incarceration but remain imprisoned in the Illinois Department of Corrections because they cannot find housing that complies with 730 ILCS 5/3-3-7(a)(7.6). 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 challenge the constitutionality of 730 ILCS 5/3-3-7(a)(7.6) (hereinafter "the One-Per-Address Statute" or "the Statute"). The Statute prohibits any individual on Mandatory Supervised Release ("MSR") for a sex offense from residing

"at the same address or in the same condominium unit or apartment unit or in the same condominium complex or apartment complex with another person he or she knows or reasonably should know is a convicted sex offender or has been placed on supervision for a sex offense." *Id*.

The named Plaintiffs and the members of the class they seek to represent have all completed their court-ordered terms of incarceration and are entitled to release on MSR. They remain in prison because they cannot find an approved "host site" at which to live while on MSR due to the enforcement of the One-Per-Address Statute.

Plaintiffs claim the enforcement of the Statute against them and others similarly situated violates the Eighth Amendment and Equal Protection Clause. Plaintiffs seek injunctive and declaratory relief on behalf of the class against Rob Jeffreys in his official capacity as the director of the Illinois Department of Corrections. Mr. Jeffreys is the public official with ultimate authority for enforcement of the One-Per-Address Statute.

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 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 proposed class meets 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 class easily satisfies this standard. According to the final report of the Illinois Sex Offenses & Sex Offender Registration Task Force,

published in December 2017, "[o]n average, the Illinois Department of Corrections houses 1,200 to 1,400 offenders who may not be released from custody because they are unable to secure permanent, stable housing meeting Illinois statute requirements or agency policy."[1] Many such individuals remain incarcerated solely because of the One-Per-Address provision. Plaintiffs' pleadings to date have identified 17 individuals who have otherwise compliant addresses that have not been approved because of the One-Per-Address Statute.[2]

As explained in Plaintiffs' most recent preliminary injunction motion (ECF No. 17), these individuals fall into three broad categories: (1) individuals such as Marcus Barnes, Kenneth Green and Dana Monson who would like to reside at charitably operated transitional housing such as Jordan's Dream or Wayside Cross Ministries; (2) individuals such as Alvin Goldberg and Joshua Huddleston who could obtain privately financed housing at addresses where other individuals with sex offense convictions already reside; (3) individuals such as Andra Sampson and John Margarella who are eligible for placement at the units IDOC leases from NewDay Apartments. Each of these categories likely contains dozens of other people

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[1] Available at: http://www.icjia.state.il.us/news/sex-offenses-and-sex-offender-registration-task-force-final-report

[2] Marcus Barnes, Kenneth Green, Fredrick Chamblis, Corey Crowe, Dana Monson, David Easton, Joshua Atkins, Kenneth Schroeder, Wade Council, Christopher Shelton, Mark Faller, Paul Hubbard, Alvin Goldberg, DeJuan Wright, Andra Sampson, John Margarella, and Joshua Huddleston.

who could identify housing but for the restriction on residing at the same address as another offender.[3]

Moreover, as noted in Plaintiffs' second motion for a preliminary injunction, membership in the class is growing as additional individuals finish their sentences of incarceration and become eligible for release on MSR but remain imprisoned due to an inability to obtain compliant housing. Accordingly, the class easily meets the numerosity requirement of Rule 23(a)(1).

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). Where, as here, the named Plaintiffs and the members of the class they seek to represent bring a facial challenge to an allegedly unconstitutional statute, the central questions of law and fact are necessarily common to all members of the class. *See Smiley v. Calumet City*, No. 08 C 3017, 2009 U.S. Dist. LEXIS 41701, at *15-16 (N.D. Ill. May 15, 2009) (Where the Plaintiff brings "a facial challenge to the validity of [a statute] … the statute itself serves as the required 'common nucleus of operative fact.'") (*citing Keele v. Wexler*, 149 F. 3d 589, 594 (7th Cir. 1998) and *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)).

[3] Indeed, since the May 6, 2020, hearing on Plaintiffs' second motion for a preliminary injunction, Plaintiffs have identified several additional transitional housing providers who could accept members of the proposed class but for the One-Per-Address restriction and several additional extended-stay motels that will accept individuals with sex offense convictions.

Here, the named Plaintiff and all members of the proposed are challenging the constitutionality of the same statute. 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 One-Per-Address Statute;
- Whether there is any compelling interest served by the Statute;
- Whether the Statute violates the Eighth Amendment and/or Equal Protection Clause as applied to the members of the class.

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 statute affecting all members of the class, typicality exists even if there are factual differences in precisely how the statute was applied to each plaintiff. *Sherman v. Twp. High Sch. Dist. 214*, 540 F. Supp. 2d 985, 992 (N.D. Ill. 2008) ("variations in factual circumstances … do not defeat the typicality of the class representative's defenses.") (*citing Brown v. Kelly*, 244 F.R.D. 222, 230 (S.D.N.Y. 2007) ("if factual distinctions could preclude findings of commonality and typicality under Rule 23(a), they would be the death knell for class actions challenging the systemic enforcement of an unconstitutional statute."); *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).

In this case, the named Plaintiffs' claims are typical of the class as a whole. Each named Plaintiff has a place to live that would meet IDOC approval but for the One-Per-Address Statute. The members of the proposed class are in the same situation—that is, they will be imprisoned beyond the completion of their court-ordered term of incarceration unless and until they find housing that satisfies this rule. Moreover, the named Plaintiffs and each class member have the same legal theories—that is, the application of the challenged statute keeps them in prison in violation of the Eighth Amendment and the Equal Protection Clause. 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 v. Brown*, 284 F.R.D. 398, 411 (N.D. Ind. 2012) (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 adequacy 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 elements are met here.

a. The Named 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 and the class members raise the same claims, seek the same relief, and their interests are aligned. The named Plaintiffs are a diverse group who represent the various ways in which the One-Per-Address Statute keeps individuals in prison beyond their release dates. Each of the named Plaintiffs 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). At present, there are 16 named Plaintiffs who

remain in prison because of the One-Per-Address Statute.[4] Even if such individuals are released pursuant to preliminary injunctive relief, they will remain invested in seeing this litigation through to its conclusion because in the absence of permanent injunctive relief, they will be returned to prison on a technical violation of their parole (*i.e.*, their housing will no longer be valid because of the One-Per-Address Statute). Accordingly, the name Plaintiffs will adequately represent the interests of the class.

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. Ms. Nicholas and Mr. Weinberg have successfully litigated numerous constitutional cases in which broad equitable relief was sought, including the *Murphy* class action which raised claims closely related to the claims raised here. *See*, *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

[4] Columbo Galindo, Joshua Huddleston, Alvin Goldberg, Kenneth Green, Fredrick Chamblis, Corey Crowe, Dana Monson, David Easton, Joshua Atkins, Kenneth Schroeder, Wade Council, Christopher Shelton, Mark Faller, Paul Hubbard, Andra Sampson, and John Margarella.

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 an 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 plaintiff must 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. *See 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);

Chi. Teachers Union, Local No. 1 v. Bd. of Educ. of Chi., 797 F.3d 426, 441 (7th Cir. 2015) ("23(b)(2) is the appropriate rule to enlist when the plaintiffs' primary goal is not monetary relief, but rather to require the defendant to do or not do something that would benefit the whole class. Not surprisingly, civil rights cases … are prime examples of Rule 23(b)(2) classes.") (citations omitted).

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).

Rule 23(g) 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 invested substantial work into preparation of this case, including speaking to numerous families and individuals affected by the challenged statute, drafting a Complaint and First Amended Complaint, drafting two successful motions for a preliminary injunctive relief, and conducting extensive legal research concerning the class members' claims. Second, as set forth in §I(A)(4)(c) above, Plaintiffs' counsel have devoted substantial professional resources to litigation on behalf of individuals who have been convicted of sex offenses and have significant experience in handling complex civil rights litigation, including the kind of claims asserted in this case. 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 undersigned counsel to represent the class.

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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