

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KENNETH FOSTER-BEY,
JOHN ALEXANDER,
WAYMON KINCAID,
WILLIAM SLEEPER,
ROBERT WEISENAUER,
ERIC MCCULLUM,
GERALD LEE HESSEL,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

JOHN S. RUBITSCHUN, Chair,
JAMES ATTERBERRY, MIGUEL BERRIOS,
CHARLES BRADDOCK, STEPHEN DEBOER,
ENID LIVINGSTON, JAMES QUINLAN,
MARIANNE SAMPER, BARBARA SAMPSON,
ARTINA HARTMAN, in their official capacities
as members of the Michigan Parole Board, and
PATRICIA L. CARUSO, in her official capacity as
director of the Michigan Department of Corrections,

Defendants.

File No. 05-CV-71318-DT

Hon. Nancy G. Edmunds

U.S Mag. Judge Virginia Morgan

ORDER GRANTING CLASS CERTIFICATION

The plaintiffs filed a motion for class certification with their complaint. The Court deferred consideration of the motion until the defendants' motion to dismiss was decided. The plaintiffs then renewed their motion, and the defendants concurred in it. Accordingly,

IT IS ORDERED that the plaintiffs' motion for class certification is granted, with the plaintiff class, for purposes of the *Foster-Bey* case, to be defined (at least for the present time) as follows:

All parolable life inmates in the custody of the Michigan Department of Corrections who were convicted before October 1, 1992, and whose parole the "new" parole board has denied, passed over, expressed no interest in pursuing, or otherwise rejected or deferred.

For purposes of this class definition, the “new” parole board refers to the board that came into existence pursuant to the 1992 statutory changes in parole, and that gradually took over from the old board in the period from 1992 to 1994. If further refinement of the class definition is needed, including the creation of sub-classes, that issue will be addressed when and if the parties raise it after discovery.

The Court finds that the proposed class meets the requirements of Fed. R. Civ. P. 23(a), namely that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The Court also finds that the proposed class meets the requirements of Fed. R. Civ. P. 23(b)(2), namely that the parties opposing the class have 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. Notice to the class may be provided by posting in all MDOC facilities where parolable life inmates are incarcerated.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: October 26, 2005

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 26, 2005, by electronic and/or ordinary mail.

s/Carol A. Hemeyer
Case Manager

Approved as to form and content:

/s/ Paul D. Reingold
Paul D. Reingold (P-27594)
Attorney for Plaintiffs

/s/ for Kevin R. Himebaugh
Kevin R. Himebaugh (P-53374)
Attorney for Defendants

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CERTIFICATE OF SERVICE

I certify that on October 25, 2005, I electronically filed the order granting class certification with the clerk of the court using the ECF system, which will send notification of such filing to the following:

Kevin Himebaugh (P-53374)
Office of the Attorney General
Corrections Division
P.O. Box 30217
Lansing, MI 48909

I also certify that I have sent the same pleadings by U.S. mail to the following non-ECF participants:

Anthony Lynch-Bey #146972
Saginaw Correctional Facility
9625 Pierce Rd.
Freeland, MI 48623

Dated: October 25, 2005

/s/ Paul D. Reingold
Paul D. Reingold
Attorney for Plaintiffs