DOCKET NO. HHD-CV20-6126477-S

CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION, *et al*,	:	SUPERIOR COURT
Plaintiffs,	:	
	:	JUDICIAL DISTRICT OF HARTFORD
v.	:	AT HARTFORD
	:	
LAMONT, NED, *et al*,	:	APRIL 7, 2020
Defendants,	:	

DEFENDANTS' OBJECTION TO MOTION FOR TEMPORARY ORDER OF MANDAMUS

This action for temporary mandamus relief is brought by an organization of defense lawyers, the Connecticut Criminal Defense Lawyers Association ("CCDLA") and four incarcerated inmates, allegedly seeking mandamus relief. They cannot however, point to any statutory right to a mandatory ministerial duty requiring the four inmate plaintiffs, Breyette, Rodriguez, Johnson and Jones, to be released from lawful confinement, nor do they meet any of the other requirements for the extraordinary relief of a temporary writ of mandamus. In support of this objection, and in opposition to the plaintiffs' motion, the defendants respectfully file the following:

1. Declaration of Gavin Galligan
2. Declaration of Michelle DeVeau
3. Declarations of Dr. Cary Freston (one as to each inmate plaintiff)
4. Declaration of Dr. Byron Kennedy
5. Defendants' Motion to Dismiss
6. Defendants' Memorandum of Law in Support of Motion to Dismiss

For the reasons set forth herein below, and in the defendants' affidavits in opposition, as well as for the reasons stated in the memorandum in support of the motion to dismiss, the motion for a temporary order of mandamus should be denied, and the accompanying motion to dismiss should be granted.

Standard of Review

Our Supreme Court in *AvalonBay Communities, Inc. v. Sewer Comm'n of City of Milford*, 270 Conn. 409, 416–17, 853 A.2d 497, 502 (2004) set forth the well-established standard for the issuance of a writ of mandamus, as stated, the following:

> The requirements for the issuance of a writ of mandamus are well settled. "Mandamus is an extraordinary remedy, available in limited circumstances for limited purposes.... It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with recognized principles of law.... That discretion will be exercised in favor of issuing the writ only where the plaintiff has a clear legal right to have done that which he seeks.... The writ is proper only when (1) the law imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy." (Internal quotation marks omitted.) *Miles v. Foley*, 253 Conn. 381, 391, 752 A.2d 503 (2000).

Here, the plaintiffs fail on all three prongs. First, the decision whether or not to release an inmate from lawful incarceration to some form of community release, is a decision that is within the extremely broad exercise of the discretion of the Commissioner of Correction. See Declaration of Gavin Galligan, which accompanies this objection. Second, none of the plaintiffs have a "clear legal right" to be released from a lawful sentence prior to the expiration of the sentence, and plaintiffs' moving papers point to no such authority. Third, the actual relief sought here, release from confinement, is solely available by way of a petition for a writ of habeas corpus, and it is not seriously contested that if such an application were filed, a motion for an emergency hearing or an emergency expedited hearing on the habeas petition is an available remedy. See e.g. *State v. Anderson*, 319 Conn. 288, 325, 127 A.3d 100, 123 (2015)(inmate claiming inadequate medical or mental health treatment may pursue an expedited petition for a writ of habeas corpus challenging the conditions of his confinement). Accordingly, plaintiffs' motion should be denied.

FACTS

Gavin Galligan is employed by the State of Connecticut, Department of Correction (DOC) in the position of Director of the Community Release Unit (CRU). Galligan Decl. ("GD") ¶2. Prior to becoming Director of the CRU, Galligan worked in the CRU as a Correctional Counselor Supervisor, whose duties included, in part, reviewing individuals incarcerated in DOC who might be eligible for some form of community release under the release discretion of the DOC. He has provided this Court a declaration based on his personal knowledge, which accompanies this memorandum and is incorporated by reference herein. *Id.* ¶ 3. Galligan is an experienced corrections professional with more than eighteen years of expertise in classification matters, risk assessments of inmates and knowledge of the DOC's policies and procedures regarding the release of offenders to various forms of community supervision. *Id.* ¶4.

Community Release provides eligible inmates an opportunity to reintegrate into the community prior to the completion of their sentence. Community Release is discretionary release granted or denied by the designee of the Commissioner of Correction. *Id*. ¶5. At this point in time, it would be unreasonably dangerous to the community and the public, and irresponsible to release at one time large numbers of inmates, as the social support networks in the communities in the cities and towns to which these offenders would be released has been dramatically impacted by the COVID-19 public health emergency. *Id.* ¶6. At this point in time the DOC is making extreme efforts to avoid shelter placements for inmates discharging end-of-sentence ("EOS"), as well as for inmates considered for discretionary release prior to EOS. This number is typically 40-50 inmates per month claiming homelessness. A copy of the DOC's COVID-19 Response for Individuals Discharging to Homelessness is attached to the Galligan Decl. as **Exhibit A.** *Id*. ¶6.

Keeping the DOC's COVID-19 Response for Individuals Discharging to Homelessness as set forth in Exhibit A in mind, a dramatic increase in releases would make the DOC release process not only much more difficult, but also would inevitably increase the health risk to the public by releasing

individuals prematurely, without adequate risk assessments, health reviews, referrals and transition plans developed by DOC discharge planners. The plaintiffs' proposal to release large numbers of offenders at once would also negatively impact community hospitals, walk-in clinics, and other medical facilities and would complicate the ability of those medical facilities, cities and towns that are already struggling to identify and plan for additional bed space, which is beyond the present capacity of these facilities. *Id.* ¶7.

Under DOC's current practice, DOC staff are not approving discretionary release for anyone that does not have a solid home plan. Plaintiffs' proposal would negatively impact the DOC's thoughtful, coordinated, and balanced approach to community releases, and would disregard the lack of a safety net available for most offenders when they are released from incarceration. *Id.* ¶8.[1]

Community Release By DOC v. Board of Pardons and Paroles Discretionary Release

There are several different avenues for offenders incarcerated in Connecticut to be released from prison prior to the end of their sentence. Community Release through the CRU is one of those avenues. *Id*. ¶9. Community Release includes transitional supervision,[2] residential program placement,[3] transitional placement,[4] nursing home release,[5] DUI home confinement,[6] re-entry furlough[7] and in some cases dual supervision for cases that are serving Special Parole. *Id.* ¶10. An offender, if eligible, may be released to a variety of different locations after being approved for community release through the CRU. For example, an inmate reviewed for community release could be released to a halfway

[1] See **Exhibit B,** to Galligan Decl.; THE CT REENTRY COLLABORATIVE; COVID-19 & REENTRY IN CONNECTICUT.(posted at https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/COVID19-Reentry-Factsheet-English-031920.pdf?la=en)

[2] Conn. Gen. Stat. §18-100c ("definite sentence of two years or less"… "*may* be released")
[3] Conn. Gen. Stat. §18-100(e)("the Commissioner *may* transfer…")
[4] *Id.* ("*may* transfer…after satisfactory participation in a residential program, to any approved community or private residence."
[5] Conn. Gen. Stat. §18-100i ("at the Commissioner's discretion, *may* release…"
[6] Conn. Gen. Stat. §18-110h ("the commissioner *may*, after admission and a risk and needs assessment release such person to such person's residence…"
[7] Conn. Gen. Stat. §18-101a (The Commissioner of Correction, at the Commissioner's discretion, *may* extend the limits of the place of confinement…")

house, to community supervision with a sponsor such as a family member in the community, a sober house or even to a medical facility. *Id.* ¶11. Alternatively, inmates may, if eligible, also be released prior to their end of sentence to either a halfway house or community supervision by virtue of the parole system under the Board of Pardons and Paroles (BOPP). BOPP review includes but may not be limited to such things as discretionary parole,[8] special parole[9] and compassionate parole.[10] *Id*. ¶12. The CRU is not involved in the BOPP parole process. CRU is managed by the DOC, not the BOPP. *Id*. ¶13. See also Gavin Decl. ¶¶ 14-19 (discussing differences between discretionary release by DOC and discretionary release by the BOPP).

The CRU and Parole and Community Services (PCS) Division and the BOPP are working collaboratively to review appropriate release eligible offenders that have a solid home plan. Community release decisions include a risk assessment process which evaluates the risk of the offender to the public and for recidivism. DOC added a process to prioritize those that are considered high risk if exposed to COVID-19 following the Centers for Disease Control and Prevention (CDC) guidelines. For example, DOC is identifying all inmates who might possibly be candidates for medical and/or compassionate parole, obtaining necessary medical records, information and is referring those cases to the BOPP. *Id.* ¶19. In keeping with DOC's commitment to provide previously incarcerated people returning to their communities with the very best chance for success, the DOC Reentry Unit is collaborating with the Hartford Reentry Center, CT Coalition to End Homelessness, and DOC's other community partners to find alternative ways to connect people to reentry services and housing supports. DOC has also partnered with the Institute for Municipal and Regional Policy (IMRP) and the CT Reentry Collaborative to quickly create a fact sheet for all releasing offenders with information

[8] Conn. Gen. Stat. §54-125a ("…*may* be allowed to go at large on parole…")
[9] Conn. Gen. Stat. §54-125e (b)(2)("subject to such rules and conditions as may be established by the Board of Pardons and Paroles…")
[10] Conn. Gen. Stat. §54-131k ("The Board of Pardons and Paroles *may* grant a compassionate parole release…")

about changes to resource information that were likely triggered by COVID-19 and where to find assistance. Id. ¶20; Exhibit B, to Galligan Decl.

DOC Population Numbers

On March 30, 2015 the total inmate facility count for the DOC was 16,157. This was the date in which DOC opened its then newly formed CRU, with the goal of having one decision maker for discretionary release applications under the authority of the Commissioner. *Id.* ¶21.[11] Fast forward to 2020, the CRU has conducted over 46,000 case reviews in just over a five-year time period. During the same time period, other initiatives were taking place pertaining to criminal justice reforms have contributed to a lower overall DOC count, as covered in OPM reports. *Id*. ¶24.[12]

As recently as one year ago, on April 3, 2019, there were a total of 13,249 offenders in DOC facilities. *Id.* ¶25. As of January 1, 2020, there were 12,284 individuals in DOC custody, a reduction of 965 inmates in DOC facilities in nine months. *Id*. ¶26. As of April 3, 2020, there are presently 11,736 inmates in DOC facilities, a reduction of 548 inmates in the last three months.[13] This is a reduction of the inmate population of nearly 5% in just three months, in part, due to the redoubled efforts described below, and in the Galligan Declaration. *Id.* ¶27.

Recently, based upon the COVID-19 crisis, CRU has been continuing to ensure that *all* eligible offenders are being reviewed for discretionary release within current DOC policies and under the

[11] Historically discretionary release decisions had been made by each facility Warden, and at the time of opening CRU, there were 15 different decision makers. *Id.* ¶22. The goal of CRU was not only to have consistent release decisions being made, but also to coordinate and track the cases across all facilities to ensure that cases eligible for release consideration were being reviewed in a timely manner. Efficiencies were maximized for the review processes and timeliness of release decisions were vastly improved. *Id.* ¶23.

[12] See https://portal.ct.gov/OPM/CJ-About/CJ-SAC/SAC-Sites/Monthly-Indicators/Monthly-Indicators-2019

[13] As of 11:00 AM on April 7, 2020, the total DOC population count is even lower, 11,638 inmates, total in facilities. DeVeau Supp. Decl. ¶ 4.

Commissioner's statutory authority. *Id.* ¶28.[14] The CRU has given direction to the correctional facilities to review all cases for accuracy to increase and include those who may be eligible but had not currently been reviewed based upon restrictive status, disciplinary issues or even temporality ineligible for review. *Id*. ¶29. CRU staff also requested that all DOC facilities review all cases that were previously stipulated to complete programming, to see if the programming was completed or where the offender was in the process of the program participation. Staff within CRU also reviewed all of these cases. *Id*. ¶30

CRU directed the facilities to meet with all offenders who were approved for Transitional Supervision, but had no sponsor/residence, to see if they now were able to obtain a sponsor. Additional phone calls were allowed and approximately 20% of the cases that previously did not have a sponsor, were able to provide a sponsor/residence. *Id*. ¶32. CRU worked with the facilities and Parole and Community Services to review cases that were "past due" or past their approved release date. These dates are "on or after dates," as they are discretionary releases. For the most part, the "on or after date" which is given is the earliest date an individual could be released, pending a second review of the release plan, which is a required second step in the discretionary process, a second discretionary review to determine if the offender has a sponsor, and an approved, solid home plan. Some of these past due cases had sponsor issues in which information needed to be clarified, review of cases to obtain medical transfer summaries that would then allow the case to move forward with placement in a halfway house, or simple requests to update classification information were also attempted to be resolved in order to process releases. These case reviews continue on a daily basis. *Id.* ¶33.

[14] None of the four plaintiffs are presently eligible for any discretionary community release program. Indeed, Breyette was only sentenced in 2015, to a total effective sentence of 15 years, and his parole eligibility date is not until June 18, 2024. Galligan Decl. ¶53. Marvin Jones is not eligible for release as he is a Special Parole violator with new pending criminal charges and is awaiting thereafter a parole revocation hearing. *Id.* ¶¶64-65.

On April 2, 2020, Commissioner Cook approved and authorized a revision to AD 9.8 Furloughs, (copy attached to Galligan Decl. as **Exhibit C)**, which expanded the use of furloughs for offenders approved for Transitional Supervision based upon the Governor's declaration of a State of Emergency. This expansion will accelerate the release of some offenders up to 45 days prior to their Transitional Supervision release date. *Id.* ¶ 34. CT DOC Health Services has been working to identify offenders that may be at risk if they were to contract COVID-19, based upon age 50 or older and medical scores of 3 or greater. DOC health services staff are identifying those at higher risk for COVID-19, e.g. those inmates with comorbidities, the presence of two or more chronic diseases or conditions. DOC Health Services staff are working to get opinion letters, signed by physicians or other Primary Care Providers (PCPs) to support the applications sent to the BOPP for consideration for Compassionate Parole. The BOPP has stated that they would be willing to look at any cases that DOC sent over. *Id.* ¶35.

However, none of the plaintiffs meet the criteria for medical or compassionate parole. *Id.* ¶36

The Community Release Review Process Is Discretionary

The purpose for compiling all available information about an offender, to consider each offender on a case-by-case basis for possible discretionary release to the community is to balance public safety with the inmate's needs once he is released to the community. Without this information, for example seriousness of the risk of violence, domestic violence, as well as previous chances at community supervision, either on community release, parole or probation, it is impossible to identify factors that pose a threat to public safety and/or are likely to result in the inmate reoffending and requiring a return to incarceration. Plaintiffs' proposed application for an order of temporary mandamus, besides lacking any authority to require such releases from incarceration, also ignores any consideration of past criminal history or previous failures at successfully participating in a program of supervised conditional release in the community. Quite frankly, plaintiffs' proposal presents an undue risk to public safety by disregarding such critical information.

The current process for discretionary community release through the CRU is as follows: once an offender has been identified by facility classification staff (typically a counselor) as eligible for community release,[15] facility staff assemble materials required for the offender to be reviewed, and submit the offender's application electronically to CRU. *Id*. ¶37. The materials included or reviewed in the offender's application for community release include such things as: Criminal record check (rap sheet), Police report or Pre-Sentence Investigation (PSI), agreement of community release conditions, notice of application to DOC and Judicial Victim Services, proposed sponsor contact information and criminal record check, program evaluation (s) (when available or required), DOC programming electronic records, check of protective order registry, review of institutional behavior, review of performance while on community release, parole or probation, victim impact statement(s), letters of support, letters of opposition, verification of eligibility of release, review of sentencing mitts, if the offender has community support- such as employment upon release and/or recommendations from the facility (if provided). *Id.* ¶38.

Different programs under the umbrella of community release have different eligibility requirements. For example, sentences of two years or less may be eligible for Transitional Supervision, sentences greater than two years may be eligible for Community Release- Halfway House. Sentences specific to convictions under Conn. Gen. Stat. §§ 14-227a, 14-215, 21a-267, 21a-279c may be eligible for release to DUI Home Confinement. *Id*. ¶ 39. However, all of these various release options are entirely discretionary and indeed, there is no statutory mandate or requirement that compels the Commissioner to consider any inmate for community release, even if the inmate were theoretically "eligible."

[15] None of the four plaintiffs are currently eligible for a community release program. Galligan Decl. ¶¶57, 58, 61, 65.

Some of the eligibility requirements are set forth in DOC A.D. 9.2, attached to Galligan's Declaration as Exhibit D. *Id*. ¶40**.** Once an offender's application is submitted, CRU reviews the application and the director makes a decision on community release for that offender. *Id*. ¶41. When reviewing an application for community release, the following factors are taken into consideration: the nature of the instant offense, the offender's criminal history, statements regarding the impact of release to the victim or the victim's family, compliance with the offender accountability plan (OAP), program participation and/or program removal, institutional behavior and/or disciplinary infractions (DRs), history while on supervision of any kind, out of state or federal criminal history (if any), and successes or failures while on supervision. *Id*. ¶42. In these present days and times in light of the COVID-19 health emergency and stay-at-home orders, particular concern and attention is being paid to victims, and domestic violence cases, as the requirement for many individuals to remain inside under stay-at-home orders may very well increase the risks to victims for domestic violence. *Id.* ¶ 43.

Each offender eligible for review is afforded an individual review before a discretionary decision on the community release application is rendered. *Id.* ¶44. An offender who is initially reviewed for community release may be approved, denied, waived, continue and reapply, or closed interest. For cases that are approved, the offender may face additional action on their case and not all case approved end up being released to supervision. New charges, disciplinary action, if they are no longer interested or if they do not have an adequate time for placement or supervision are all factors that may lead to these additional actions taking place. These actions, recorded and notified to the offender, would include the case being: rescinded, offset, waived, close interest. *Id.* ¶45.

A decision to deny a community release application is final and may not be appealed, though the grievance process, per A.D. 9.6.[16] If an offender is denied, the offender is generally not reviewed again for community release during their current sentence of incarceration. There may be instances where

[16] https://portal.ct.gov/-/media/DOC/Pdf/Ad/AD9/AD0906Revision20150408.PDF?la=en

offenders denied may be eligible for a re-entry furlough, if eligible. There are also cases that may be denied, but the offender may be in a situation where they have declined medically, and after evaluation and approval, they may be approved for release to a nursing home under the Commissioner's release authority. There also may be cases in which an offender was denied, but then began a new controlling sentence, in which the offender may be eligible for a re-review based upon that new sentence being controlling. *Id.* ¶49. Reasons for a denial of a community release application are: criminal history, inadequate institutional program participation, refusal to complete stipulated programming, deemed inappropriate for outpatient sex offender treatment, injury and/or impact to victim (or) victim's family, multi-state offender, nature and/or circumstances of the current offense, poor institutional adjustment, insufficient time for placement, poor performance on community release, parole, or probation. *Id*. ¶50.

After review, the CRU notifies correctional facility staff of the release decision. The Parole and Community Services Unit would receive all approved cases, to then process for release into the community. *Id.* ¶ 51. The Parole and Community Services (PCS) Unit would then conduct a second discretionary review to determine if the offender has a valid release plan. Prior to the COVID-19 emergency, this usual practice involved home investigation by a DOC PCS parole officer to interview the sponsor, conduct a home visit and determine whether the residence is appropriate. To expedite the process, and to protect the health and safety of the parole officers, these sponsor interviews are now being conducted telephonically, which has greatly facilitated and expedited the approval process of the release plan. *Id.* ¶52.

Dr. Byron Kennedy's Declaration and DOC's COVID-19 Action Plan

Byron Kennedy, MD, PhD, MPH, FACPM, is the Chief Medical Officer for the DOC. Dr. Kennedy Decl. ¶ 3. Dr. Kennedy received his medical degree and master's in public health from Yale University and is board certified in preventative medicine. *Id.* ¶ 2. Dr. Kennedy is also familiar with, and have published articles on, Communicable Disease Outbreaks. *Id*. ¶4. The DOC is well aware of the potential for infection within correctional facilities and, therefore, has taken extraordinary

measures to prevent and reduce the spread of infection. *Id*. ¶5. Commencing April 7, 2020 Northern CI ("NCI") will be the primary housing for all COVID-19 positive inmates with the exception of inmates currently housed at Garner CI (mental health), Manson Youth (youth offenders), and York CI (female inmates) due to their specialized population. *Id*. ¶6. NCI will have dedicated COVID-19 medical staff which will consist of at least one provider/APRN per day shift and nursing staff 24 hours a day, 7 days a week. *Id.* ¶7.

For those inmates who currently show symptoms, nurses do rounds on their unit every shift and do routine blood pressure, temperature, pulse, respiration, lung sound, pulse oximeter, and pain scale checks. Should any inmate require re-evaluation or have additional needs nursing staff conduct rounds as needed. *Id.* ¶8. The DOC has created a COVID-19 tracker[17] to show the current numbers of staff and inmates who have been tested and includes numbers for positive tests. The tracker has been placed on the DOC website which is updated routinely. This website page also has sections for Frequently Asked Questions (FAQs), DOC Operational Response Plan, memos circulated to staff and inmates, and other information regarding COVID-19. *Id.* ¶9.

Currently 32 staff members have tested positive for COVID-19. *Id.* ¶10. Currently 46 inmates have tested positive for COVID-19. *Id.* ¶11. Of those inmates who have tested positive, 4 have been sent to outside hospitals with 1 expected to return to the facility shortly. The rest have been in quarantine in their respective facilities but per the new protocol (see ¶6 above) they will be transferred to NCI. *Id.* ¶12. Currently 1 inmate is in ICU as a result of his symptoms. The remaining inmates are all considered in stable condition with no severe symptomology. *Id*. ¶13. All facility and health service pandemic plans were placed under review and by March 9, 2020 all updated and finalized plans were in place at 14 facilities and health services plans were in place agency wide. *Id.* ¶14.

[17] https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Health-Information-and-Advisories

The DOC has implemented measures in conformity with CDC guidelines for correctional facilities regarding the COVID-19 pandemic. *Id.* ¶15. Measures already taken to prevent or further limit the introduction of the COVID-19 virus into DOC facilities from the outside sources include: canceling social visits, canceling transfers of inmates between facilities unless necessary for safety and security, quarantining all new admits from the general population for fourteen days, canceling volunteer and limiting contractor access to facilities to only those who are the most essential, and performing temperature checks on incoming staff members and conducting questionnaires regarding COVID-19 symptoms and exposure prior to allowing them entry. *Id.* ¶16.

If any staff member is either shown to have a temperature above 100.4 or exhibits other symptoms related to COVID-19 infection they are denied entry into the prison. *Id.* ¶17. Measures already taken to prevent or further limit the spread of the COVID-19 virus within the DOC facilities include: widely distributing soap and other cleaning supplies among the inmate population, thoroughly cleaning common areas and frequent touch points at night, instituting quarantines of units when an inmate displays any symptoms of COVID-19, and modifying recreation to include only outside recreation and enforcement of social distancing guidelines. *Id.* ¶18. If an employee exhibits symptom while at work they are immediately isolated, a review is completed to determine who that employee has come into contact with, those individuals are then monitored for symptoms, and any area that the employee has come into contact with is cleaned and disinfected. *Id.* ¶19.

As of April 5, 2020, a total of 5,759 blue level 3 masks have been distributed to DOC staff. *Id.* ¶20. In addition, DOC has increased staff use of Personal Protective Equipment ("PPE") including authorizing the use of personally owned PPE. *Id.* ¶21. Masks in compliance with CDC recommendations for the general public have been provided to all inmates. *Id.* ¶22. CDC posters regarding COVID-19 have been placed throughout all facilities to educate both staff and inmates as to proper preventative measures. *Id.* ¶23. DOC medical staff are reviewing inmates who have been

identified by the parole department as eligible for early release. *Id*. ¶24. Eligible inmates such as those with heart conditions, respiratory conditions, or other risk indicators may be released prior to their end of sentence if shown they will have sufficient stable assistance in the community to ensure they are not being placed at greater risk of contracting COVID-19. *Id.* ¶25. Policies are being reviewed in collaboration with external partners including Yale Clinic for inmates discharging due to end of sentence that are COVID-19 positive. *Id.* ¶ 26.

WILLIE BREYETTE IS NOT EVEN NEAR HIS RELEASE DATE

Plaintiff Willie Breyette, inmate #371781, is serving a total effective sentence of 15 years for Conspiracy to commit Robbery 1st degree. Breyette's End of Sentence (EOS) date is September 18, 2026 (subject to change with Risk Reduction Earned Credit). His parole eligibility date is June 18, 2024, and his DOC Community Release eligibility date is March 19, 2025. (may be subject to change with Risk Reduction Earned Credit). *Id*. ¶ 53; Michelle Deveau Decl. ¶ ¶4, 5; Exhibit A, attached thereto. Detailed information concerning Breyette's involvement as the driver for Frankie Resto, and the murder of Ibrahim Ghazal is set forth in the transcripts, Exhibit E to the Galligan Declaration. Mr. Resto, the robber at the time, shot Mr. Ghazal with a firearm and he was later pronounced dead. This entire incident was recorded on video surveillance at the store. Shortly thereafter, after distributing the video surveillance to the police, the Meriden Police Department were given information that the shooter was known as a Frankie Resto and they also received information implicating Willie Breyette, as the potential driver. Police responded to Mr. Breyette's home and located the vehicle that matched the description and they also interviewed Mr. Breyette about his involvement. Mr. Breyette indicated at the time he was the driver of the vehicle and that had driven Mr. Resto to that store. See Galligan Decl. ¶ 56, and Exhibit E, attached thereto.

Breyette Is Not Medically Eligible

The plaintiff Breyette has a current medical level of 2, i.e., low medical acuity. Declaration of Dr. Cary Freston, ("Freston Breyette Decl.") ¶7.[18] Breyette has a chronic low thyroid condition which resulted from a transient condition known as Hashimoto's Thyroiditis. He now claims to suffer from asthma – although that was not reported by him previously. *Id.* ¶ 8. Breyette's thyroid condition is being controlled through medication therapy. Recent laboratory results show the plaintiff is well controlled, and the labs are within normal limits. *Id.* ¶ 9. Current DOC medical records do not document that Breyette suffers from asthma.[19] *Id*. ¶10. Since the beginning of January 2020, Breyette has had two requests to be seen by DOC medical staff for non-chronic conditions, both for right lower leg pain. *Id*. ¶11. Breyette has not exhibited symptomology which, under the CDC guidelines, indicates possible contraction of COVID-19. *Id.* ¶13. Breyette has not exhibited symptomology which, under the CDC guidelines, indicates the need for testing for COVID-19. *Id.* ¶14. Breyette has no other positive indicators which, under CDC guidelines, requires the need for testing for COVID-19. *Id.* ¶15. DOC medical records indicate Breyette does have the following chronic conditions: Hypothyroidism. *Id*. ¶16. Breyette does not have a chronic medical condition which would place him in a COVID-19 high risk category. *Id*. ¶17. Although Breyette does have hypothyroidism, a chronic condition, the increased risk for COVID-19 is minimal. And the hypothyroidism is currently being managed as recommended per CDC guidelines. *Id*. ¶18. Dr. Freston, after having reviewed Breyette's health care records, has determined that it is ***not*** medically necessary to release the plaintiff prior to his current end of sentence. *Id.* ¶19. Thus, plaintiff Breyette has no factual basis to claim he is eligible for any form of community release under any statute or any other legal mandate.

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[18] Dr. Freston has reviewed the health care records of the four named individual inmate plaintiffs and supplies this Court with four separate affidavits, declaring under penalty of perjury, his medical findings as to each of the individual plaintiffs. They are each referred to by the last name of each inmate plaintiff.

[19] This finding from the documented health record is significant for the reason that Breyette has been continuously incarcerated since July 3, 2012, and has made no mention or request for asthma treatment to the medical department concerning an alleged asthma condition, that appears for the first time as an allegation in the instant complaint.

DANIEL RODRIGUEZ IS NOT ELIGIBLE

Daniel Rodriguez, #371603, is committed to the custody of the Commissioner of Correction pursuant to a mittimus issued in docket UWY-CR14-424379-T for the crime of robbery 1st degree in violation of Conn. Gen. Stat. §53a-134a (3), sentenced to eight (8) years to serve followed by ten (10) years' Special Parole. Registration on the deadly weapon registry ordered. Daniel Rodriguez was also sentence in docket no. UWY -CR14-423964-T for criminal attempt to commit assault first degree with extreme indifference to human life, in violation of Conn. Gen. Stat. §§53a-49@53a-59(a)(3), sentenced to eight (8) years to serve followed by ten (10) years' Special Parole. Registration on the deadly weapon registry ordered, concurrent to other cases. See mittimuses, Exhibit B, attached to Declaration of Michelle DeVeau, ¶ 6.

Daniel Rodriguez, #371603, was also committed to the custody of the Commissioner pursuant to a third mittimus, Exhibit B, count one- Assault 2nd degree in violation of Conn. Gen. Stat. 53a-60; and on count two criminal possession of a firearm, in violation of Conn. Gen. Stat. § 53a-217, to which Rodriguez was sentenced to five years on count one, concurrent with other cases, and two years mandatory on count two, concurrent with count one. Thus, on all three mittimuses Rodriguez has a total effective of eight years to serve after which he will be transferred to the jurisdiction of the Board of Pardons and Paroles to being his period of ten years Special Parole. DeVeau Decl . ¶7. Rodriguez will not satisfy his sentence until November 14, 2021, and his parole eligibility date is February 11, 2021, as he is not eligible for parole until he completes 85% of his sentence.[20] *Id.* ¶8. See also Declaration of Gavin Galligan, ¶¶ 58-60, which paragraphs are incorporated by reference herein.

Rodriguez Is Not Medically Eligible

[20] As a violent offender Conn. Gen. Stat. §54-125a(b)(1) requires that Rodriguez must complete 85% of his sentence before becoming parole eligible.

The plaintiff, Daniel Rodriguez, has a current medical level of 3 being intermediate medical acuity. Freston Rodriguez Decl. ¶7. Since the beginning of January 2020, Rodriguez has had one request to be seen by DOC medical staff for non-chronic conditions. *Id.* ¶8. Since the beginning of January 2020, Rodriguez has been treated by DOC medical staff for the following non-chronic complaints: Right shoulder pain. *Id*. ¶9. Rodriguez has not exhibited symptomology which, under the CDC guidelines, indicates possible contraction of COVID-19. *Id.* ¶10. Rodriguez has not exhibited symptomology which, under the CDC guidelines, indicates the need for testing for COVID-19. *Id.* ¶11. Rodriguez has no other positive indicators which, under CDC guidelines, requires the need for testing for COVID-19. *Id.* ¶12. DOC medical records indicate Rodriguez does have the following chronic conditions: Hypertension, Hypertrophic Cardiomyopathy, Vitamin D deficiency, Herpes genitalis, Lactose intolerance, GERD, Mood disorder, Polysubstance dependence. *Id.* ¶13.

Rodriguez does have a chronic medical condition, Hypertrophic Cardiomyopathy, which places him in a higher-than-average COVID-19 risk category. *Id.* ¶14. Although Rodriguez does have Hypertrophic Cardiomyopathy, he is currently being managed as recommended per CDC guidelines, and the disease is well managed at present. Id. ¶15. Dr. Freston, after having reviewed Rodriguez's health care records, has determined that it is ***not*** medically necessary to release Rodriguez prior to his current end of sentence. *Id.* ¶19. Thus, plaintiff Daniel Rodriguez has no factual basis to claim he is eligible for any form of community release under any statute or any other legal mandate.

ANTHONY JOHNSON IS NOT ELIGIBLE

Anthony Johnson, #90062, is committed to the custody of the Commissioner of Correction pursuant to two mittimuses, attached as Exhibit C to the DeVeau Decl. , as follows: in docket no. CR13-245927, Johnson is convicted on count one of robbery 2nd degree inv violation of Conn. Gen. Stat. 53a-135(a)(1)(B), and on count two conspiracy to commit robbery 2nd degree, in violation of Conn. Gen. Stat. §§ 53a- 48@53a-135. Johnson was sentenced on count one to eight (8) years to serve

followed by two years Special Parole, and on count two, eight (8) years to serve followed by two years Special Parole, concurrent to each other. See Exhibit C, Deveau Decl.¶ 9.Johnson is also committed to the Commissioner's custody pursuant to a mittimus in docket no. T19R-CR14-0105809 for illegal possession of drugs in violation of Conn. Gen. Stat. §21a- 279(a), in which docket he was sentenced to a one year concurrent sentence. DeVeau Decl .¶10; Exhibit C.

The plaintiff Johnson has a current medical level of 3, being intermediate medical acuity. Freston Johnson Decl.¶ 7. Since the beginning of January 2020, Johnson has had three requests to be seen by DOC medical staff for non-chronic conditions *Id.* ¶8. Since the beginning of January 2020, Johnson has been treated by DOC medical staff for the following non-chronic complaints: back pain, report of cold symptoms and request to have labs checked, however no symptoms or reason reported. *Id.* ¶9. Johnson has not exhibited symptomology which, under the CDC guidelines, indicates possible contraction of COVID-19. *Id*. ¶10. Johnson has not exhibited symptomology which, under the CDC guidelines, indicates the need for testing for COVID-19. *Id*. ¶11. Johnson has no other positive indicators which, under CDC guidelines, requires the need for testing for COVID-19. *Id.* ¶12. Plaintiff does have the following chronic conditions: Vitamin D Deficiency, Chronic Back Pain, Seasonal Allergies, and GERD. *Id*. ¶13. The plaintiff does not have chronic medical condition(s) which would place him in a COVID-19 high risk category. *Id.* ¶14. Although the plaintiff does not have a chronic condition which has been identified by the CDC as being a possible risk factor for COVID-19, he is 61 years old, and increased age is a potential increased risk, albeit, minor at age 61. All of his minor conditions are being appropriately treated. *Id.* ¶15. Dr. Freston, after having reviewed Johnson's health care records, has determined that it is <u>*not*</u> medically necessary to release the plaintiff prior to his current end of sentence. *Id.* ¶16. Thus, plaintiff Johnson has no factual basis to claim he is eligible for any form of community release under any statute or any other legal mandate.

MARVIN JONES IS NOT ELIGIBLE

The plaintiffs have a fundamental misunderstanding of the facts and mistakenly assert that one of the plaintiffs, Marvin Jones, # 297305, is solely held in lieu of $5000 bond. However, plaintiff Jones is also held pending disposition of his criminal case as a Special Parole violator. Galligan Decl. ¶ 64. DeVeau Decl. ¶¶12-14; Exh. E to Deveau Decl. Even if the bond of $5000 were reduced to a Promise To Appear (PTA), plaintiff Jones would not be eligible for release because he is under the jurisdiction of the BOPP, who would have to hold a parole revocation hearing. *Id.* ¶65. The BOPP has the authority to issue a mittimus to require Jones to serve the balance of his Special Parole, in a correctional facility, which period of Special Parole does not end until May 8, 2023. The BOPP has the sole authority to order the release, and in their discretion, may reinstate Marvin Jones to Special Parole, once his criminal case is adjudicated, and his parole revocation proceeding by the BOPP is concluded. Plaintiffs' moving papers appear to seek the release of Marvin Jones, pursuant to Conn. Gen. Stat. § 18-100f.[21]

However, plaintiff Jones, although in the physical custody of the DOC, is under the legal jurisdiction of the Board of Pardons and Paroles. Conn. Gen. Stat. §54-125e(a). The Board has discretionary authority under Conn. Gen. Stat. §54-125e, subsections (e), (f) and (g), to revoke the entire period of Special Parole, or reinstate the plaintiff to Special Parole.[22] The decision whether or

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[21] Conn. Gen Stat. §18-100f is another completely discretionary statute that cannot give rise to relief in a mandamus action. ("the commissioner ***may*** release such person…")

[22] This is a matter totally within the Board's discretion, and the statute clearly gives such discretion, stating,

> (e)If such violation is established, the board may: (1) Continue the period of special parole; (2) modify or enlarge the conditions of special parole; or (3) revoke the sentence of special parole.
> (f)If the board revokes special parole for a parolee, the chairperson may issue a mittimus for the commitment of such parolee to a correctional institution for any period not to exceed the unexpired portion of the period of special parole.
> (g)Whenever special parole has been revoked for a parolee, the board may, at any time during the unexpired portion of the period of special parole, allow the parolee to be released again on special parole without court order.

Conn. Gen. Stat. § 54-125e (e), (f) and (g).

not Jones may be released is solely with the jurisdiction of the Board. The Board is not a party to this action.

Marvin Jones Is Not Medically Eligible

Marvin Jones #297305, is a 34-year-old male who is currently incarcerated at the New Haven Correctional Center. Freston Jones Decl ¶ ¶5-6. Dr. Freston has reviewed the health records for Marvin Jones, and attests that Jones has a current medical level of 1, correlating to no medical problems known, or only minor medical conditions. *Id.* ¶7. The plaintiff claims that he has only one functioning lung. *Id*. ¶8. Complaint, ¶ 8. Current DOC records indicate that the plaintiff has both his right and left lung. A series of chest x-rays (CXR) identify that there is a right lower lung area of sutures and deformed ribs resultant from a known gunshot wound and trauma surgery. However, the lung is present. The likely scenario is that a small section of lung tissue was removed to repair trauma. Records also indicate both lungs are functioning properly. *Id*. ¶9.

Since the beginning of January 2020 Jones has had four requests to be seen by DOC medical staff for non-chronic conditions. *Id.* ¶10. Since the beginning of January 2020 Jones has been treated by DOC medical staff for the following non-chronic complaints: Request to have a specialized "common fair" diet, request to have his toenails cut, 2 reports of common cold symptoms. *Id.* ¶ 11. Jones has not exhibited symptomology which, under the CDC guidelines, indicates possible contraction of COVID-19. *Id.* ¶ 12. Jones has not exhibited symptomology which, under the CDC guidelines, indicates the need for testing for COVID-19. Id. ¶ 13. Jones has no other positive indicators which, under CDC guidelines, requires the need for testing for COVID-19. *Id*. ¶14. DOC medical records indicate Jones has only minor ailments, and does not have any significant current medical conditions or complaints. *Id*. ¶15. DOC medical records indicate the plaintiff does not have chronic medical condition(s) which would place him in a COVID-19 high risk category, albeit remote surgery is noted. *Id.* ¶16. Although Jones does not have a chronic condition that has been identified by

the CDC as being a possible risk factor for COVID-19, the normal health and hygiene issues that are present have been addressed. *Id.* ¶17. Dr. Freston, after having reviewed Jones's health care records, has determined that it is *not* medically necessary to release Mr. Jones prior to his current end of hios Special parole sentence. *Id.* ¶18. Thus, plaintiff Jones has no factual basis to claim he is eligible for any form of community release under any statute or any other legal mandate

For the reasons discussed in this Objection, the plaintiffs' motion for a temporary order of mandamus must be denied as none of the plaintiffs' have any statutory, mandatory right to be released from lawful confinement, and the decision to consider an inmate for such discretionary release is wholly discretionary. See Galligan Decl. ¶ ¶42 though 52, inclusive.

NONE OF THE PLAINTIFFS MEET THE CRITERIA FOR COMPASSIONATE PAROLE

Compassionate parole is authorized by Conn. Gen. Stat. §54-131k, but plaintiffs do not allege, nor is there any good-faith factual basis for them to claim that any one of them "(1) is so physically or mentally debilitated, incapacitated or infirm as a result of advanced age or as a result of a condition, disease or syndrome that is not terminal as to be physically incapable of presenting a danger to society…" Moreover, any such consideration by the Board of Pardons and Parole is wholly discretionary as the statute provides, that "The Board of Pardons and Paroles *may* grant a compassionate parole release to any inmate serving any sentence of imprisonment …"

I. MANDAMUS DOES NOT LIE AS THE DEFENDANTS HAVE BROAD DISCRETION

The defendants have discretion in establishing policy for the DOC, and wide discretion in whether or not to approve a particular community release application.

A. Plaintiffs Have No Liberty Interest or Any Statutory or Constitutional Right to Community Release, Which Is Discretionary

Plaintiffs have no right to even be considered for community release, even if they were eligible. *Asherman v. Meachum,* 213 Conn. 38, 49, 566 A.2d 663, 668 (1989)(the petitioner had no

constitutionally derived liberty interest in remaining on supervised home release). Unlike Asherman, who was already out in the community on supervised home release, the inmate plaintiffs here, have nothing more than a subjective unilateral expectation, which creates no rights and no entitlements. *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 7, 99 S. Ct. 2100, 2104, 60 L. Ed. 2d 668 (1979); *Baker v. Commisioner of Correction*, 281 Conn. 241, 257(2007), (there is no liberty interest in parole because "the decision to grant parole is entirely within the discretion of the board.") *See Missionary Society of Connecticut v. Board of Pardons & Parole*, 272 Conn. 647, 652 (2005)(citing with approval, *Taylor v. Robinson*, 171 Conn. 691, 697 (1976) (there is no statutory requirement that parole board determine eligibility for parole of any particular prisoner). See *Taylor v. Haggan*, TTD-CV15-5005924S (Conn .Super Ct. April 10, 2015)(*Graham, J.*)(attached); see also *Bajramaj v. Bd. of Pardons & Paroles*, No. CV165017916S, 2017 WL 2453250, at *3 (Conn. Super. Ct. May 9, 2017)(granting motion to dismiss mandamus and denying an order to be released from confinement to the supervision of special parole.)

Similarly, there is no statutory mandate that requires the defendant Commissioner of Correction to consider any inmate for community release. Plaintiffs point to no mandatory ministerial requirement to consider any inmate for any community program, whether it be a halfway house, another community residential program, transitional placement, or for sentences of two years or less, transitional supervision. In the absence of any such ministerial duty, plaintiffs instead point to Conn. gen. Stat. §18-7, which merely authorizes the Commissioner of Correction to provide for medical care and treatment for those inmates who may be sick, Conn. Gen. Stat. has no language or text which authorizes release from lawful confinement. Indeed, under well-established principles of judicial restraint and deference to prison officials, the Court should recognize that it must give great deference to experienced correctional administrators, who in this present time of a COVID-19 emergency are faced with "Herculean obstacles. … Suffice it to say that the problems of prisons in America are

complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government." *Washington v. Meachum*, 238 Conn. 692, 734, 680 A.2d 262, 283 (1996).

B. **Plaintiffs Have No Standing To Seek Broad Relief For Others**

The plaintiff here seek to litigate the rights presumably of all inmates confined in the DOC. It is well-established that these plaintiffs cannot assert the rights on non-parties. *Harris v. Armstrong*, No. CV-03-0825678S, 2009 WL 5342484, at *8 (Conn. Super. Ct. Dec. 7, 2009)(*Prescott, J.*)(plaintiff inmate seeking to litigate the effect of the directive at issue on the rights of third plaintiff lacks standing to raise the claim for others). Courts have held consistently that individuals, including inmates, do not have standing to sue on behalf of other individuals. See *Singleton v. Wulff*, 428 U.S. 106, 114 (1976) ("Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights of some third party") (internal quotation marks and citations omitted); *Am. Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 358 (2d Cir. 2016) ("Another prudential [limit on standing is the] principle is that a plaintiff may ordinarily assert only his own legal rights, not those of third parties."); *Rainey v. Ponte*, No. 16 CIV. 6336 (ER), 2017 WL 3267746, at *3 (S.D.N.Y. July 31, 2017) (dismissing inmate's claims against correctional officers and officials due to lack of standing because inmate did "not allege that he ha[d] been personally harmed[ ] and because a pro se plaintiff cannot bring claims on behalf of others"); *Swift v. Tweddell*, 582 F. Supp. 2d 437, 449 (W.D.N.Y. 2008) (holding inmate "lack[ ] standing ... to assert claims on other inmates' behalf") (citation omitted). Plaintiff may only assert claims and requests for relief that are personal to them. To the extent that the plaintiffs seek to assert claims and requests for relief on behalf of other inmates, the claims and requests for relief are not redressable in this action. See *Trowell v. Jamie*, No. 3:18CV460(MPS), 2018 WL 3040349, at *2–3 (D. Conn. June 19, 2018).

Moreover, the claim for relief is completely disconnected to these named plaintiffs and seeks systemic, state-wide relief as to all inmates. Such broad relief is not authorized as a matter of law. For example, a habeas court, "much like a court of equity, has considerable discretion to frame a remedy, so long as that remedy is commensurate with the scope of the constitutional violations which have been established." *Gaines v. Manson*, 194 Conn. 510, 528, 481 A.2d 1084, 1096 (1984)(other citations omitted). "The parties should be afforded the opportunity to offer suggestions for an appropriate remedial order." Id. at 529. Here, there is no reason to infer from the pleadings that DOC in any way is violating any inmate's constitutional right to medical care. In any event, the appropriate remedy would be an Order to provide such care, if in fact, plaintiffs could make a showing that their eighth amendment right to be free from deliberate indifference to serious and treatable medical conditions has been violated. On this record, plaintiffs lack standing, lack an injury, and as discussed above, and summarized again below, lack any clear legal, non-discretionary right to the relief they seek.

C. Mandamus Will Not Lie Where There Is Discretion

As discussed above, and as noted by the Connecticut Appellate Court:

> Mandamus is an extraordinary remedy, available in limited circumstances for limited purposes . . . It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with recognized principles of law .
> . . That discretion will be exercised in favor of issuing the writ only where the plaintiff has a clear legal right to have done that which he seeks . . . The writ is proper only when (1) the law imposes on the party against whom the writ should run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy. (Internal quotation marks omitted.)

Grasso v. Zoning Board of Appeals, 69 Conn. App. 230, 234-35 (2002); see also *Miles v. Foley,* 253 Conn. 381, 391 (2000). The same standard was reiterated more recently in *Silver v. Holtman,* 149 Conn. App. 239, 246, 90 A.3d 203, 208 (2014). Here, the writ is not proper as plaintiffs cannot meet

any of the three standards required. Both the DOC and the BOPP, who is not even a party to this action, have extremely wide discretion to establish policies, and there is no statutory requirement to even require the defendants to consider any inmate plaintiff for release. Indeed, such decisions are left to the unfettered expert discretion of the DOC. Plaintiffs have no "clear legal right" to have any duty performed, and thus, their request for a temporary order for a writ of mandamus should be dismissed.

D. Standard of Review, Motion for Temporary Injunction

Plaintiffs brought this action and claim it is an action of a temporary order of mandamus, citing to Conn. Prac Bk. §23-48. Their complaint is not a verified complaint, and they fail to comply with Prac. Bk §23-48, as they fail to include any affidavit from any of the individual inmate plaintiffs. Prac. Bk .§23-48 also requires, much like a motion for a preliminary injunction, that the plaintffs must demonstrate they will suffer "irreparable injury" in the absence of the temporary order of mandamus. Even if this Court were to construe plaintiffs' moving papers as an application for a temporary injunction, their motion also fails as a matter of law, under an analysis for an injunction.[23]

"The standard for granting a temporary injunction is well settled." *Antezzo v. Harkins*, No. CV156049887S, 2015 WL 3974679, at *4 (Conn. Super. Ct. June 4, 2015) (quoting *Aqleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 97–98 (2010)). "In general, a court may, in its discretion, exercise its equitable power to order a temporary injunction pending final determination of the order, upon a proper showing by the movant that if the injunction is not granted he or she will suffer irreparable harm for which there is no adequate remedy at law ... A party seeking injunctive relief must demonstrate that: (1) it has no adequate remedy at law; (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its

[23] In plaintiffs' motion at 2, n. 1 they cite to Conn. Gen. Stat. §52-472, and vaguely reference Rule 65 Fed. R. Civ. P. In an abundance of caution, the defendants address briefly why their motion fails as a matter of law, even if the Court were to construe this as an action for temporary injunctive relief.

favor ... The plaintiff seeking injunctive relief bears the burden of proving facts which will establish irreparable harm as a result of that violation ... Moreover, [t]he extraordinary nature of injunctive relief requires that the harm complained of is occurring or will occur if the injunction is not granted." *Id*. (quoting *Aqleh*, 299 Conn. at 97–98).

"In exercising its discretion, the court, in a proper case, may consider and balance the injury complained of with that which will result from interference by injunction." *Id*. (quoting *Moore v. Ganim*, 233 Conn. 557, 569 n. 25 (1995)). Further, "[t]he relief granted must be compatible with the equities of the case." *Id*. (quoting *Berin v. Olson*, 183 Conn. 337, 343 (1981)).

"'Adequate remedy at law' means a remedy vested in the complainant, to which he may, at all times, resort, at his own option, fully and freely, without let or hindrance ... If the plaintiffs have an adequate remedy at law then they are not entitled to the injunction.'" *Id*. (quoting *Stocker v. Waterbury*, 154 Conn. 446, 449 (1967)).

"The extraordinary nature of injunctive relief requires that the harm complained of is occurring or will occur if the injunction is not granted. Although an absolute certainty is not required, it must appear that there is a substantial probability that but for the issuance of the injunction, the party seeking it will suffer irreparable harm." *Id*. (quoting *Karls v. Alexandra Realty Corp.*, 179 Conn. 390, 402 (1980). "A finding that a substantial probability of irreparable harm exists requires a two part analysis: (1) whether there is a substantial probability that the alleged harm will result; and (2) whether the harm, if it occurs, will be irreparable." *Id*. (quoting *International Ass'n of Firefighters, Local 786 v. Serrani*, 26 Conn.App. 610, 616 (1992)). "Harm is irreparable when 'it cannot be adequately compensated in damages, or cannot be measured by any pecuniary standard ...'" *Id*. (quoting *New London v. Perkins*, 87 Conn. 229, 235 (1913)). "The irreparability of an injury depends more upon the nature of the right injuriously affected than the pecuniary measure of the loss." *Id*. (quoting *Local 818 v. East Haven*, 42 Conn. Sup. 227, 238 (1992)).

As was the case in discussing mandamus relief, *supra*, here, plaintiff fails on each prong of the injunction test; (1) there are other available remedies, e.g. an emergency expedited hearing on the habeas petition is an available remedy. See e.g. *State v. Anderson*, 319 Conn. 288, 325, 127 A.3d 100, 123 (2015); (2) as can be seen from the declarations of Dr. Freston, none of the four inmate plaintiffs are suffering any irreparable harm and at best any injury is remote and speculative; (3) there is little to no likelihood of success on the merits, as the writ of mandamus cannot lie where there is discretion, and all of the statutory mechanisms for releasing inmates give the Commissioner of Correction extremely broad discretion; and (4) the balance of equites requires the Court to consider the negative impacts of releasing large numbers of offenders, especially those who are homeless, and the additional risks to public safety and the strain on scare hospital and medical center bed space in the community, already struggling to keep up with COVID-19 cases, which are overwhelming community resources. Galligan Decl. e. g. ¶¶ 6, 7, 20. The balance of equities does not favor the plaintiffs.

CONCLUSION

For all the foregoing reasons, the defendants' objection to the Motion for Temporary Order of Mandamus should be sustained, the plaintiffs' motion for a temporary order of mandamus should be denied.

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Gov. Lamont, et al.

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CERTIFICATION

I hereby certify that on April 7, 2020, a copy of the foregoing was filed electronically on the judicial branch website and emailed to the following:

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NO: TTD-CV15-5005924S	:	SUPERIOR COURT
	:	JUDICIAL DISTRICT
TODD TAYLOR		OF TOLLAND
v.	:	AT ROCKVILLE, CONNECTICUT
JOSEPH HAGGAN, DIRECTOR OF PAROLE	:	APRIL 10, 2015

M E M O R A N D U M O F D E C I S I O N

BEFORE THE HONORABLE JAMES T. GRAHAM, JUDGE

A P P E A R A N C E S :

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THE COURT: Good afternoon, everybody. Let me indicate that I'm about to rule. I'm ordering a transcript of my ruling, and I'll direct the clerk to send a free copy to Mr. Taylor so that he can have that. The state knows how to obtain a copy as well if they wish to.

In this mandamus action, Mr. Todd Taylor, the petitioner, seeks a court order compelling the respondent, Director Joseph Haggan, the Director of Parole Community Services for the Department of Correction to release Mr. Taylor on parole.

Mandamus is used to compel the performance of a ministerial act by a public officer when the petitioner has a clear legal right to the immediate performance of that act. AvalonBay Communities, Inc. versus Sewer Commission, 270 Connecticut 409 at 422 to 29, 2004.

Mandamus does not give or define rights which one does not already possess and cannot act upon doubtful and contested rights. Hennessey v. Bridgeport, 213 Connecticut 656 at 659, 1990.

A party seeking a writ of mandamus must establish the following: The law imposes on the party against whom the writ would run a duty, the performance of which is mandatory and not discretionary, the party applying for the writ has a clear legal right to have the duty performed, and

there is no other specific adequate remedy. Stewart v. Watertown, 303 Connecticut 699 at 712 to 13 at 2012.

The law set forth very succinctly in the AvalonBay Communities case, which I cited to earlier, page four twenty-two, quote, "It is axiomatic that the duty that a writ of mandamus compels must be a ministerial one. The writ will not lie to compel the performance of the duty which is discretionary.

Consequentially, a writ of mandamus will lie only to direct performance of a ministerial act which requires no exercise of a public officer's judgment or discretion.

Furthermore, where a public officer acts within the scope of delegated authority and honestly exercises her judgment in performing her function, mandamus is not available to review the action or to compel a different course of action.

Discretion is determined from the nature of the act for a thing to be done rather than from the character of the office of the one against whom the writ is directed." Unquote.

The petitioner has been incarcerated beginning in 1988 on multiple felony counts, including sexual assault in the third degree.

On June 7th of 2013, the petitioner was

granted parole by the Connecticut Board of Parole, effective on or after January 14th, 2014, and no deadline was contained in that order. The petitioner is still incarcerated.

The petitioner received a conditional parole requiring, among other things, that the petitioner live in a residence approved by his parole officer. The petitioner was unable to suggest a residence or obtain a sponsor. The Parole and Community Services of the Department of Correction is responsible for implementing the parole board's order.

Parole and Community Services has a limited number of beds available from contractors. Sexual assault offender beds are scarce, and special parolees have priority for those over discretionary parolees. The petitioner is a discretionary parolee. Currently, there are no beds for sex offender discretionary parolees.

I find that when a parole requires residence approval that it is a discretionary parole, and the respondent is performing a discretionary duty, not a ministerial one.

I further find that the relevant Department of Correction employees acted within the scope of the delegated authority, and honestly exercised their judgment in performing their duties as to the

petitioner's parole conditions.

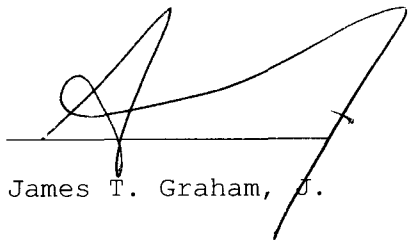
Under well established Connecticut law, a writ of mandamus cannot issue to compel a discretionary duty or a good faith exercise of a public officer's judgment.

I understand the petitioner's frustration. It's clear that it's in society's best interest, as well Mr. Taylor's, for him to have a period of supervised transition before his sentence ends, but where a prisoner has no family in Connecticut or sponsor and is a sex offender, as a practical matter, it appears that the program beds are essentially not available for a discretionary parolee, presumably for budget reasons, and budget reasons are, of course, beyond the control of the Department of Corrections.

Mr. Taylor, it's unfortunate that they don't have a bed to allow you that supervised period of transition. I know you want it to increase the chances of your success. I think it would be in society's interest, but I also understand that there are a limited number of beds and more people needing them than there are beds.

When you do release, Mr. Taylor, I wish you good luck in your new life and your attempts to stay out of trouble and become a productive member of society. That's all I can do for you today,

sir. I've acted on the petition you filed, and again, I wish you good luck.



James T. Graham, J.

MR. TAYLOR: Appreciate it, sir.

THE COURT: You're welcome, sir. We're going to stand now, there being no further business to come before the Court, adjourned.

(Court adjourned.)

NO: TTD-CV15-5005924S	:	SUPERIOR COURT
TODD TAYLOR	:	JUDICIAL DISTRICT OF TOLLAND
v.	:	AT ROCKVILLE, CONNECTICUT
JOSEPH HAGGAN, DIRECTOR OF PAROLE	:	APRIL 10, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the stenographic notes of the above-referenced case, heard in Superior Court, Judicial District of Tolland, Tolland, Connecticut, before the Honorable James T. Graham, Judge, on the 10th day of April, 2015.

Dated this 7th day of May, 2015 in Rockville, Connecticut.

Rebecca J. Livingstone

Certified Court Reporter