

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

---

KENNETH FOSTER-BEY, *et al.*, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

vs.

JOHN S. RUBITSCHUN, *et al.*,

Defendants.

---

File No. 05-CV-71318-DT

Hon. Marianne O. Battani

U.S. Mag. Judge Virginia Morgan

**AMENDED ORDER OF CLASS CERTIFICATION**

The Court granted class certification on October 26, 2005. At that time the order defined the class provisionally, subject to change after discovery, when and if the need for change was raised by the parties. The parties having now stipulated to an amended class definition,

IT IS ORDERED that the plaintiff class be re-defined as follows:

All parolable lifers in the custody of the Michigan Department of Corrections who committed crimes (for which they received a parolable life sentence) 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. Excluded from this definition are so-called “drug lifers” who were convicted of distribution or possession of controlled substances, regardless of whether the crime was originally one subject to parolable life or one converted to parolable life at a later time.

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 c. 1992 to 1994. As before, 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.

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 lifers are incarcerated.

SO ORDERED.

s/Marianne O. Battani  
Hon. Marianne O. Battani  
U.S. District Judge

Dated: July 3<sup>rd</sup>, 2007

Approved as to form and content:

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

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