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EASTERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

VINCENT CERVANTES, etc., et al.,

Plaintiffs,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

/

NO. CIV. S-94-671 LKK\GGH

ORDER

This matter is before the court on plaintiffs' motion for class certification. Following hearing on the motion on September 6, 1994, the court ordered further briefing on issues of standing and mootness. Pursuant to the Order filed on November 14, 1994, I now resolve the outstanding jurisdictional question and certify the class accordingly.

I

BACKGROUND

Plaintiffs, six individuals and the Prisoners' Rights Union, bring this suit for declaratory relief and prospective injunctive

relief pursuant to 42 U.S.C. § 1983 against the State of California, Governor Wilson, and state correctional officials. Plaintiffs contend that the state's parole revocation procedures violate the Fourteenth Amendment. The Complaint alleges violations of the requirements of Morrissey v. Brewer, 408 U.S. 471 (1972) (due process) and Gagnon v. Scarpelli, 411 U.S. 778 (1973) (right to counsel).[1]

Plaintiff Vincent Cervantes, currently on parole, has had his parole revoked twice in the past. Cervantes was denied counsel at his revocation hearings. Plaintiff Isaac Cubillos was discharged from parole on June 7, 1994. Cubillos previously served a revocation term on a plea bargain. Plaintiff Jerry Valdivia, long addicted to drugs, has had his parole revoked four times. He accepted several plea bargains on parole violation charges without receiving treatment for addiction. Currently on parole, Valdivia's maximum term of parole will not expire until 1997.

Plaintiff Steven Williams was released from prison and parole on June 9, 1994. Williams was held for three months on an alleged violation of parole after his acquittal on criminal charges based on the same grounds. Defendants did not allow Williams to be represented by an attorney in revocation proceedings, although plaintiff had found an attorney willing to do so. Plaintiff Hossie

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[1] Specific allegations include: unfair re-arrest procedure; denial of prompt preliminary hearings; lack of timely written notice of charges; denial of counsel; hearings before non-neutral hearing body; lack of opportunity to investigate, present testimony, and confront witnesses; unfair plea bargaining; arbitrary final revocation decisions; and disregard for potential dispositions other than return to prison.

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Welch, currently on parole, was incarcerated for violating parole although he was found not guilty of criminal charges arising from the same incidents. Welch was denied counsel at the revocation hearing. Plaintiff Alfred Yancy also had his parole revoked without benefit of counsel, and is currently serving the parole violation term. Yancy expects to be released from prison on December 7, 1994.

Plaintiff Prisoners' Rights Union has a membership of approximately 8,900 people. The organization has one or more members in each of the following situations: on parole, in custody on alleged parole violations while awaiting possible revocation, or serving a prison sentence upon a parole violation.

The class plaintiffs seek to certify consists of (1) California parolees at large; (2) California parolees in custody, as alleged parole violators, and who are awaiting revocation of their state parole; and (3) California parolees who are in custody, having been found in violation of parole and who have been thereupon sentenced to prison custody. This court has already ruled that the requirements of Federal Rule of Civil Procedure 23 are satisfied. See Order filed November 14, 1994. Certification was delayed pending determination of the standing and mootness challenges resolved herein.

II

STANDARDS

Standing to litigate is a necessary component of a justiciable "case or controversy" within the meaning of Article III. Lujan v.

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Defenders of Wildlife, 504 U.S. __, 112 S. Ct. 2130, 2136 (1992). The party invoking federal jurisdiction bears the burden of establishing standing. Lujan, 112 S. Ct. at 2136. The "manner and degree of evidence" required to show standing varies according to the stage of litigation. Id. at 2136.

> At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim."

Id. at 2137, quoting Lujan v. National Wildlife Federation, 497 U.S. 871, 889 (1990).

Generally, plaintiffs must establish standing as of the date the action is filed. See Pickus v. United States Bd. of Parole, 543 F.2d 240, 242 n.3 (D.C. Cir. 1976). In class action suits, named plaintiffs must also have standing when the class is certified. Sosna v. Iowa, 419 U.S. 393, 402 (1975). In addition, the named plaintiff must be "a member of the class he or she seeks to represent at the time the class action is certified by the district court." Sosna, 419 U.S. at 403. Since the class in this case has not yet been certified, the court analyzes the standing of the named plaintiffs and not the class as a whole. Nelsen v. King County, 895 F.2d 1248 (9th Cir. 1990).

III

STANDING

A. Actual or Imminent Injury

"[I]njury in fact" is the first element of the "irreducible

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constitutional minimum of standing." Lujan, 112 S. Ct. at 2136. Plaintiffs must plead an actual or imminent injury; "speculative" injuries are insufficient to confer standing. Id. at 2136. Standing may nonetheless be found on the basis of impending injuries as well as present harms. See Resources Ltd., Inc. v. Robertson, 8 F.3d 1394, 1398 (9th Cir. 1993) (amended on other grounds) (concluding that Lujan does not "materially alter the standing principles which previously applied"); Los Angeles v. Lyons, 461 U.S. 95, 102, 105 (1983).[2]

Defendants argue that plaintiffs' claims are impermissibly speculative, citing City of Los Angeles v. Lyons, 461 U.S. 95 (1983). They contend that it is uncertain when and if the plaintiffs will undergo the parole revocation procedures complained of. In assessing whether a threat of future injury is too speculative to establish standing, the court must consider several factors, including plaintiffs' personal interest in the litigation and the likelihood of recurrence. Nelsen v. King County, 895 F.2d 1248, 1250-51 (9th Cir. 1990). The burden in this regard is on the plaintiffs. Id. at 1251. The probability of injury should not be assessed merely in quantitative terms, nor exclusively on the basis of past harms. Id. at 1251.

I now apply these principles to plaintiffs Cervantes,

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[2] See also Seattle Audubon Soc'y v. Espy, 998 F.2d 699, 703 (9th Cir. 1993); Portland Audubon Soc'y v. Babbitt, 998 F.2d 705 (9th Cir. 1993).

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Valdivia, Welch, and Yancy.[3] When the Complaint was filed on September 6, 1994, plaintiffs Valdivia and Welch were on parole, and Cervantes was serving a parole revocation term. All three plaintiffs are apparently now on parole. On September 6, 1994, Yancy was serving a parole violation term; he is scheduled to be released to parole on December 7, 1994. Yancy's status at that time will be identical to that of Cervantes, Valdivia, and Welch.[4]

These plaintiffs base their standing on the threat of future injury from a systematically defective parole revocation procedure. Defendants characterize such injury as speculative, but plaintiffs argue that their likelihood of injury is substantial. For plaintiffs' threatened injury to occur, the parolees must be accused of violating terms of their paroles or of violating the law, and consequently be subjected to the revocation procedure.[5] Plaintiffs assert that denial of due process mars the revocation procedure as a whole, beginning with arbitrary decisions to re-arrest for parole violation and continuing through the Department's final decision regarding revocation. As parolees within the ongoing jurisdiction of the Department of Corrections, plaintiffs

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[3] Plaintiffs Cubillos and Williams clearly lack standing, for they have been discharged from parole and thus are not members of the class at the time of certification. See Sosna v. Iowa, 419 U.S. 393, 403 (1975).

[4] By this lawsuit, Yancy does not challenge his current commitment, but rather, like other plaintiffs, seeks prospective injunctive relief to restructure the revocation procedure.

[5] Of course, exposure to the revocation procedure precedes any determination that parolees **actually** violated terms of their parole or the criminal law.

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are uniquely subject to the procedures they challenge.

The parolees' relationship to defendants and to the correctional system they direct is comparable to the structural relationship between plaintiffs and defendants in LaDuke v. Nelson, 762 F.2d 1318 (9th Cir. 1985) (modified on other grounds). In LaDuke, a class of migrant farm dwelling residents was found to have standing to seek an injunction against warrantless INS searches of their homes. The court observed that it was class members' status as residents of migrant farm housing that exposed them to the threat of future injury. LaDuke, 762 F.2d at 1324-26. Similarly, plaintiffs here are uniquely and directly subject to the procedures they challenge by virtue of their status as parolees. See Ramer v. Saxbe, 522 F.2d 695, 703 (D.C. Cir. 1975) ("Whether actually incarcerated or in parole or mandatory release status, the appellants continue subject to the rules and regulations of the Bureau of Prisons.").

Plaintiffs allege that in each of the last seven years, on average, more than 50% of persons on parole have been returned to prison as parole violators.[6] Plaintiffs assert that in a recent year, the successful completion rate of parole in California was 19%, and further, that California has one of the lowest -- if not the lowest -- parole success rates of any state in the nation.[7] A recent state report notes that the number of parole revocations "is increasing at a rate far in excess of increases in prison or

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[6] See Complaint ¶ 52.

[7] See Complaint ¶ 53.

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parole population."[8] The rates for felon parolees returned to prison in 1983 through 1992 exceeded 50% in six of those years.[9] While the probability of injury may not be assessed merely in quantitative terms, Nelsen v. King County, 895 F.2d 1248, 1251 (9th Cir. 1983), these quantitative indicators are one factor the court may consider in its analysis of the likelihood of future injury.

These statistics illustrate the unique degree to which parolees are subject to the challenged revocation procedures. Parolees are, by definition, already subject to defendants' oversight and control. Consequently, they are far more likely to experience recurrent injuries than are plaintiffs who have attempted to challenge practices that only randomly affect members of the general public.

For example, citizens did not have standing, on the basis of threatened injury, to seek injunctive relief against a magistrate and state judge who allegedly violated their constitutional rights as criminal defendants. O'Shea v. Littleton, 414 U.S. 488, 496 (1974). The Court concluded that for their injury to materialize, the citizens would had to have been charged with violating the criminal law. O'Shea, 414 U.S. at 496-97. Further, they would have had to again come before one of the same two individual defendants and again receive allegedly unconstitutional treatment.

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[8] See Blue Ribbon Commission on Inmate Population Management, Final Report, State of California, January 29, 1990 (Plaintiffs' Ex. B).

[9] See Putting Violence Behind Bars, Report of the Little Hoover Commission, State of California, January 18, 1994 (Plaintiffs' Ex. A).

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Id. at 496. Parolee plaintiffs in this case, however, do not assert claims against individual parole agents on the "front line" of the revocation process. Rather, plaintiffs allege a systemic denial of due process, and sue the state and state executives overseeing the correctional system.

Likewise, a citizen previously injured by a police chokehold was held to lack standing to request a preliminary injunction against the future use of police chokeholds. City of Los Angeles v. Lyons, 461 U.S. 95, 105 (1983). The Court reasoned that the possibility that the plaintiff would be stopped by the Los Angeles police again, and for a second time subjected to a chokehold without any provocation or police justification, was too remote and unrealistic to constitute a threat of injury sufficient for standing. Lyons, 461 U.S. at 105-06. Comparing parolee plaintiffs' likelihood of experiencing the revocation procedure to the Lyons plaintiff's likelihood of being choked again by police, it is apparent that the threat of injury to parolees is more real and immediate.

Plaintiffs' status as parolees subjects them to the continual jurisdiction and supervision of the correctional system, unlike the position of ordinary citizens vis-a-vis the Los Angeles police force or Illinois judiciary. Parolee plaintiffs' exposure to defendants' correctional system is inherently more constant and immediate than the relationships underlying Lyons and O'Shea.

Moreover, an examination of parolee plaintiffs' individual histories highlights their likelihood of experiencing parole

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revocation proceedings in the future. Cervantes' parole has already been revoked twice, Valdivia's four times, and Welch and Yancy have experienced revocation once apiece. These plaintiffs have thus been allegedly injured in the past by the challenged revocation procedures. These prior injuries serve as evidence that the future threat is likely to actually occur. See Lyons, 461 U.S. at 102; O'Shea, 414 U.S. at 485-86. As the Supreme Court noted, "Of course, past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury." 414 U.S. at 496.[10]

Additionally, parolee plaintiffs Welch and Valdivia are chronic substance abusers whose respective alcohol and drug use has contributed to their previous parole revocations. Because alcohol or drug-related violations could again catalyze the revocation process, Welch and Valdivia are potential parole violators as long as they continue to misuse drugs.[11]

Considered as a whole, plaintiffs' status as parolees, their ongoing supervision by defendants, the quantitative data regarding revocation rates, allegations of past injury, and plaintiffs' individual case histories establish that for these individual

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[10] Nelson, 895 F.2d 1248, does not hold to the contrary. The circuit reasoned that "past exposure to harm is not sufficient to confer standing" for a threatened injury (emphasis added). I agree that plaintiffs' past injuries do not alone suffice to confer standing now. However, past revocations function as evidence of the reality of the threat of injury in the case of all four parolee plaintiffs. See Lyons, 461 U.S. at 102.

[11] The Complaint supports an inference of ongoing substance abuse. See Complaint ¶¶ 42-51.

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plaintiffs, the threat of parole revocation is sufficiently "real and immediate" to satisfy the Article III injury requirement. Lyons, 461 U.S. at 102.[12]

B. Causation and Redressability

The second requirement for Article III standing is a causal connection between the injuries asserted and the conduct complained of. Lujan, 112 S. Ct. at 2136. Plaintiffs contend that California's parole revocation procedure -- from re-arrest through final revocation -- violates their constitutional rights. There is no dispute that the procedures alleged to be unconstitutional are under the control and authority of the defendants. The causation requirement is therefore satisfied.

The third and final minimum constitutional requirement of standing is redressability. Plaintiffs must show that it is "likely," as opposed to merely "speculative," that their injuries will be "redressed by a favorable decision." Lujan, 112 S. Ct. at 2136. Here, the relief sought would directly cure the

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[12] In addition to the Article III standing requirements, standing analysis may address "prudential concerns" developed in case law. See Valley Forge Christian College v. Americans United For Separation of Church and State, Inc., 454 U.S. 464, 474-75 (1982). Defendants contend that prudential considerations preclude plaintiffs' standing. They argue that plaintiffs are improperly asserting the rights of others, Allen v. Wright, 468 U.S. 737, 751 (1984), and that plaintiffs have not shown a personal stake in the litigation. See Fisher v. Tucson Sch. Dist. No. One, 625 F.2d 834 (9th Cir. 1980). These arguments fail because plaintiffs have demonstrated that they are individually threatened by future exposure to an unconstitutional revocation procedure.

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constitutional defects alleged.[13] This requirement is accordingly satisfied.

C. Standing of Prisoners' Rights Union

Plaintiff Prisoners' Rights Union (the "Union") alleges standing as the representative of its members, estimated to number 8,900 people. An organization has standing to represent its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). Not all members of the association must have standing in their own right -- "any one of them" will suffice. Warth v. Seldin, 422 U.S. 490, 511 (1975). I evaluate the Union's standing under these well-established principles.

The Complaint alleges that one or more members of the Union are in each of the following situations: (1) on parole; (2)

[13] Plaintiffs request a declaratory judgment that the provisions of the Statutes of California, Laws of 1992, Ch. 695, Senate Bill 97, granting defendants broad power over parole revocation, are violative of due process. They further seek injunctive relief insuring (1) that revocation proceedings satisfy due process; (2) that arrest warrants and holds are promptly considered for sufficiency and re-arrested parolees promptly arraigned; (3) that preliminary and final revocation hearings are prompt and occur before a neutral and detached body; (4) that potential revokees may acquire the assistance of counsel at plea negotiations; (5) that defendants publish regulations and provide notice and public hearings regarding revocation matters; and, (6) that defendants comply with Morrissey v. Brewer, 408 U.S. 471 (1972), and Gagnon v. Scarpelli, 411 U.S. 778 (1973). See Complaint ¶¶ 60-62.

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undergoing the revocation process; and (3) in custody after parole revocation.[14] The analysis of individual parolee plaintiffs, above, applies to the Union members on parole. Therefore it is clear that at least one Union member, like parolee plaintiffs, has a threat of future injury sufficient to confer standing.

Moreover, given a group of some 8,900 people, it is reasonable to assume that at least one Union member who was "in prison, pending final revocation of parole" on September 6, and thus was experiencing the revocation procedures, will continue to be "in process" at the time of class certification.[15] Such members have been exposed to the allegedly unconstitutional revocation process at the time of filing and certification, and therefore assert current "injur[ies] in fact" as well as imminently threatened injuries. Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992).[16]

The causation and redressability requirements are satisfied for the same reasons explained above regarding individual plaintiffs. Accordingly, I conclude that at least some Union members would have standing in their own right, and the first requirement for representational standing is thus satisfied.

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[14] See Complaint ¶¶ 97-99.

[15] Complaint ¶ 99.

[16] Because the relief sought is prospective reformation of the revocation procedures, rather than release from custody or damages for injuries already sustained, plaintiffs may challenge the system that allegedly holds them unconstitutionally. See Wolff v. McDonnell, 418 U.S. 539, 554-55 (1974); Heck v. Humphrey, 114 S. Ct. 2364 (1994).

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Since 1971, the Union has been working to provide legal assistance to prisoners, and to preserve and protect the rights of parolees and prisoners in California. The constitutional rights that plaintiffs seek to vindicate by this action are manifestly related to the Union's historic provision of legal assistance. The second requirement for representational standing is therefore satisfied. See Hunt, 432 U.S. at 343.

Defendants argue that representational standing is nonetheless improper because "the union must rely upon the participation of its members in the lawsuit." This argument pertains to plaintiffs' allegations that the revocation procedure denies parolees the right to counsel, in violation of Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973). Gagnon held that state authorities must consider a parolee's right to counsel in revocation proceedings on a case-by-case basis. 411 U.S. at 787-91. Defendants reason that it will therefore be necessary to have the participation of those Union members who claim to have been unlawfully denied counsel in order to assess their cases individually.

While defendants' proposition seems reasonable at first glance, it does not survive scrutiny. The Complaint asserts that when parolees request counsel, defendants engage in a pattern and practice of Gagnon violations manifested by their denial of the request "in virtually all such cases, on the invalid ground, among other invalid grounds, that the parolee is competent to represent himself or that the charges are not difficult to defend."[17]

[17] See Complaint ¶ 195.

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Plaintiffs allege that defendants do not inform parolees of their right to request counsel and do not make a case-by-case assessment of each parolee's right to counsel, but instead apply broad and inflexible standards to most parolees.[18] It is quite possible that the Union can prove these allegations of systemic Gagnon violations through evidence obtained from defendants during discovery, or from the named plaintiffs, without resort to individual cases of Union members. Thus neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. See Hunt, 432 U.S. at 343. Accordingly, I conclude that the Prisoners' Rights Union has standing on behalf of its members.

IV

MOOTNESS

Defendants argue that the claims of the Complaint are moot. The doctrine of mootness bars the court from adjudicating a case where (1) the issues are no longer "live" or (2) the parties lack a legally cognizable interest in the outcome. Sample v. Johnson, 771 F.2d 1335, 1338 (9th Cir. 1985), cert. denied, 475 U.S. 1019 (1986). To the extent that defendants' "mootness" argument relies on the contention that plaintiffs currently lack standing, it fails for the reasons already explained. The due process issues raised by the Complaint are equally as vital now as they were when the Complaint was filed. As the Ninth Circuit recently noted, "[w]here the threatened harm still exists . . . the case remains alive and

[18] See Complaint ¶¶ 16, 60-61, 81, 195, 228-240.

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suitable for judicial determination." Public Serv. Co. of Colo. v. Shoshone-Bannock Tribes, 30 F.3d 1203, 1205 (9th Cir. 1994).

Likewise, the "personal stake" element of the mootness doctrine is satisfied because the parolee plaintiffs are each personally threatened with revocation of their parole status under defendants' allegedly unconstitutional process. See United States Parole Comm'n v. Geraghty, 445 U.S. 388, 396-400 (1980). Accordingly, their controversy with defendants presents a matter capable of judicial resolution, and does not require the court to issue an "advisory opinion" upon a hypothetical set of facts. See Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990).

In regard to the Union, those members who are parolees are in the same position as the individual plaintiffs considered above, and consequently satisfy the mootness analysis. As for the Union members who were experiencing the revocation process at time of filing, it is clear that even if some of these individuals are no longer engaged in the revocation procedure, the "constant existence of a class of persons suffering the deprivation is certain" in a group of approximately 8,900 people. See Gerstein v. Pugh, 420 U.S. 103, 111 n.11 (1975).

Moreover, given the relative brevity of the parole revocation process, it is manifestly unlikely that a particular parolee could have his or her claims adjudicated before the revocation process ended. Many individual parolees are subjected to the parole revocation process more than once. A "classic justification for a conclusion of nonmootness" therefore applies to Union members

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undergoing parole revocation at the time of filing, for their claims are "capable of repetition yet evading review." See Roe v. Wade, 410 U.S. 113, 125 (1973).

For all of the above reasons, defendants' mootness argument fails.

V

ORDER

Accordingly, for all the reasons stated above, defendants' objections to class certification on standing and mootness grounds are rejected.

Pursuant to this court's Order filed November 14, 1994, a class is hereby certified under Rule 23(b)(2), consisting of: (1) California parolees at large; (2) California parolees in custody, as alleged parole violators, and who are awaiting revocation of their state parole; and (3) California parolees who are in custody, having been found in violation of parole and who have been thereupon sentenced to prison custody.

IT IS SO ORDERED.

DATED: November 29, 1994.

LAWRENCE K. KARLTON
CHIEF JUDGE EMERITUS
UNITED STATES DISTRICT COURT

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