

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF FLORIDA

3 BOBBY M., et al., )  
4 Plaintiffs, ) No. TCA 83-7003  
5 v. )  
6 ROBERT GRAHAM, et al., )  
7 Defendants. )

8 MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION  
9 TO ADD NAMED PLAINTIFFS AND AMEND COMPLAINT

10 ARGUMENT

- 11 1. RULE 21 OF THE FEDERAL RULES OF CIVIL PROCEDURE  
12 GIVES THIS COURT AUTHORITY TO ADD NAMED PLAINTIFFS  
TO THIS LAWSUIT.

13 Rule 21 of the Federal Rules of Civil Procedure states, in  
14 pertinent part, that:

15 Parties may be dropped or added by order of the  
16 court on motion of any party or of its own  
17 initiative at any stage of the action and on  
such terms as are just.

18 Courts have held that, as long as notice and an opportunity  
19 to be heard are given, parties may be added in the judge's  
20 discretion. Gentry v. Smith, 487 F.2d 571 (5th Cir. 1973), Aero  
21 Corp. v. Department of the Navy, 493 F. Supp. 558 (D.C.D.C. 1981).

1 For example, in Soler v. G. & U., Inc., 86 F.R.D. 524  
2 (S.D.N.Y. 1980), the original plaintiffs were migrant farmworkers  
3 for the 1978 migratory season who contested defendants' unfair  
4 wage and payment practices. Plaintiffs moved to add as parties  
5 migrant workers for the 1979 migratory season who had similar  
6 claims. The court allowed the addition, stating:

7 Rule 21 simply provides that parties may be added  
8 by court order "on such terms as are just." A district court  
9 has considerable discretion in determining whether additional  
10 parties should be included in a pending action. Gentry  
v. Smith, 487 F.2d 571, 579-80 (5th Cir. 1973); Fairhouse  
Dev. Ct. v. Burke, supra, 55 F.R.D. at 419.

11 Having ruled that the plaintiffs may amend their  
12 complaint to add 1979 claims, the court concludes that other  
13 workers seeking to assert the exact same claim should be  
14 permitted to join the action. It appears that all these  
15 claims involve the same or related factual and legal  
16 questions. Joinder of additional parties at this stage of  
17 the litigation would not create an unfair disadvantage for  
18 the defendants and may preserve judicial resources.  
19 Therefore, the complaint may be amended to include additional  
20 parties pursuing claims under the act arising from the 1979  
21 season.

22 Id. at 528.

23 Plaintiffs in this case move to add RAYMOND C., RICHARD C.,  
24 and THOMAS P., minor children presently confined at Okeechobee, as  
25 plaintiffs. They challenge the same conditions at issue in the  
26 original Complaint, i.e., education and counseling, overcrowding,  
use and conditions of isolation, and lack of adequate medical and  
psychiatric care. Thus, defendants have notice of plaintiffs'  
claims, and the addition of RAYMOND C., RICHARD O., AND THOMAS P.  
as named plaintiffs at this stage of the lawsuit is not  
prejudicial.

1           2. THIS PLEADING CAN BE AMENDED PURSUANT TO RULE 15(a)  
2           OF THE FEDERAL RULES OF CIVIL PROCEDURE.

3           Rule 15(a) of the Federal Rules of Civil Procedure provides,  
4 in pertinent part that:

5           A party may amend his pleading only by leave of court or  
6 by written consent of the adverse party; and leave shall be  
freely given when justice so requires.

7           In the leading case of Foman v. Davis, 371 U.S. 1978 (1962),  
8 the Supreme Court articulated the general principle that, in the  
9 absence of bad faith or misconduct by the moving party, or undue  
10 prejudice to the opposing party, leave to amend should be "freely  
11 given:"

12           If the underlying facts or circumstances relied upon by  
13 the plaintiff may be a proper subject of relief, he ought to  
14 be afforded an opportunity to test his claims on the merits.  
15 In the absence of any apparent or declared reason -- such as  
16 undue delay, bad faith, or dilatory motive on the part of the  
movant, repeated failure to cure deficiencies by amendments  
previously allowed, undue prejudice to the opposing party by  
virtue of allowance of the amendments, etc. -- the leave  
should as the rules require be "freely given."

17           Id. at 182. See 3B J. Moore, W. Taggart & J. Wicker, Moore's  
18 Federal Practice ¶ 15.08 (2d ed. 1974); United States v. Houcham,  
19 364 U.S. 310, 316-17 (1960); Simons v. United States, 497 F.2d  
20 1046, 1049-50 (9th Cir. 1974); Howey v. United States, 481 F.2d  
21 1187, 1190 (9th Cir. 1973). Similarly, the Ninth Circuit Court of  
22 Appeals has held that, "Rule 15's policy of favoring amendments to  
23 pleadings should be applied with 'extreme liberality.'" United  
24 States v. Webb, 655 F.2d 977, 979 (9th Cir. 1981) (quoting  
25 Rosenberg Brothers & Co. v. Arnold, 283 F.2d 406 (9th  
26 Cir. 1960)).

1 As discussed in section 1 of this brief, adding additional  
2 plaintiffs will not cause delay or undue prejudice. Plaintiffs  
3 only use Rule 15(a) to amend the "factual allegations" section of  
4 their complaint to include specific information concerning the new  
5 plaintiffs. In Joseph v. House, 353 F. Supp. 367 (E.D. Va. 1973),  
6 a case involving a challenge to a municipal ordinance brought by  
7 several massage parlors, the court allowed the amendment of  
8 additional named plaintiffs, stating that:

9 Rule 21, Fed. R. Civ. P., provides that parties to an action  
10 may be added by order of the court at any stage of the  
11 proceedings ... the main purpose of the amended complaint is  
12 to add new plaintiffs. While the original plaintiffs are not  
13 to be permitted to blandly defeat the requirement that the  
14 court must order such additions by proceeding under Rule 15  
(cite omitted), the court concludes it appropriate to  
exercise the discretion vested in it by Rules 15 and 21 and  
permit the filing of the amended complaint. The addition of  
parties is not made at a late stage of the proceedings.

15 Id. at 371.

16 Similarly, in McLellan v. Mississippi Power and Light  
17 Company, 526 F.2d 870 (5th Cir. 1976), a civil rights action  
18 against certain local and international unions, the court allowed  
19 the addition of defendants, saying:

20 Professor Wright makes the very practical point that the  
21 first part of Rule 15(a) contemplates that the court should  
22 not have to be concerned with passing on amendments at an  
23 early stage when there is little likelihood of prejudice to  
24 other parties. Finally, the cases that require Rule 21  
mechanics but apply Rule 15(a) standards, and those in which  
the court goes through the form of giving precedence to Rule  
21 but then acts on its own initiative to permit the  
amendment, give indirect support to our views.

25 Id. at 873.

26 Plaintiffs in this case are using Rule 21 to add plaintiffs

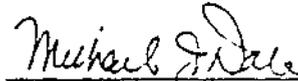
1 and Rule 15(a) to include factual allegations regarding the added  
2 plaintiffs, and thus are clearly supported by both rules and case  
3 law.

4 CONCLUSION

5 For the foregoing reasons, plaintiffs urge this Court to  
6 order that (1) plaintiffs' motion to add named plaintiffs be  
7 granted, and (2) leave be given to amend plaintiffs' original  
8 Complaint to include the allegations specific to the added  
9 parties.

10 DATED: June 2, 1986

11  
12 Respectfully submitted,

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