Multiple Documents

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Exhibit 9

From: Colangelo, Richard <Richard.Colangelo@ct.gov>
To: 'afelsen@aol.com' <afelsen@aol.com>; Rapillo, Christine (Public Defenders) (christine.rapillo@jud.ct.gov) <christine.rapillo@jud.ct.gov>; audrey@koffskyfelsen.com <audrey@koffskyfelsen.com>
Cc: Colangelo, Richard <Richard.Colangelo@ct.gov>
Sent: Fri, Apr 24, 2020 11:41 am
Subject: Procedure to discuss cases

I hope you are all well and safe. We would like to implement the following: Procedure for Attorney's to contact a Supervisor in a JD or GA with a list of cases to conduct a pretrial on. I would propose the following process:
1. An attorney (private or PD) would email a supervisor with a list of cases to discuss
2. The supervisor would request access to the court location to retrieve the files
3. The cases would be assigned to a DASA, ASA or SASA in the location, the handoff could occur in the parking lot
4. The assigned Attorney would contact the defense attorney to set up a call to discuss the cases.
5. (use *67 to block your number)
6. Note the file so we are ready to handle the cases when we open back up

I think this is a reasonable process that will allow us to keep working on our cases. If we work out a disposition that will get the person out of jail please flag that case so we can address it as soon as we are able to.
Please understand that with closed courts it will take time to get the files. I think this will enable us to be ahead of the tidal wave when we reopen the courts. Any issues please let me know.
Stay safe
Rich

Richard J. Colangelo, Jr.
Chief State’s Attorney
300 Corporate Place
Rocky Hill, CT 06067
Phone: 860.258.5850
Fax: 860.258.5851

Exhibit 10

Declaration of Elisa Villa

I, Elisa Villa, declare as follows:

1. I am currently Supervisor of the Parole Revocation Unit within the Division of Public Defender Services. I have been a public defender with the Division of Public Defender Services since 1989.
2. My unit is responsible for providing assigned counsel at parole remand matters, including parole revocation hearings and special parole revocation hearings. Often, our clients are facing an underlying criminal charge whose resolution bears on their parole status. Thus, before the revocation hearing is scheduled, the underlying criminal charge must be resolved in superior court.
3. Because Connecticut courts have continued all criminal matters into May and June, my clients are now facing indefinite delays in their revocation hearings. For the most part, the revocation hearings in these situations are simply not being scheduled.
4. In practical terms, this means that pre-trial detainees arraigned from late February onward, assuming they are on parole or special parole, could be held in DOC custody indefinitely, no matter whether they make bond, or the seriousness of their charges.
5. The Board of Pardons and Paroles has not advised me of any screening process or mechanism by which people in revocation proceedings might be released.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 21, 2020

Elisa Villa

Exhibit 11

Declaration of Mr. Roe

1. I am a plaintiff in this action.
2. Upon arrival at Northern in the COVID-19 unit, I attempted to grieve my conditions and treatment related to COVID-19. I asked the correctional officer for grievance forms and was told they didn't have any and they didn't do that here.

I declare under penalty of perjury that the foregoing is true and correct.

Dated May 1, 2020

Exhibit 12

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TIANNA LABOY, et al.,	:	CIVIL CASE NO.
Plaintiffs,	:	3:19-cv-307 (JCH)
	:	
v.	:	
	:	
SCOTT SEMPLE, et al.,	:	
Defendants.	:	DECEMBER 5, 2019
	:	

RULING ON MOTION FOR SUMMARY JUDGMENT (DOC. NO. 31), MOTION FOR JOINDER (DOC. NO. 35), AND MOTION TO AMEND COMPLAINT (DOC. NO. 36)

I. INTRODUCTION

Plaintiff Tiana Laboy ("Laboy") gave birth at the York Correctional Institution in February, 2018, while in in the custody of the Department of Correction ("DOC"). In March, 2019, Laboy and her daughter, Baby N., through her guardian, filed the Complaint ("Compl.") (Doc. No. 1), alleging, inter alia, that staff and supervisors at the DOC acted with deliberate indifference to their medical needs.

Several motions are pending before this court. This Ruling addresses the defendants' Motion for Summary Judgment (Doc. No. 31), the plaintiffs' Motion to Amend the Complaint (Doc. No. 36), and the plaintiff's Motion for Joinder (Doc. No. 35).

II. BACKGROUND

A. Facts[1]

Tiana Laboy has been incarcerated at the York Correctional Institute ("York") since August 15, 2017. Defendants' Statement of Material Facts ("Defts.' Stat.") (Doc. No. 31-2) ¶ 1; Plaintiffs' Statement of Material Facts ("Pls.' Statement of Facts") (Doc. No. 54-1) ¶ 1. When she was first admitted to York Correctional Institute, Laboy was about eight weeks pregnant. Id.[2] Laboy received some medical care for her pregnancy at York, id. ¶ 2. The gravamen of the Complaint is that care was inadequate in the days leading up to the birth of her child. See Compl. (Doc. No. 1).

Specifically, the Complaint alleges that, although Laboy experienced pain and vaginal discharge for several days in early February 2018, and informed York medical staff of her symptoms, medical and correctional staff failed to provide medical care. Compl. ¶¶ 53-58. On one occasion, Laboy was told she could not be seen by medical staff because she had not completed the appropriate medical form. Id. ¶ 55. A few days later, she was told she should return if and when her contractions were less than two minutes apart. Id. ¶¶ 58. Finally, after she spent the night of February 13, 2018,

---

[1] With the Motion for Summary Judgment (Doc. No. 31), the defendants filed a Statement of Material Facts pursuant to Local Rule 56(a) (Doc. No. 31-2). Some of the facts presented there are admitted by the plaintiffs in their Statement of Material Facts in response. See Plaintiffs' Statement of Material Facts (Doc. No. 54-1). The undisputed facts are taken from the Defendant's Local Rule 56(a)(1) Statement and the plaintiffs' Local Rule 56(a)(2) Statement. Unless otherwise noted, Laboy admits to the facts as stated.

Because the defendants' Local Rule 56(a)(2) Statement of Facts relates solely to the issue of exhaustion, this section also includes facts as alleged in the first Complaint, which provide context for the court's discussion of the proposed Amended Complaint. The court does not rely on any facts in the Complaint that are not included in the Defendant's Local Rule 56(a)(1) Statement of Facts or the plaintiffs' Local Rule 56(a)(2) statement in its discussion of the Motion for Summary Judgment.

[2] Tianna Laboy was initially admitted to York as a pretrial detainee. Laboy was sentenced on October 18, 2018, and is serving that sentence at York. See Department of Correction Inmate Information, http://www.ctinmateinfo.state.ct.us/ detailsupv.asp?id_inmt_num=417372.

lying awake in pain, Laboy requested medical attention at 4:30am, and was told the doctor would see her at 7:30. Id. ¶ 61. Around 6:30 am that day, Laboy delivered her child into a toilet at the prison. Id. ¶ 64-66.

An ambulance took Laboy and her baby to Lawrence and Memorial Hospital, where Laboy was shackled to a bed by her ankles for the duration of her four-day stay. Id. ¶ 75. After Laboy returned to York, she met with Commissioner Scott Semple, who apologized for her treatment and informed her that medical staff, who had been working the night between February 12 and February 13, had been "walked out." Id. ¶ 113; see also Pl.'s Stat. ¶ 17.

During her orientation, Laboy was informed about York's administrative remedies process. Pls.' Stat. ¶ 13. Nonetheless, the defendants state that, between August 17, 2018, and March 31, 2018, Laboy filed no grievances related to her treatment at York. Defs.' Stat. ¶ 8, 12. Laboy denies this statement, saying that she "filed a grievance or an appeal or a document of some sort expressing dissatisfaction with treatment in prison" because she appealed a ticket during her pregnancy. Pls.' Stat. ¶ 8, 12.

B. Procedural History

Laboy filed the Complaint in March 2019. Pls.' Statement of Facts ¶ 4. The Complaint named as defendants Scott Semple, Commissioner of the DOC; Dr. Nelson, Medical Director for York; Dr. Tricia Machinski, OB/GYN specialist at York; Warden Antonio Santiago; and four John or Jane Doe defendants, two of whom are members of the medical staff and two of whom are correctional officers (collectively, "the defendants"). See Compl. at 1. The Complaint includes 393 paragraphs, spanning over 65 pages. Much of the Complaint's length can be attributed to the plaintiffs' decision to include over twenty counts, which fall into five general categories: (1) eight

counts, each corresponding to a different defendant, alleging that the defendant was deliberately indifferent to Tianna Laboy's medical needs in violation of the Eighth and Fourteenth Amendments; (2) two counts of state-law negligence; (3) three counts alleging that Baby N. had been falsely imprisoned in violation of the Fourth Amendment; (4) seven counts, each corresponding to a different defendant, alleging that the defendant had been deliberately indifferent to Baby N.'s medical needs in violation of the Eighth and Fourteenth Amendments; and (5) two counts asserting supervisory liability against defendant Semple.

In the eight months since the Complaint was filed, the parties have submitted numerous filings. The defendants filed their Answer (Doc. No. 18), with affirmative defenses, in late June, and their Motion for Summary Judgment ("Mot. for Summ. J.") (Doc. No. 31), on August 28. The plaintiffs, on August 30, filed three motions: (1) a motion challenging the designation of discovery materials as "confidential," see Motion (Doc. No. 32); (2) the Motion for Joinder of defendants identified through discovery (Doc. No. 35); and (3) the Motion to Amend the Complaint (Doc. No. 36). Also pending are several Motions to Seal. See Motion to Seal (Doc. No. 33) (moving to seal motion challenging "confidential" designation); Motion to Seal (Doc. No. 37) (moving to seal proposed Amended Complaint). The defendants oppose the Motion to Amend the Complaint. See Defendants' Memorandum in Opposition to Motion to Amend ("Defs.' Mem. in Opp. to Mot. to Amend") (Doc. No. 47). The plaintiffs have filed an Opposition to the Motion for Summary Judgment (Doc. No. 51), which they have also Moved to Seal (Doc. No. 52). The court has granted multiple extensions of time to both sides. See, e.g., Order (Doc. No. 26) (extending time for the plaintiffs to Amend the Complaint

and the defendants to respond to discovery); Order (Doc. No. 43) (extending time for plaintiffs to respond to the Motion for Summary Judgment); Order (Doc. No. 45) (extending time for defendants to respond to Motion to Amend Complaint).

III. DISCUSSION

A. Motion to Amend Complaint

1. Standard of Review

First, the court considers the Motion to Amend the Complaint (Doc. No. 36), which the defendants oppose (Doc. No. 47). Because Laboy filed the Motion to Amend the Complaint within the—extended—deadline set by this court in its Scheduling Order, that Motion is governed by the liberal standard of Federal Rule of Civil Procedure 15(a). Pursuant to Rule 15(a), a party may amend its pleading with the court's leave, and "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15. As the Supreme Court explained in Foman v. Davis,

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

Foman v. Davis, 371 U.S. 178, 182 (1962); see also Agerbrink v. Model Serv. LLC, 155 F. Supp. 3d 448, 452 (S.D.N.Y. 2016) ("Under this liberal standard, a motion to amend should be denied only if the moving party has unduly delayed or acted in bad faith, the opposing party will be unfairly prejudiced if leave is granted, or the proposed amendment is futile.") The Second Circuit has referred to prejudice as among the "most important" reasons to deny leave to amend. AEP Energy Servs. Gas Holding Co. v.

Bank of Am., N.A., 626 F.3d 699, 725 (2d Cir. 2010) (quoting State Teachers Ret. Bd. v. Fluor Corp., 654 F.2d 843, 856 (2d Cir. 1981)).

2. Analysis

The defendants do not argue that there has been "undue delay" or that Laboy had a "dilatory motive," Foman, 371 U.S. at 182. Nor have there been "repeated failure[s] to cure deficiencies by amendments previously allowed," id., as this is the plaintiffs' first proposed Amended Complaint. Therefore, of the Foman factors—which are not exhaustive—the defendants are left with two potential arguments why this court should deny leave to amend: "undue prejudice to the opposing party by virtue of allowance of the amendment" or "futility of amendment." Id.

The defendants do not argue that they would be unduly prejudiced by the proposed amendments. See Defs.' Mem. in Opp. to Mot. to Amend. The court agrees with Laboy and Baby N. that allowing leave to amend would not unduly prejudice the defendants. See Pl.'s Mem. in Support of Mot. to Amend (Doc. No. 36-1) at 4. "Amendment may be prejudicial when, among other things, it would 'require the opponent to expend significant additional resources to conduct discovery and prepare for trial' or 'significantly delay the resolution of the dispute.'" AEP Energy Servs., 626 F.3d at 725–26 (2d Cir. 2010) (quoting Fluor Corp., 654 F.2d at 856); see also Solomon v. Adderley Industries, Inc., 960 F. Supp. 2d 502, 508 (S.D.N.Y. 2013) ("[The defendant] will not have to expend significant additional resources because the same claims in the original complaint are being alleged against the new parties and further (limited) discovery itself is not an adequate ground to deny an amendment to a complaint.") (citations omitted). Here, although the Amended Complaint adds additional detail, it does not include any new claims based on facts of which the defendants were not

aware at the time the initial Complaint was filed.[3] The parties have until April of 2020 to complete discovery, and the court sees no reason why the additional proposed amendments would delay the resolution of the dispute.

Rather than arguing that they would be prejudiced by the amendment, the defendants argue that the Proposed Amended Complaint fails to comply with Rule 8 of the Federal Rules of Civil Procedure, and that amendment would be futile. Def's. Mem. in Opp. to Mot. to Amend at 4, 7. Regarding Rule 8, the court agrees with the defendants that the proposed Amended Complaint does not comply with Rule 8's requirement that pleadings contain a "short and plain" statement of the grounds for the court's jurisdiction, the claim, and a demand for the relief sought. Fed. R. Civ. P. 8. However, the court is not aware of any cases suggesting that leave to amend—which, as discussed, is analyzed under the liberal standard of Rule 15—should be denied where a complaint is unnecessarily prolix. Salahuddin v. Cuomo, 861 F.2d 40 (2d. Cir. 1988), on which defendants rely, considered whether a court could dismiss an unusually "prolix" complaint for noncompliance with Rule 8 without granting leave to amend. Salahuddin, 861 F.2d at 43. On the facts before it, the Second Circuit concluded that dismissing without leave to amend was an abuse of the district court's discretion. Id. The Second Circuit did not consider whether it would be an abuse of discretion for a

[3] The proposed Amended Complaint makes several changes. It eliminates some of the prolixity of the Initial Complaint by removing the state-law negligence claims and removing all claims against defendants Nelson and Santiago. See Proposed Am. Compl. (Doc. No. 39-1) at 1, 39. It also replaces the unnamed defendants previously identified as John or Jane Doe with Correctional Officer Alberto Ortiz, Correctional Officer Silvia Surreira, Registered Nurse Michelle Fiala, and Registered Nurse Brianna Simmons. Id. at 1. Throughout, the proposed Amended Complaint includes additional detail, including, inter alia, several additional paragraphs listing Correctional Managed Health Care or DOC policy with which medical staff and correctional officers failed to comply, id. ¶¶ 38-55; additional allegations about the actions medical staff did not take in the days leading up to Baby N.'s birth, id. ¶¶ 61-62, 64, 70; descriptions of the Security Division Investigation conducted after Baby N.'s birth, id. ¶¶ 115-21; and additional information about a consent decree that has been in place since 1988, id. ¶¶ 122-139.

district court to deny leave to amend to avoid unwanted detail. Finding no authority to do so, and in light of Rule 15's liberal standard that leave should be "freely given," the court will not deny leave to amend on the ground that the proposed Amended Complaint is unnecessarily long.[4]

The court also declines to deny leave to amend on futility grounds. The defendants argue that the proposed amendments to the Complaint are futile because: (1) Tianna Laboy has failed to exhaust her administrative remedies; (2) government officials, namely defendant Semple, may not be held liable under section 1983 for the conduct of their subordinates under a theory of respondeat superior; and (3) the defendants are entitled to qualified immunity. Def's. Mem. in Opp. to Mot. to Amend at 7-13. In the court's view, the supervisory liability and qualified immunity arguments would be better addressed on a motion to dismiss. Denying leave to amend will not change the underlying allegations in the first Complaint, which could still be subject to dismissal for failure to establish supervisory liability or on qualified immunity grounds. Any discussion of supervisory liability or qualified immunity at this stage would simply foreshadow how this court would rule if a motion to dismiss were before it and would need to be repeated if such a motion were filed. Therefore, the court will not address qualified immunity or supervisory liability here. To the extent that the defendants argue

[4] The defendants also suggest that the "unnecessary and immaterial allegations" in the proposed amended complaint "should be stricken." Defs.' Mem. at 6. The defendants can raise this argument in a Motion to Strike, which, following Second Circuit caselaw, the court will grant if there is no admissible "evidence in support of the allegation," Lipsky v. Commonwealth United Corp., 551 F.2d 887, 893 (2d Cir.1976), the allegations "have no bearing on the issues in the case," and "permit[ting] the allegations to stand would result in prejudice to the movant." Tucker v. American Intern. Group, Inc., 936 F. Supp. 2d 1 (D. Conn. 2013) (citations omitted).

that the amendments are futile because Laboy has failed to exhaust her remedies, the court directs the parties to its discussion of the exhaustion requirement, infra at 8-13.

In summary, pursuant to the liberal standard of Rule 15 of the Federal Rules of Civil Procedure, this court must give leave to amend "freely" when justice so allows. Fed. R. Civ. P. 15. Because the defendants would not be prejudiced by the amendment of the Complaint, and because defendants' arguments regarding supervisory liability and qualified immunity are better addressed in a dispositive motion, the court **grants** the plaintiffs' Motion to Amend the Complaint (Doc. No. 36).

B. Motion for Joinder

The plaintiffs have also filed a Motion for Joinder (Doc. No. 35), seeking to join Correctional Officer Alberto Ortiz, Correctional Officer Silvia Surreira, Registered Nurse Michelle Fiala, and Registered Nurse Brianna Simmons to "replace" the unnamed John and Jane Doe defendants in the Complaint. Mot. for Joinder at 3-4. As the court has granted the plaintiffs' Motion to Amend (Doc. No. 36), which substitutes Ortiz, Surreira, Fiala, and Simmons for the unnamed parties, the Motion for Joinder is **granted**.

C. Motion for Summary Judgment

1. Standard of Review

In the Motion for Summary Judgment (Doc. No. 31), the defendants argue that Laboy is prohibited from bringing this action because she has not exhausted her administrative remedies pursuant to the Prison Litigation Reform Act ("PLRA"). Mot. for Summ. J. at 1. A motion for summary judgment may be granted only where the moving party can establish that there is no genuine dispute as to any material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Wright v. N.Y. State Dep't of Corr., 831 F.3d 64,

71–72 (2d Cir. 2016). The court "resolve[s] all ambiguities and draw all inferences in favor of the party against whom summary judgment is sought." LaFond v. Gen. Physics Servs. Corp., 50 F.3d 165, 175 (2d Cir. 1995).

2. Analysis

Pursuant to the PLRA, an individual must exhaust "'such administrative remedies as are available' before bringing suit to challenge prison conditions." Ross v. Blake, 136 S.C.t 1850, 1854 (2016) (quoting 42 U.S.C. § 1997e(a)). The crux of the dispute between the parties here is whether an administrative remedy was "available."

In a similar case, the Seventh Circuit concluded that a woman could sue the staff at an Illinois county jail for deliberate indifference to her need for proper prenatal care and prompt transport to a hospital for delivery, regardless of the fact that she had not exhausted the administrative procedure for a remedy. See White v. Bukowski, 800 F.3d 392 (7th Cir. 2015). In White, the plaintiff was almost eight months pregnant when she was first detained in jail. 800 F.3d at 394. When she went into labor, she was taken to the hospital and delivered her baby, who suffered from birth defects. Id. The mother later sued jail staff for failing to take a proper medical history, failing to respond to her requests for medical assistance, and for failing to react quickly enough when she went into labor. Id. The District Judge dismissed the suit for failure to exhaust available administrative remedies. Id. at 393. On review, the Seventh Circuit began by noting that "[t]he purpose of a prisoner's filing a grievance is to obtain a change of some sort—to obtain better medical care, for example." White, 800 F.3d at 394. For White, however, no such change was possible:

> [S]uppose the plaintiff had suspected that [her child's birth defects] were attributable to a mistreatment that she had received in the jail . . . What good

> would it have done her to file a grievance? She wasn't about to become pregnant again . . . could she have gained from filing a grievance?

Id. at 394-95. Stressing section 1997e(a)'s rule that no action can be brought "until such administrative remedies as are available are exhausted," id. at 395, the Seventh Circuit reasoned that, "if one has no remedy, one has no duty to exhaust remedies." Id. In its view, the caselaw suggested that "a grievance must be filed" under section 1997e "as long as there is something the jail or prison could do in response to a grievance." Id. After the plaintiff gave birth, there was "no remedy within the power of the jail to grant," and thus, section 1997e's exhaustion requirement did not apply to require dismissal. Id. This reasoning aligns with the Second Circuit's reasoning in Abney v. McGinnis, 380 F.3d 663 (2d Cir. 2004), in which the Second Circuit explained that the PLRA requires exhaustion of only those remedies that are "available" to the inmate, that is, that afford the possibility of some relief for the action of which the individual complains. Abney, 380 F.3d at 667 (quoting Booth v. Churner, 532 U.S. 731 (2001)).

White was decided a year before the Supreme Court's decision in Ross v. Blake, 136 S.C.t 1850, 1857 (2016). In Ross, the Court held that the statutory text and history of the PLRA's exhaustion requirement foreclose "special circumstances" exceptions to the exhaustion requirement. However, as the Ross Court explained, "the PLRA contains its own, textual exception to mandatory exhaustion": an individual "must exhaust available remedies, but need not exhaust unavailable ones." Ross, 136 S. Ct. at 1859. Thus, although Ross forecloses "special circumstances" exceptions, it does not foreclose the application of White in this case, because White focused on the "availability" of a remedy. See generally White, 800 F.3d at 395-396 (repeatedly emphasizing that a prisoner must exhaust "administrative remedies as are available"

and that there were no remedies available to a prisoner who had already given birth); Doe v. County of Milwaukee, 14-cv-200 (JPS), 2017 WL 1843262, at *7 (D. Wis. May 5, 2017) (concluding that "Ross leaves room for White" and applying White to deny summary judgment).[5] Indeed Ross recognizes the PLRA's exhaustion requirement does not apply to "unavailable remedies." 136 S. Ct. at 1859.

In support of their Motion for Summary Judgment, the defendants argue only that administrative remedies were available because York's grievance procedures were "not so opaque" that Laboy could not understand them. Defs.' Mem. in Support of Mot. for Summ. J. (Doc. No. 31-1) at 11 (citing Riles v. Buchanan, 656 Fed. App'x 577, 581 (2d Cir. 2016)). However, an administrative remedy may be "unavailable" even in cases where the plaintiff clearly understands the administrative process. See, e.g., Ross, 136 S. Ct. at 1859-60 (discussing three scenarios in which relief may be unavailable, including where the process is too opaque, as well as cases in which administrators thwart inmates from using the process through misrepresentation and cases where the process, though clear, is a "dead end").

[5] Nor does White conflict with Second Circuit precedent. In White, the Seventh Circuit distinguished Ruggiero v. County of Orange, 467 F.3d 170 (2d Cir. 2006), a Second Circuit case that held that the plaintiff had not exhausted his remedies and rejected his arguments that he should be excused from doing so either because he ultimately received the relief he requested—a transfer to another facility—or because he was not provided with an inmate handbook. Ruggiero, 467 F.3d at 176. Ruggiero is distinguishable from this case, as well, because Ruggiero's claims arose out of "several incidents in which . . . correctional officers . . . employed excessive force against him" over the course of a year. Id. at 172. After those incidents, but before Ruggiero's case was decided, the Supreme Court made clear that exhaustion was required even where the claim related to a single instance of mistreatment. Id. at 173 (citing Porter v. Nussle, 534 U.S. 516 (2002)). The Second Circuit reasoned that, for Ruggiero, additional relief, such as a change in policy or disciplinary actions against the relevant officers, was available. Thus, the exhaustion requirement applied. Id. at 177. A policy change or the discharge of an officer could have helped Ruggiero, because he continued to be incarcerated and would have to interact with those officers, under those policies, in the future. Here, however, a change in the policies regarding pregnant inmates or the discharge of OBGYN staff could not have helped Laboy with her pregnancy—once her child was born, the situation that led to the alleged deprivation of her rights could not be repeated because Laboy would not again become pregnant in prison.

Under the circumstances of this case, there was no "available" remedy. As in White, after Laboy's baby was born, there was nothing she or the prison could do to change the facts surrounding its birth, which remain in dispute.[6] Laboy "had no opportunity to grieve" the failure to provide her medical care "until after the harm done . . . was complete and could not be undone by the defendants." Id. at 396. She "wasn't about to become pregnant again," and thus, she had nothing to gain from filing a grievance. White, 800 F.3d at 394-95. An "available" remedy is one that is "capable of use for the accomplishment of a purpose," and "accessible" or obtainable. Ross, 136 S. Ct. at 1958. Here, filing a grievance could not have accomplished any purpose for Laboy. On the facts of this case, there was no "available" remedy for Laboy to exhaust.[7]

In light of Ross v. Blake, Laboy had no available remedies to exhaust. Therefore, the defendants' Motion for Summary Judgment (Doc. No. 31) is denied.

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[6] The defendants do not state, in their Statement of Material Facts, that Laboy gave birth at York. Defs.' Statement of Facts (Doc. No. 31-2). They simply state facts related to the grievance procedures at York, and Laboy's failure to use those procedures. The plaintiffs' Statement of Material Facts, however, includes additional facts and refers to the birth in prison. See Pl.'s Stat. ¶ 16, 19. For the purpose of the Motion for Summary Judgment, the court accepts that Laboy gave birth in prison.

[7] In Ross, the Supreme Court "note[d] as relevant here three kinds of circumstances in which an administrative remedy, although officially on the books, is not capable of use to obtain relief:" first, where the administrative process "operates as a simple dead end;" second, where the administrative scheme is "so opaque that it becomes, practically speaking, incapable of use;" and third, where "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." 136 S. Ct. at 1859-60. The plaintiff argues that this case could fit into either the first or third Ross exceptions, because Semple met with Laboy after she returned to York. See Pl.'s Opp. to Mot. for Summ. J. (Doc. No. 51) at 12-17. However, as the plaintiff notes, citing the Second Circuit, the three circumstances in Ross do not appear to be exhaustive. Id. at 17 (citing Williams v. Correction Officer Priatno, 829 F.3d 118, 123 n. 2 (2d Cir. 2016)). The court need not fit this case into one of the three Ross examples to conclude that no remedy was available.

IV. CONCLUSION

For the reasons discussed, the plaintiffs' Motion to Amend the Complaint (Doc. No. 36) is **GRANTED**, and the plaintiffs' Motion for Joinder (Doc. No. 35) is **GRANTED**. The defendants' Motion for Summary Judgment (Doc. No. 31) is **DENIED.**

SO ORDERED.

Dated this 5th day of December, 2019, at New Haven, Connecticut.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge

Exhibit 13

ORDER 421277

DOCKET NO: UWYCV206054309S

SUPERIOR COURT

CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION Et Al
V.
LAMONT, NED Et Al

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

4/24/2020

ORDER

ORDER REGARDING:
04/07/2020 112.00 MOTION TO DISMISS PB 10-30

The foregoing, having been considered by the Court, is hereby:

ORDER:

On April 3, 2020, the plaintiffs, the Connecticut Criminal Defense Lawyers Association (CCDLA), Willie Breyette, Daniel Rodriguez, Anthony Johnson, and Marvin Jones (individual plaintiffs), FN1 filed the writ of summons, complaint, and motion for temporary order of mandamus FN2 in this action against the defendants, Governor Ned Lamont and Rollin Cook, Commissioner of the Department of Correction. On April 7, 2020, the defendants filed a motion to dismiss, along with a memorandum of law in support. FN3Thereafter, on April 8, 2020, the plaintiffs filed an amended complaint, which adds Kerri Dirgo and Joshua Wilcox as additional plaintiffs, and which includes additional allegations and changes to some previous allegations. FN4
In the amended complaint, the plaintiffs ask the court to issue a writ of mandamus compelling the defendants to (a) "immediately release all people having the CDC heightened risk factors for serious illness or death from COVID-19, to an appropriate medical facility where necessary"; (b) "immediately and meaningfully reduce the population density at each and every facility in which they confine people"; (c) "submit for the court's review and ongoing monitoring a plan: (1) to provide adequate sanitation and social distancing in prisons so as
to prevent the spread of COVID-19, including by taking all measures for screening, cleaning, hygiene and social distancing that the CDC recommends for correctional facilities; (2) to diagnose and treat people showing symptoms of COVID-19 in accordance with contemporary standards of care, (3) to approve, within seven days, community or private residences to those qualified for release to such via [General Statutes] § 18-100, (4) to approve, within seven days, residences for any prisoner or detainee who is now eligible for release but for the defendant's approval of a residence, and (5) to sufficiently fund transitional housing for the duration of the pandemic; and (d) undertake any other task necessary to discharge their duties to those in their custody during the pandemic, including by working with other arms of state government to expedite their handling of requests for release, and ensuring consideration of relief for all incarcerated people who can safely return to their communities."
The defendants assert in their motion to dismiss that the court lacks subject matter jurisdiction over this action on the basis that the defendant CCDLA lacks standing because it fails the classical aggrievement test and because it cannot assert third party standing on behalf of the individual plaintiffs. They also assert that the individual plaintiffs lack standing because they do not have any right to be released prior to the end of their lawful sentences and because their constitutional claims are based on alleged injuries that are too speculative. The defendants also assert that the plaintiffs' claims are nonjusticiable political questions. Finally, the defendants contend that the plaintiffs' request for the court to order the defendants to submit a plan for the court's review is barred by sovereign immunity to the extent that such a plan calls for the defendants to sufficiently fund transitional housing for the duration of the pandemic because such a plan would amount to an award of damages from the state, which has not consented to be sued.
On April 13, 2020, the plaintiffs filed a memorandum in opposition to the motion and the defendants filed a reply, along with a declaration of Cary Freston. Arguments on this motion were heard before this court on the record on April 15, 2020. Counsel for all parties participated by telephone.

DISCUSSION

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) Santorso v. Bristol Hospital, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) MacDermid, Inc. v. Leonetti, 310 Conn. 616, 626, 79 A.3d 60 (2013). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) Hinde v. Specialized Education of Connecticut, Inc., 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014).

A

Standing

"[J]usticiability comprises several related doctrines, namely, standing, ripeness, mootness and the political question doctrine, that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter. . . . A case that is nonjusticiable must be dismissed for lack of subject matter jurisdiction." (Internal quotation marks omitted.) Janulawicz v. Commissioner of Correction, 310 Conn. 265, 270, 77 A.3d 113 (2013).

"[B]ecause the issue of standing implicates subject matter jurisdiction, it may be a proper basis for granting a motion to dismiss." Electrical Contractors, Inc. v. Dept. of Education, 303 Conn. 402, 413, 35 A.3d 188 (2012). "The proper procedural vehicle for disputing a party's standing is a motion to dismiss." (Internal quotation marks omitted.) D'Eramo v. Smith, 273 Conn. 610, 615 n.6, 872 A.2d 408 (2005). "If . . . the plaintiff's standing does not adequately appear from all materials of record, the complaint must be dismissed." (Footnote omitted; internal quotation marks omitted.) Burton v. Dominion Nuclear Connecticut, Inc., 300 Conn. 542, 550, 23 A.3d 1176 (2011).

"It is well established that [a] party must have standing to assert a claim in order for the court to have subject matter jurisdiction over the claim. . . . Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. . . . [Our Supreme Court] has often stated that the question of subject matter jurisdiction, because it addresses the basic competency of the court, can be raised by any of the parties, or by the court sua sponte, at any time. . . . Where a party is found to lack standing, the court is consequently without subject matter jurisdiction to determine the cause. . . .

"Standing is no mere procedural technicality. As the United States Supreme Court has explained, '[t]he power to declare the rights of individuals and to measure the authority of governments . . . is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy.' . . . Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 471, 102 S. Ct. 752, 70 L. Ed. 2d 700 (1982). As a result, '[t]he exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, is therefore restricted to litigants who can show [an injury] resulting from the action which they seek to have the court adjudicate.' . . . Id., 473. The standing requirement further evinces a proper regard for the judicial branch's relationship with coequal branches of government under our constitutional structure. Thus, '[i]t is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution.' Lewis v. Casey, 518 U.S. 343, 349, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996)." (Citations omitted; footnotes omitted; internal quotation marks omitted.) Johnson v. Rell, 119 Conn. App. 730, 735–37, 990 A.2d 354 (2010).

The defendants argue that the court lacks subject matter jurisdiction because the plaintiffs lack standing to pursue their claims in this mandamus action. In support of their position, they argue that none of the plaintiffs are classically aggrieved because they have not alleged any direct injury. They also maintain that the plaintiffs have failed to allege facts to meet the other standing requirements applicable to each of the plaintiffs.

1. Associational Standing as to the CCDLA

With regard to the CCDLA, the defendants first argue that the CCDLA lacks standing because the complaint sets forth no allegations of any injury to the CCDLA or its members; the plaintiffs allege only potential injury to some clients of its members. They further maintain that the CCDLA cannot successfully assert associational standing because such standing requires the plaintiffs to allege that the

CCDLA has suffered or will suffer some direct injury in its own right. They note that no such allegations are included in the complaint. In opposition, the plaintiffs argue that the CCDLA may avail itself of associational standing to bring this action on behalf of its members because they meet the requirements for such standing. Specifically, they maintain that its members suffer an injury in fact and therefore would otherwise have standing to maintain this action in their own right because they face the threat of coronavirus infection when visiting their clients who are "cycling in and out of DOC custody." They further assert that the interests they seek to protect are germane to the CCDLA's purpose, which is to support its members in their defense of people accused of violating the law. Finally, they assert that participation of the individual members would not be required. In their reply, the defendants assert that the plaintiffs' assertions of injury in their memorandum in opposition are not a substitute for allegations in their operative complaint, which do not allege any such injuries, and argue that the CCDLA members have no rights under the eighth or fourteenth amendments to the United States constitution and are not required to enter prisons to represent their clients. They also argue that because the plaintiffs do not allege that CCDLA members represent inmates in any actions asserting conditions of confinement claims, they fail to satisfy the "germaneness" prong of the associational standing test.

The court agrees with the defendants that the plaintiffs have not alleged facts demonstrating that the CCDLA meets the requirements for such standing. Specifically, the plaintiffs have not alleged that the CCDLA or any of its members have suffered any injury. In the amended complaint, the plaintiffs allege that the CCDLA "is a nonprofit Connecticut organization comprising lawyers who represent people accused of crimes in the state," it "has approximately 300 members statewide," "[i]ts members represent clients held in each of the facilities controlled by the Connecticut Department of Correction," and it "engages in education and advocacy for the fair treatment of those accused of crimes, and for positive changes in Connecticut's criminal and motor vehicle code," and "also serves as an amicus curiae to Connecticut's appellate courts." (Amended complaint, entry #114, ¶¶ 1-4.) The CCDLA is not mentioned in anywhere else in the complaint, and these allegations fail to assert that it has suffered or will suffer any direct injury.

"An organization may file suit on its own behalf 'to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the organization itself may enjoy.' Warth v. Seldin, 422 U.S. 490, 511, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). In order to do so, however, an organization must satisfy the constitutional minimum of standing by demonstrating an 'injury in fact'; a causal connection between the injury and the conduct of which the party complains; and that it is 'likely' a favorable decision will provide redress." Juvenile Matters Trial Lawyers Assn. v. Judicial Dept., 363 F. Supp. 2d 239, 244 (D. Conn. 2005). Without any allegation of an injury in fact to the CCDLA, it fails to meet the requirements of associational standing. In Juvenile Matters Trial Lawyers Assn. v. Judicial Dept., supra, 363 F. Supp. 2d 245, an organization of attorneys who provided legal services to juveniles and their families brought an action seeking injunctive and declaratory relief against the Judicial Department and several individual defendants. In opposing a motion to dismiss asserting lack of standing, the plaintiff argued that it had standing to bring this action in its own right, on behalf of its members, and on behalf of the clients represented by the member attorneys. As in the present case, the complaint in that case did not include any allegation of injury to the association itself. Accordingly, the District Court determined that the plaintiff lacked standing to bring the action on its own behalf in that action. That same reason applies here. As the plaintiffs have not alleged any injury to the CCDLA, it lacks standing to assert any claim on its own behalf.

Moreover, any injury on behalf of the CCDLA that might be inferred from the complaint would be too indirect to demonstrate the CCDLA's standing because any such injury would be suffered by individual clients of individual members of the CCDLA. In Connecticut State Medical Society v. Oxford Health Plans (CT), Inc., 272 Conn. 469, 481–82, 863 A.2d 645 (2005), the plaintiff had argued that it had sufficiently alleged an injury suffered by the plaintiff in that it alleged that its members had suffered injury by the defendant's failure to make timely and complete payments to those members, which, in turn, resulted in the plaintiff suffering injury because the defendants' actions caused the plaintiff to expend resources and to suffer a reduction in revenue from its members. The court upheld the trial court's decision dismissing the action for lack of standing because the plaintiff's injuries "derive solely and exclusively from the harm allegedly visited upon the plaintiff's members by the defendant. In other words, none of the harm that the plaintiff allegedly suffered as a result of the defendant's conduct is direct." (Emphasis in original.) Id., 479. As the defendants in the present case correctly note, the injuries asserted in this case are one step further removed; any injuries would affect the inmates, not the CCDLA or its members. For this reason as well, the CCDLA does not have associational standing.

2. Third Party Standing of the CCDLA

The court must next address whether the plaintiffs' allegations support the plaintiffs' argument that the CCDLA has third party standing to assert claims on behalf of third party inmates. The defendants assert that the CCDLA cannot assert third party standing on behalf of inmates because the three requirements for such standing are not satisfied in the present case. Specifically, they argue that the complaint sets forth no allegation of an injury suffered by the CCDLA or its members, that the CCDLA's relationship with the third party inmates is not sufficiently close, and that there is no hindrance to the third parties' ability to protect their own interests.

The plaintiffs counter that the CCDLA satisfies the requirements for third party standing, specifically that the CCDLA's relationship with third party inmates is sufficiently close and that there is a hindrance to the third party inmates' ability to protect their own interests. The plaintiffs do not directly address the defendants' argument that the CCDLA fails to allege an injury to itself for purposes of third party standing, but contend that members of the public may bring mandamus actions to enforce a public right pursuant to Practice Book § 23-45 (a) FN5 without the need to demonstrate any interest in the outcome of the matter. Moreover, they maintain, the CCDLA is in a better position to represent the interests of its members' clients than the individual inmates themselves because of the limited resources available to the courts to review the petitions of numerous individual inmates seeking to obtain release due to the COVID-19 pandemic.

The United States Supreme Court has "recognized the right of litigants to bring actions on behalf of third parties, provided three important criteria are satisfied: The litigant must have suffered an 'injury in fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute . . . the litigant must have a close relation to the third party . . . and there must exist some hindrance to the third party's ability to protect his or her own interests." (Citations omitted.) Powers v. Ohio, 499 U.S. 400, 410–11, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991); see also State v. Bradley, 195 Conn. App. 36, 51, 223 A.3d 62 (2019) (listing "injury" as one of three requirements that must be satisfied in order to bring actions on behalf of third parties), cert. granted on other grounds, 334 Conn. 925, 223 A.3d 379 (2020).

As discussed elsewhere in this decision with regard to associational standing, the plaintiffs have not alleged any injury to the CCDLA or its members. As such an injury is required in order to bring a claim on behalf of third parties, the plaintiffs' claim of third party standing as to the CCDLA fails. Moreover, the plaintiffs' contention that such an injury or direct interest is not required where a plaintiff brings a mandamus action to enforce a public right is unpersuasive. Practice Book § 23-45 (a) provides: "An action of mandamus may be brought in an individual right by any person who claims entitlement to that remedy to enforce a private duty owed to that person, or by any state's attorney to enforce a public duty." (Emphasis added.) The CCDLA is alleged to be an association of criminal defense attorneys, not state's attorneys. The one Connecticut case cited by the plaintiffs in support of their position, State ex rel. E. Color Printing Co. v. Jenks, 150 Conn. 444, 190 A.2d 591 (1963), was brought by a state's attorney and is therefore inapposite. Although it is therefore not necessary to address the other requirements of third party standing, the court further notes that the plaintiffs' contention that it meets the third requirement, that the third parties must be hindered in protecting their own rights, is belied by the fact that the individual plaintiffs in this action are members of the group whose interests the CCDLA seeks to protect. For all of these reasons, the CCDLA lacks standing to assert claims on behalf of third parties in this action. Accordingly, the motion is granted and the action is dismissed with regard to the CCDLA.

2. Standing: Individual Plaintiffs

The court next turns to the issue of whether the individual plaintiffs have standing to maintain this action. The defendants argue that the individual plaintiffs lack standing because they have not alleged any injury as they do not have any right to be released before the end of their sentences. They maintain that the individual plaintiffs have no statutory right to early release and that the statutes providing for early release provide discretion to the executive officials charged with carrying out their provisions. In support, they further argue that the eighth and fourteenth amendments to the United States constitution do not provide a remedy for the individual plaintiffs because they do not provide for early release; rather, they relate to deliberate indifference to health and safety and the provision of medical care. They further maintain that the risk of harm posed by the individual plaintiffs remaining incarcerated is too speculative to support the plaintiffs' claims. Finally, the defendants argue that the plaintiffs' failure to allege that the defendants have the requisite level of mental culpability for purposes of a deliberate indifference claim deprives them of standing.

In opposition, the plaintiffs counter that the defendants' knowledge of the dangers of COVID-19, and the defendants' failure to take appropriate measures to prevent its spread in their facilities, amount to an eighth and fourteenth amendment violation because the individual plaintiffs' conditions of confinement are likely to cause serious illness and needless suffering. They argue that they have alleged the defendants' deliberate indifference to the plaintiffs' exposure to COVID-19 by their failure to take adequate steps to prevent exposure to the virus. Moreover, the plaintiffs maintain, their allegations pertaining to the defendants' mental state are adequate because they need only to have alleged that the defendants acted "recklessly" with regard to the safety of the individual plaintiffs who have been sentenced and that the defendants knew or should have known of the excessive risk to health or safety with regard to the individual plaintiffs who have not yet been sentenced. The plaintiffs further argue that claims of deliberate indifference do not require the plaintiffs already to have been exposed to the risk of infection. They maintain that the complaint adequately alleges that people incarcerated in DOC facilities are held in conditions posing a substantial risk of serious harm. Finally, the plaintiffs argue that their injuries are redressible by this court without regard to whether a particular statute or administrative scheme establishes a remedy to address the risks posed by the COVID-19 crisis and that, even if the court were limited only to the remedies already provided by the executive and legislative branches, the defendants already have the authority "to alter every existing textual form of relief such that their feigned helplessness divests them of a defense." Essentially, the plaintiffs argue that the court has broad discretion to structure appropriate relief in this mandamus action such that the plaintiffs have injuries that are redressible in this action.

As a threshold matter, the court rejects the defendants' argument that the issue of whether the individual plaintiffs have a right to be released from custody is dispositive of the issue of whether they have standing to maintain this action. Although the defendants have cited federal case law stating that "if the plaintiff's claim has no foundation in law, he has no legally protected interest and thus no standing to sue"; Claybrook v. Slater, 111 F.3d 904, 907 (D.C. Cir. 1997); research reveals no appellate authority in Connecticut applying the concept of standing that broadly. To the contrary, our Supreme Court has consistently retained a distinction between standing and the plaintiff's "legal interests." "The fundamental aspect of [statutory] standing . . . [is that] it focuses on the party seeking to get his complaint before [the] court and not on the issues he wishes to have adjudicated. . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue and not whether the controversy is otherwise justiciable, or whether, on the merits, the plaintiff has a legally protected interest that the defendant's action has invaded. . . . The concepts of standing and legal interest are to be distinguished. The legal interest test goes to the merits, whereas standing concerns the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." (Internal quotation marks omitted.) Lazar v. Ganim, 334 Conn. 73, 85–86, 220 A.3d 18 (2019), quoting Mystic Marinelife Aquarium, Inc. v. Gill, 175 Conn. 483, 491–92, 400 A.2d 726 (1978). Accordingly, the court will not grant the defendants' motion on ground that the plaintiffs have no injury simply because they have no right to be released from custody. Nevertheless, the court must consider whether the plaintiffs otherwise have failed to allege an injury as a result of the defendants' handling of the COVID-19 pandemic.

"An allegation of injury is both fundamental and essential to a demonstration of standing. Under Connecticut law, standing requires no more than a colorable claim of injury; a plaintiff ordinarily establishes his standing by allegations of injury. . . . As long as there is some direct injury for which the plaintiff seeks redress, the injury that is alleged need not be great. . . . Furthermore, an allegation of injury is a prerequisite under federal law to the maintenance of an action under § 1983. See, e.g., Colombo v. O'Connell, 310 F.3d 115, 117 (2d Cir. 2002) ('[t]o state a claim under [§] 1983, a plaintiff must allege facts indicating that some official action has caused the plaintiff to be deprived of his or her constitutional rights—in other words, there is an injury requirement to state the claim'), cert. denied, 538 U.S. 961, 123 S. Ct. 1750, 155 L. Ed.2d 512 (2003); Ciambriello v. County of Nassau, 292 F.3d 307, 323 (2d Cir. 2002) ('[i]n order to state a claim under § 1983, a plaintiff must allege that he was injured by either a state actor or a private party acting under color of state law')." (Emphasis in original; footnotes omitted.) Johnson v. Rell, supra, 119 Conn. App. 735–38.

"The eighth amendment, which applies to the states through the due process clause of the fourteenth amendment to the United States constitution . . . prohibits detention in a manner that constitutes cruel and unusual punishment. . . . Cruel and unusual punishment refers to punishment that involves the unnecessary and wanton infliction of pain or is grossly disproportionate to the severity of the crime. . . .

Under the eighth amendment, prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates . . . .” (Citations omitted; internal quotation marks omitted.) Fuller v. Commissioner of Correction, 75 Conn. App. 133, 136, 815 A.2d 208 (2003).

“In challenging the conditions of confinement, the prisoner must meet two requirements. First, the alleged deprivation of adequate conditions must be objectively, sufficiently serious . . . such that the petitioner was denied ‘the minimal civilized measure of life’s necessities . . . .’ . . . Wilson v. Seiter, 501 U.S. 294, 298, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991). Second, the official involved must have had a sufficiently culpable state of mind described as ‘deliberate indifference’ to inmate health or safety. Farmer v. Brennan, [511 U.S. 825, 834, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)]. In that context, subjective deliberate indifference means that ‘a prison official cannot be found liable under the [e]ighth [a]mendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety . . . .’ Id., 837. (Citations omitted; internal quotation marks omitted.) Fuller v. Commissioner of Correction, supra, 75 Conn. App. 136–37.

In the present case, the plaintiffs have not alleged facts satisfying these two requirements. First, the plaintiffs have not alleged facts showing that the defendants have deprived the plaintiffs of the minimal civilized measure of life’s necessities by failing to release a sufficient number of prisoners from confinement in order to mitigate the risk of the spread of infection. Although Helling v. McKinney, 509 U.S. 25, 113 S. Ct. 2475, 125 L. Ed. 2d 22 (1993), supports the plaintiffs’ position that exposure to future harm can present an eighth amendment violation, the facts of that case are distinguishable from those alleged in the present case. In Helling, the United States Supreme Court held that the plaintiff in that case stated a cause of action under the eighth amendment by alleging that prison officials “have, with deliberate indifference, exposed [the plaintiff inmate] to levels of [environmental tobacco smoke] that pose an unreasonable risk of serious damage to his future health.” Id., 35. Although the court held that the fact that the plaintiff had not yet suffered any adverse health consequences from his exposure to smoke was not fatal to his claim, the plaintiff had asserted that he was presently and directly exposed to the dangerous condition, in that he was presently being exposed to smoke by being forced to share a cell with another prisoner who was smoking five packs of cigarettes per day. Id., 28. In the present case, the plaintiffs have not alleged analogous facts. For example, the plaintiffs do not allege that any of them are housed with or otherwise directly exposed to individuals with COVID-19. Rather, they allege that the preventative steps that the defendants have taken have not been and will not be adequate to address the pandemic because the plaintiffs will be subjected to a heightened risk of exposure to the coronavirus in the future as a result of inadequate steps taken to mitigate the risks.

Even assuming, arguendo, that the conditions to which the plaintiffs are being or will be exposed do rise to the level of a “serious risk to health or safety,” the plaintiffs have not alleged facts to satisfy the second requirement, that is, to show that the defendants have acted or will act with “deliberate indifference” to the risks posed by the COVID-19 pandemic. To the contrary, the plaintiffs describe the defendants’ conduct in the amended complaint as “commendable, but unfortunately insufficient to comply with their constitutional and statutory obligation to ensure the safety of those in their custody.” (Amended complaint, entry #114, ¶ 92.) Allegations that the defendants’ actions have been or will be “insufficient” do not rise to the level of a conscious disregard of an excessive risk to inmate health or safety.

“The second requirement follows from the principle that only the unnecessary and wanton infliction of pain implicates the Eighth Amendment. . . . To violate the Cruel and Unusual Punishments Clause, a prison official must have a sufficiently culpable state of mind. . . . In prison-conditions cases that state of mind is one of ‘deliberate indifference’ to inmate health or safety . . . .” (Citations omitted; internal quotation marks omitted.) Farmer v. Brennan, supra, 511 U.S. 834. The United States Supreme Court has explained that “deliberate indifference describes a state of mind more blameworthy than negligence.” Id., 835. It further explained that this standard “requires more than ordinary lack of due care for the prisoner’s interests or safety.” (Internal quotation marks omitted.) Id. “It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.” Id., 836. In further clarifying what is meant by “recklessly” in this context, the court in Farmer explained that “a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” (Emphasis added.) Id., 837. “The Eighth Amendment does

not outlaw cruel and unusual 'conditions'; it outlaws cruel and unusual 'punishments.' An act or omission unaccompanied by knowledge of a significant risk of harm might well be something society wishes to discourage, and if harm does result society might well wish to assure compensation. The common law reflects such concerns when it imposes tort liability on a purely objective basis. . . . But an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." (Citations omitted.) Id., 837–38.

In the present case, the plaintiffs have not alleged facts demonstrating that the defendants had or have the requisite mental state with respect to the risks identified in the complaint. Although the allegations in the amended complaint do demonstrate that the defendants are aware of the seriousness of the risks posed by COVID-19 generally, the complaint does not allege facts demonstrating that the defendants are acting with deliberate indifference with regard to those risks. Rather, the plaintiffs assert in their amended complaint that the defendants, in failing to release prisoners from confinement to reduce prison population density, have not done enough to protect inmates from the risk of infection. As the defendants correctly assert, these allegations sound in negligence, not recklessness. Our Supreme Court has "described recklessness as a state of consciousness with reference to the consequences of one's acts. . . . It is more than negligence, more than gross negligence. . . . The state of mind amounting to recklessness may be inferred from conduct. But, in order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them. . . . Wanton misconduct is reckless misconduct. . . . It is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences of the action." (Internal quotation marks omitted.) Matthiessen v. Vanech, 266 Conn. 822, 832–33, 836 A.2d 394 (2003). As the allegations in the amended complaint do not sound in recklessness, the plaintiffs have failed to allege an eighth amendment injury and, accordingly, the individual plaintiffs lack standing to maintain this action.

B

Political Question Doctrine

Although it is not necessary to reach the other grounds asserted in the defendants' motion, as the court has already determined that none of the plaintiffs have standing to maintain this action and it must, therefore, be dismissed, the court will address the political question doctrine as an alternative basis for its decision. The defendants argue that the plaintiffs' action presents nonjusticiable political questions and must be dismissed because the plaintiffs' requests for relief in this mandamus action seek to impose the judgment of the court in place of the discretion vested in coordinate branches of government. In essence, they contend that by seeking mandamus relief that would limit or override the discretion otherwise vested in the legislative and executive branches of government, the plaintiffs' action presents nonjusticiable political questions. The plaintiffs counter that the plaintiffs' claims do not involve political questions because the court has the power to provide mandamus relief from reckless exposure to illness or death as a result of the spread of COVID-19 in their facilities. They maintain that enforcing the protections of the United States constitution against cruel and unusual punishment is within this court's authority. They argue that the defendants' duty to safeguard the health and wellbeing of the inmates in custody are not discretionary. In response, the defendants further argue that the question of how any violations of the plaintiffs' constitutional rights would be rectified should be left to the discretion of the legislative and executive branches. They maintain that because the plaintiffs seek relief that calls for the exercise of discretion by executive branch officials, and seeks no alternative relief such as a declaratory judgment that the plaintiffs' constitutional rights are being violated, this case presents nonjusticiable political questions and must be dismissed.

"The political question doctrine itself is based on the principle of separation of powers . . . as well as the notion that the judiciary should not involve itself in matters that have been committed to the executive and legislative branches of government. . . . [I]n considering whether a particular subject matter presents a nonjusticiable political question, we have articulated [six] relevant factors, including: a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. Unless one of these formulations is inextricable from the case at bar, there should be no

dismissal for nonjusticiability on the ground of a political question's presence." (Citations omitted; internal quotation marks omitted.) Connecticut Coalition for Justice in Education Funding, Inc. v. Rell, 295 Conn. 240, 255-56, 990 A.2d 206 (2010).

Applying these factors to the present case, the plaintiffs' claims involve nonjusticiable political questions and should be dismissed for that reason as well. The plaintiffs seek mandamus relief compelling the defendants to release inmates with heightened risk factors for COVID-19 to "to an appropriate medical facility where necessary"; "immediately and meaningfully reduce the population density at each and every facility in which they confine people" by taking specific steps specified by the plaintiffs in their complaint; and to "submit for the Court's review and ongoing monitoring a plan" regarding certain aspects of the defendants' efforts to mitigate the spread of the coronavirus, providing medical care to inmates, approval of residences for qualified inmates, and to sufficiently fund transitional housing for the duration of the pandemic; and to undertake other necessary tasks. If the court were to compel the defendants to take these actions, such an order would necessarily be made without "judicially discoverable and manageable standards"; would not be possible "without an initial policy determination of a kind clearly for nonjudicial discretion"; would not be possible "without expressing lack of the respect due coordinate branches of government . . . ." See Id.

As the defendants correctly note, the statutes governing release and transfer of inmates in DOC custody provide discretion to the executive branch officials with regard to the transfer or release of inmates. For example, General Statutes § 18-100 (e) provides in relevant part that "the commissioner may transfer any person from one correctional institution to another or to any public or private nonprofit halfway house, group home or mental health facility or, after satisfactory participation in a residential program, to any approved community or private residence. . . ." (Emphasis added.) Similarly, General Statutes § 18-100c provides that an inmates with a sentence of two years or less "may be released pursuant to subsection (e) of section 18-100 or to any other community correction program approved by the Commissioner of Correction." (Emphasis added.) General Statutes § 18-52a (a) provides in relevant part: "Any person committed to the custody of the Commissioner of Correction who is confined in a correctional facility and requires hospitalization for medical care may be transferred by the department to any hospital having facilities for such care. . . ." (Emphasis added.) These statutes necessarily entail the use of discretion and judgment by the department of correction in determining whether to release or transfer an inmate. Accordingly, application of the above factors indicates that the action should be dismissed based on the political question doctrine.

By contrast, in Connecticut Coalition for Justice in Education Funding, Inc., the court determined that the plaintiffs' claims in that case did not present a nonjusticiable political question. In reaching its conclusion, the court summarized the reasoning set forth in an earlier decision, Seymour v. Region One Board of Education, 261 Conn. 475, 482–84, 803 A.2d 318 (2002). In both cases, the court relied, in part, on the forms of relief sought by the plaintiffs in determining that the case did not present a nonjusticiable political question. Specifically, it noted: "If we were to construe the complaint as requesting only that a court, having determined that the plaintiffs' constitutional claims are meritorious, order the [school] district to establish itself as a taxing district, and set the taxing powers and standards suggested by the plaintiffs, we would have grave doubts about the justiciability of the claim, as the defendant suggests. In that case, it is very likely that the claim would fall within one or more of the categories of nonjusticiability." Connecticut Coalition for Justice in Education Funding, Inc. v. Rell, supra, 295 Conn. 261. The court further explained: "Although the plaintiffs do seek, in part, such an order from the court, and although the text of the complaint presents such a remedy as the only way to vindicate the plaintiffs' rights, a separate prayer for relief is simply '[t]hat judgment be entered declaring that . . . [General Statutes] § 10–51 (b) is unconstitutional on its face and as applied by [the board].'" Id. It further explained: "This latter prayer for relief is susceptible of an interpretation that would leave the formulation of the appropriate remedy to the legislative branch, rather than requiring the judicial branch to entangle itself in what probably would be the nonjudicial function of establishing a taxing district. Furthermore, there is precedent for this court, having determined that a particular legislative scheme is unconstitutional, to leave the remedy to the legislative branch, at least initially. . . . We, therefore, consider the question of justiciability on the premise that the plaintiffs seek a declaration of the unconstitutionality of § 10–51 (b), with the remedy that they propose to be considered by the legislative branch." Id., 261-62.

Applying this reasoning to the present action yields a different result. In the present case, the plaintiffs' prayers for relief leave no room for an interpretation that the plaintiffs seek a mere declaration as to the constitutionality of the defendants' actions with respect to the COVID-19 crisis. Although the plaintiffs'

claims would depend, in part, on a determination that the individual plaintiffs' constitutional rights are being violated, the plaintiffs do not seek declaratory relief. They ask that the court order mandamus relief, specifically the release and relocation of inmates and the reduction in prison populations. Moreover, the nature of the action itself, mandamus, demonstrates that the nature of relief sought in this action is to compel specific actions on the part of the defendants, actions that are governed by statutes granting the defendants discretion with regard to how to carry out their responsibilities. Accordingly, this action presents nonjusticiable political questions and must be dismissed.

C

Sovereign Immunity

With regard to the defendants' sovereign immunity argument, the motion will not be granted on that basis. "The Supreme Court . . . has taught that sovereign immunity is not invoked simply because prospective injunctive relief ultimately results in a diminution of state funds." In re Dairy Mart Convenience Stores, Inc., 411 F.3d 367, 375 (2d Cir. 2005), citing Edelman v. Jordan, 415 U.S. 651, 668, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974) (although state officials, "in order to shape their official conduct to the mandate of the Court's decrees, would more likely have to spend money from the state treasury than if they had been left free to pursue their previous course of conduct" such "an ancillary effect on the state treasury is a permissible and often an inevitable consequence of the principle" that prospective injunctive relief is not barred by the eleventh amendment to the United States constitution). As the plaintiffs correctly assert, therefore, sovereign immunity does not bar the present action. Accordingly, the motion is not granted on sovereign immunity grounds. Nevertheless, for the reasons discussed elsewhere in this decision, the court nevertheless lacks subject matter jurisdiction, which requires that the motion be granted.

CONCLUSION

For the foregoing reasons, the defendants' motion to dismiss is hereby granted.

Footnotes

1 As noted elsewhere in this decision, Kerri Dirgo and Joshua Wilcox were added as plaintiffs on April 8, 2020. Accordingly, references to the "individual defendants" refer to them as well.

2 On April 8, 2020, the plaintiffs also filed a supplemental motion for temporary order of mandamus to conform to the amended complaint that was filed on that date.

3 On April 7, 2020, the defendants also filed an objection to the motion for temporary order of mandamus, with several exhibits.

4 On April 8, 2020, this court, Bellis, J., issued an order stating in relevant part: "By agreement of the parties, and with the court's permission, Kerri Dirgo and Joshua Wilcox are added as party plaintiffs, Amended Complaint entry #114 filed on today's date is the operative complaint, and Motion to Dismiss entry #112 is directed to said Amended Complaint."

5 Practice Book § 23-45 (a) provides: "An action of mandamus may be brought in an individual right by any person who claims entitlement to that remedy to enforce a private duty owed to that person, or by any state's attorney to enforce a public duty." (Emphasis added).

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Judge: BARBARA N BELLIS

Exhibit 14

Declaration of Darcy McGraw

1. I am the Director of the Connecticut Innocence Project/Post-Conviction Unit of the Division of Public Defender Services. I have been in this position for 7 years, and I have worked for the Division of Public Defender Services since 2009.

2. A longtime client of mine is a 67-year-old man with chronic health conditions that will become much worse should he contract the coronavirus. Once the pandemic began, I submitted a compassionate release application on his behalf to the Board of Pardons and Parole. He meets the statutory criteria; he is a model prisoner; and he has a home to go to and a job waiting for him. However, my application was denied. We were told simply that "Unfortunately, he does not meet the eligibility criteria outlines [sic] in the statute as he is not debilitated, incapacitated or infirmed as a result of his condition(s). He is housed in general population and is caring for himself with limited involvement from medical staff." His increased risk of serious illness or death due to the Coronavirus outbreak in the facility where he is housed was not addressed at all.

3. My client has had a habeas claim addressing his underlying criminal conviction since September 2019, currently before Hon. Tejas Bhatt, Judge of the Superior Court. The habeas court is not open to hear his claim, and has not been open since the end of March.

4. Like my client, Robert Day had a pending habeas claim. I have learned that when counsel submitted an application for bond pending habeas for Mr. Day on the basis of COVID-19 and Mr. Day's medical conditions, the habeas court held that it could not be granted absent a demonstration that the petitioner would likely prevail on the underlying habeas.

5. When someone with a current habeas files a new habeas, the habeas court's practice is to consolidate them. In addition, it will be impossible for me to make the requisite showing that it is likely that my client will prevail on the merits of his habeas claim while the courts, the police, the forensic lab, and all other state facilities are closed. The habeas system in our state has only two judges and is slow moving in the best of times. It absolutely does not have the capacity to hear tens, let alone hundreds or thousands, of pro

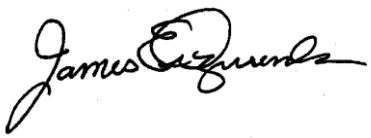
se habeas cases imminently. I personally know of no habeas cases being heard and I do not expect any movement on my client's case until the end of the pandemic or the restoration of the state court system.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Darcy McGraw

Dated May 3, 2020

Exhibit 15

State of Connecticut Department of Correction **ADMINISTRATIVE DIRECTIVE**	Directive Number 9.6	Effective Date 8/15/2013	Page 1 of 14
	Supersedes Inmate Administrative Remedies, dated 11/27/2012		
Approved By  Interim Commissioner James E. Dzurenda	Title Inmate Administrative Remedies		

1. Policy. The Department of Correction shall provide a means for an inmate to seek formal review of an issue relating to any aspect of an inmate's confinement that is subject to the Commissioner's authority. The Inmate Administrative Remedies Process enables the Department to identify individual and systemic problems, to resolve legitimate complaints in a timely manner and to facilitate the accomplishment of its mission.

2. Authority and Reference.

   A. United States Code, 42 USC 1997e and 42 USC 12101 et seq.
   B. Code of Federal Regulations, 28 CFR 40, Standards for Inmate Grievance Procedures.
   C. Porter v. Nussle, 534 US 516 (2002).
   D. Connecticut General Statutes, Chapter 53 and Sections 18-81 and 18-81y.
   E. Regulations of Connecticut State Agencies, Sections 4-157-1 through 4-157-17.
   F. Administrative Directives 2.17, Employee Conduct; 4.7, Records Retention; 6.10, Inmate Property; 6.14, Security Risk Groups; 8.9, Health Services Review; 9.2, Offender Classification; 9.4, Restrictive Status; 9.5, Code of Penal Discipline; 9.9, Protective Management; and 10.7, Inmate Communications.
   G. American Correctional Association, Standards for the Administration of Correctional Agencies, Second Edition, April 1993, Standards 2-CO-3C-01 and 2-CO-4B-03.
   H. American Correctional Association, Standards for Adult Correctional Institutions, Fourth Edition, January 2003, Standard 4-4284.
   I. American Correctional Association, Performance-Based Standards for Adult Local Detention Facilities, Fourth Edition, June 2004, Standard 4-ALDF-6B-01.
   J. American Correctional Association, Standards for Adult Probation and Parole Field Services, Third Edition, August 1998, Standard 3-3179.

3. Definitions. For the purposes stated herein, the following definitions apply:

   A. Administrative Remedies Coordinator. An employee of the facility designated by the Unit Administrator to coordinate the Inmate Administrative Remedies Process.
   B. Appeal. The application for formal review of an agency decision.
   C. Compromised. The application for administrative remedy has sufficient merit that some modification of the existing decision is warranted.
   D. Denied. The application for administrative remedy is without merit.
   E. Direct Contact Employee. An employee who has daily or regular supervision of inmates as part of the employee's job.
   F. Grievance. A written complaint filed by an inmate on the inmate's own behalf in accordance with the procedures stated herein.

G. Inmate. A person in the custody of the Commissioner of Correction to include those confined in a facility or under community supervision.

H. Rejected. The application for administrative remedy does not meet the application requirements of the particular remedy.

I. Unit. An organizational component of the Department, including correctional institutions, correctional centers, and Parole and Community Services offices.

J. Unit Administrator. The person in charge of a facility or unit specified in Section 3(H) of this Directive.

K. Upheld. The application for administrative remedy is granted.

L. Withdrawn. The inmate voluntarily discontinues the pursuit of an administrative remedy.

4. Administrative Remedies. There are several administrative remedies, each addressing a different aspect of correctional management.

A. Inmate Grievance Procedure. The Inmate Grievance Procedure is outlined in Section 6 of this Directive. The Inmate Grievance Procedure provides an administrative remedy for all matters subject to the Commissioner's authority that are not specifically identified in Sections 4(B) through 4(I) of this Directive.

B. Appeal of a Classification Decision. An appeal of a classification decision shall be in accordance with Section 7 of this Directive.

C. Appeal of a Special Management Decision. An appeal of a special management decision shall be in accordance with Section 8 of this Directive.

D. Appeal of a Security Risk Group Member Designation. An appeal of a Security Risk Group Member designation shall be in accordance with Section 9 of this Directive.

E. Appeal of a Disciplinary Action. An appeal of a guilty finding received at a disciplinary hearing shall be in accordance with Section 10 of this Directive.

F. Appeal of Decision to Reject Religious or Educational Tapes/CDs Not Available in the Commissary. An appeal of a decision to reject religious or educational tapes/CDs not available in the commissary shall be in accordance with Section 11 of this Directive.

G. Appeal of a Media Review Committee Decision. An appeal of a Media Review Committee decision shall be in accordance with Section 12 of this Directive.

H. Appeal of a Decision to Reject Unacceptable Correspondence. An appeal of a decision to reject unacceptable correspondence shall be in accordance with Section 13 of this Directive.

I. Appeal of a Furlough Decision. An appeal of a furlough decision shall be in accordance with Section 14 of this Directive.

J. Appeal of an Americans with Disabilities Act (ADA) Decision. An appeal of an ADA decision shall be in accordance with Section 15 of this Directive.

K. Property Claim. Provisions for filing a claim of lost or damaged property shall be in accordance with Section 16 of this Directive.

L. Health Services Review. Request for review of any matter relating to the delivery of health care services shall be in accordance with Administrative Directive 8.9, Health Services Review.

M Appeal of Determination of Retroactive RREC credits. An appeal of a determination of retroactive RREC credits shall be in accordance with Section 17 of this Directive.

5. General Provisions. The following provisions shall apply to all administrative remedies:

A. Notice.

1. Administrative Directive 9.6, Inmate Administrative Remedies, shall be published in English and Spanish. Each inmate, direct contact employee (to include any direct contact contractor) shall be issued a written summary of Administrative Directive 9.6, Inmate Administrative Remedies, upon initial contact with the Department. An inmate whose primary language is Spanish shall receive a copy translated into Spanish. Appropriate provision shall be made for those who do not read, speak or understand English or Spanish. Inmates who are impaired or disabled shall receive assistance as necessary.
2. English and Spanish copies of Administrative Directive 9.6, Inmate Administrative Remedies, shall be available in each library and shall be available to an inmate upon request.
3. During orientation, each inmate shall receive verbal instruction on Administrative Directive 9.6, Inmate Administrative Remedies, the subject matters that each pertains to, the forms used for filing, and the provisions for filing. This instruction shall encourage questions and take place as part of the orientation curriculum, no later than two (2) weeks after admission.
4. Staff shall receive verbal instruction regarding Administrative Directive 9.6, Inmate Administrative Remedies during orientation training.

B. Access. Each inmate in the Department's custody shall have access to Administrative Directive 9.6, Inmate Administrative Remedies. Special provisions shall be made to ensure access for the impaired or disabled, illiterate or those with language barriers.

1. Any inmate who needs assistance in using the Inmate Administrative Remedies Process shall receive assistance upon request.
2. Access to the Inmate Grievance Procedure shall only be limited as a result of abuse of the Inmate Grievance Procedure in accordance with Section 6(N) of this Directive or failure to comply with the Inmate Grievance Procedure.

C. Depositories and Collection. All grievances, appeals and property claims shall be submitted by depositing them in a locked box clearly marked as 'Administrative Remedies'. The Unit Administrator shall ensure that an adequate number of collection boxes are accessible within the facility.

D. Administrative Remedies Coordinator. The Unit Administrator shall appoint two employees of the facility to be Administrative Remedies Coordinators, one as the primary coordinator and the other to serve as the secondary coordinator. The Unit Administrator shall arrange for the training of each Administrative Remedies Coordinator. The Administrative Remedies Coordinator shall:

1. ensure that notice and instruction regarding the Inmate Administrative Remedies Process is provided to each inmate during orientation;
2. ensure that current administrative remedy forms are available in all housing units;
3. ensure that the current Administrative Directive 9.6, Inmate Administrative Remedies, is available in the library and to any inmate who requests it;
4. ensure that collection of administrative remedy forms is conducted each business day;
5. complete and forward CN 9603, Administrative Remedy Receipt to the inmate and place a copy of the receipt in the appropriate file;
6. ensure that each CN 9602, Inmate Administrative Remedy Form is properly logged and routed for investigation and response in accordance with Attachment A, Administrative Remedies Routing Chart; and,
7. assist the Unit Administrator to act within the scope and authority of the Inmate Administrative Remedies Process.

E. Administrative Remedy Filing. A request for an administrative remedy must be filed in accordance with the following provisions:

1. A request for an administrative remedy must be filed, in writing, on CN 9602, Inmate Administrative Remedy Form.
2. Each request for an administrative remedy must be submitted on a separate CN 9602, Inmate Administrative Remedy Form, or CN 9609, Lost/Damaged Property Investigation Form, as appropriate.
3. The request for an administrative remedy and the action sought should be stated simply and coherently.
4. The length of the request for an administrative remedy shall be restricted to the space available on the face of the CN 9602, Inmate Administrative Remedy Form and one (1) additional 8 1/2 x 11 inch page.
5. The request for an administrative remedy must be free of obscene or vulgar language or content.
6. The request for an administrative remedy must be filed by an inmate who is personally affected by the subject of the request and shall not be filed by an inmate on behalf of another.
7. A repetitive request for administrative remedy may not be filed by the same inmate when a final response has been provided and there has been no change in any circumstances that would affect the response; or when the initial request for an administrative remedy is still in process.

F. Process Integrity. The Unit Administrator shall ensure that no employee who is the subject of an investigation shall investigate or participate in the resolution of an administrative remedy.

G. Monitoring and Evaluation. The Unit Administrator shall conduct an evaluation of the Inmate Administrative Remedies Process in May of each year. Inmates and employees shall be afforded an advisory role in the evaluation, which shall include a review of both the effectiveness and credibility of the Inmate Administrative Remedies Process and recommendations for revision. An annual report for each fiscal year shall be presented to the Commissioner by September 1 of

each year. The report shall include the findings and recommendations of the evaluation process, statistical data regarding the number and type of remedies and dispositions. For the Inmate Administrative Remedies Process, the report shall also include the level of disposition, sample responses from each level, remedies granted, and evidence of compliance with time limits at each level of decision.

H. Petitions. Petitions are not an authorized method of accessing the Inmate Administrative Remedies Process and shall not receive a written response. Inmates must use the Inmate Administrative Remedies Process to seek formal review of an issue.

I. Reprisal against Staff. No staff member who participates in the processing of an administrative remedy shall be affected negatively for participation in the resolution of any administrative remedy.

J. Reprisal against Inmates. No inmate shall suffer negative consequences such as denial or limitation of access to any privilege, service or program offered by the facility either formally or informally for good faith participation in the Inmate Administrative Remedies Process as outlined in Administrative Directive 2.17, Employee Conduct.

K. Connecticut Inmates Housed in Other States/Jurisdictions. Connecticut inmates housed in other states/jurisdictions must utilize and exhaust the Inmate Administrative Remedies Process of the receiving state/jurisdiction for an issue relating to any aspect of an inmate's confinement that is subject to the receiving state/jurisdiction's authority.

Connecticut inmates housed in other states/jurisdictions shall have 30 calendar days to file a grievance with the Connecticut Department of Correction upon exhausting the receiving state/jurisdiction's Inmate Administrative Remedies Process.

6. Inmate Grievance Procedure. The Inmate Grievance Procedure shall be the administrative remedy for any issue relating to policy and procedure, and compliance with established provisions.

A. Informal Resolution. An inmate must attempt to seek informal resolution prior to filing an inmate grievance. The inmate may attempt to resolve the issue verbally with the appropriate staff member or with a supervisor/manager. If the verbal option does not resolve the issue, the inmate shall submit a written request via CN 9601, Inmate Request Form. The inmate must clearly state the problem and the action requested to remedy the issue. The request must be free of obscene or vulgar language or content. The completed CN 9601, Inmate Request Form shall then be addressed to the appropriate staff member and deposited in the appropriate collection box. The Unit Administrator shall ensure that inmate request forms are collected and delivered in a timely manner. Inmate request forms shall be available in all housing units. A response to the inmate shall be made within 15 business days from receipt of the written request. The Unit Administrator shall post in each housing unit a list of staff members to whom inmate requests should be addressed to for each of the grievable subjects.

B. Grievable Matters. All matters subject to the Commissioner's authority for which another remedy is not provided are grievable. Refer to Section 4 of this Directive for a list of administrative remedies other than the Inmate Grievance Procedure.

C. Filing a Grievance. An inmate may file a grievance if the inmate is not satisfied with the informal resolution offered. The inmate shall attach CN 9601, Inmate Request Form, containing the appropriate staff member's response, to the CN 9602, Inmate Administrative Remedy Form. If the inmate was unable to obtain a blank CN 9601, Inmate Request Form, or did not receive a timely response to the inmate request, or for a similar valid reason, the inmate shall include an explanation indicating why CN 9601, Inmate Request Form, is not attached. The completed CN 9602, Inmate Administrative Remedy Form, along with any relevant documents, shall be deposited in the Administrative Remedies box. The grievance must be filed within 30 calendar days of the occurrence or discovery of the cause of the grievance.

D. Disposition and Remedy. Each inmate grievance shall be reviewed, investigated and decided with the outcome indicated by one of the following dispositions: Rejected, Denied, Compromised, Upheld or Withdrawn. Each disposition shall be documented on CN 9602, Inmate Administrative Remedy Form and, when applicable, CN 9604, Inmate Grievance Appeal Form – Levels 2/3. Grievances that are upheld shall be given an appropriate and meaningful remedy. Such remedies may include, but not be limited to:

1. corrective action to rectify the matter being grieved;
2. changes in written policies and procedures or in their interpretation or application;
3. enforcement of existing policies and procedures; or,
4. development of policies and procedures pertaining to the grievance.

E. Grievance Returned Without Disposition. A grievance may be returned without disposition to the inmate for failure to:

1. attempt informal resolution;
2. adequately explain why a response to CN 9601, Inmate Request Form, is not attached; or,
3. comply with the provisions of Section 5(E)(1-5) of this Directive.

Returned without disposition signifies that the grievance has not been properly filed and may be re-filed after the inmate has corrected the error. CN 9606, Grievance Returned Without Disposition shall be attached to all grievances returned without disposition to indicate the reason for the return.

F. Rejection of Grievances. Any grievance which does not meet the criteria specified in Sections 5(E)(6 and 7) and 6(A through C) of this Directive may be rejected.

G. Grievance Appeals. A grievance that is denied or rejected may be appealed to the next level as provided for in Sections 6(K) and 6(L) of this Directive. A grievance returned without disposition due to a failure to comply with the procedural requirements of Sections 5(E)(1-5) and 6(D) of this Directive may not be appealed.

H. Appropriate Review. A grievance about a matter that is beyond the authority of lower level(s) of review may be sent by the lower level reviewer directly to the appropriate level of review. In such case the time limit(s) of the lower level(s) shall be combined with the time limit of the appropriate review level and the grievant shall be

notified of the review process and of the time frame for response. If the grievance is upheld, the time necessary to implement the change(s) may exceed the time limit for review.

I. Level 1 Review. The Level 1 decision shall be made by the Unit Administrator. The grievance shall be reviewed for compliance with the Inmate Grievance Procedure and investigated if the grievance is accepted. The response shall be in writing within 30 business days of receipt by the Level 1 Reviewer and shall include a statement of the remedy for a grievance that is upheld or compromised, or of the reason a grievance is denied or rejected. The Level 1 Reviewer shall notify the inmate of the Level 1 disposition and, if necessary, shall include an appeal form. If a response to a Level 1 grievance is not received within 30 business days, an inmate may appeal to Level 2.

J. Time Limit Extensions. With notice to the grievant, a reviewer may extend the time limit for a response up to 15 business days using CN 9605, Inmate Grievance Procedure - Notice of Time Extension. A grievant may request a time extension of up to 15 calendar days to file an appeal by sending a written CN 9601, Inmate Request Form, to the Administrative Remedies Coordinator. A request by the grievant may be granted at the discretion of the reviewer to whom the appeal is to be sent.

K. Level 2 Review. An inmate may appeal a Level 1 disposition to Level 2 within five (5) calendar days of receipt of the decision. The Level 2 review shall be made in accordance with the following:

1. A grievance appeal filed by an inmate confined in a Connecticut correctional facility shall be decided by the appropriate District Administrator.
2. A grievance appeal filed by an inmate housed out of state shall be decided by the Director of Sentence Calculation and Interstate Management (SCIM)
3. A grievance appeal filed by an inmate supervised in the community shall be decided by the Director of Parole and Community Services.

The Level 2 response shall be in writing within 30 business days of receipt by the Level 2 Reviewer and shall include a statement of the remedy for a grievance, which is upheld or compromised, or of the reason a grievance is denied or rejected. Level 2 shall be the final level of appeal for all grievances except as provided in Section 6(L) of this Directive.

L. Level 3 Review. An inmate may appeal a Level 2 disposition to Level 3 within five (5) calendar days of receipt of the disposition when such review is restricted to a grievance that:

1. challenges Department level policy;
2. challenges the integrity of the grievance procedure; or,
3. Exceeds the established 30 business day time limit for a Level 2 grievance response.

The Level 3 review shall be made by the Commissioner or designee. The response shall be in writing within 30 business days of receipt by the Level 3 Reviewer.

M. Limitations. Any Level-2 Administrative Remedy submitted as a result of an inmate not receiving a response to a level-1 Administrative Remedy within 30 business days, must be filed within 65 days from the date of filing the Level-1 Administrative Remedy.

Any Level-3 Administrative Remedy submitted as a result of an inmate not receiving a response to a Level-2 Administrative Remedy within 30 business days, must be filed within 35 days of filing the Level-2 Administrative Remedy.

All inmates shall be subject to these limitations. Any Administrative Remedy that exceeds the time limits set forth above shall be rejected.

N. Withdrawal. An inmate may withdraw a grievance. A grievance withdrawal must be filed in writing utilizing CN 9607, Inmate Grievance Withdrawal Form.

O. Abuse. An inmate may be deemed to be abusing the grievance procedure if any of the following conditions are met:

1. an inmate files more than seven (7) grievances in any 60 day calendar period;
2. an inmate files repetitive grievances addressing the same issue when the established time for response has not elapsed;
3. an inmate files repetitive grievances when a valid response has been provided and there has been no change in any circumstances that would affect the response; or,
4. an inmate files harassing grievances.

A determination of abuse shall be made by the Unit Administrator in writing and shall stipulate the restriction(s) imposed and its duration. Restrictions may include: (a) total denial of access to the grievance procedure; (b) a limitation on the number of grievances that may be filed; and, (c) a restriction as to the subject matter that may be grieved.

A determination of abuse may be appealed to the appropriate District Administrator by completing and depositing CN 9602, Inmate Administrative Remedy Form in the Administrative Remedies box. The decision of the District Administrator shall not be subject to further appeal.

P. Records.

1. General Requirements.

a. A grievance file shall be maintained at each level for each grievance. The grievance file shall include a copy of the grievance, each response, and any supporting documents submitted in support of the grievance, presented during investigation, or relied upon in the decision.

b. CN 9608, Grievance Log, shall be maintained at each level and shall include the name and number of the grievant, the dates of initial receipt and of the response at that level, a brief description of the problem and the disposition.

c. A monthly report shall be provided to the Unit Administrator to include:

1. the number of Level 1, 2 and 3 grievances filed for the month;
2. the Level 1 grievances categorized by subject; and,
3. the kind and number of dispositions for the month.

2. Retention. CN 9608, Grievance Log, shall be retained as the official record, and each completed grievance shall be maintained at the facility for five (5) years or until all litigation is resolved, whichever comes later in accordance with Administrative Directive 4.7, Records Retention.

3. Restriction. No copy of a grievance or adverse reference to any grievance shall be placed in an inmate's master file.

4. Confidentiality. The contents of the grievance file, grievance log (CN 9608), and any record of an inmate's participation in any grievance proceeding shall be confidential and access restricted to authorized personnel. All files shall be maintained in a locked cabinet not accessible to any person other than the Administrative Remedies Coordinator(s) or Level 1 reviewer. The Administrative Remedies Coordinator(s) involved in the disposition of a grievance shall have access to records and information essential to the resolution of the grievance. This section shall not be cause for immunity from disciplinary action based on statements made in a grievance.

7. Appeal of a Classification Decision. A classification decision may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of a decision regarding:

A. risk level decisions;
B. needs level decisions, except medical and mental health in consultation with relevant health care providers;
C. community release, except decisions made by the Board of Pardons and Paroles;
D. job or program assignments;
E. extended family visits; and,
F. Special Monitoring Status (with the exception of inmates completing Administrative Segregation, Chronic Discipline, Security Risk Group Member Program or Special Needs Management).

An appeal of a classification decision made by facility staff shall be decided by the Unit Administrator. An appeal of a classification decision made by the OCPM Unit shall be decided by the Director of OCPM, with the exception of special management decisions, which shall be in accordance with Section 8 of this Directive. The Unit Administrator or the Director of OCPM shall respond in writing within 15 business days of receipt of the

appeal. The decision of the Unit Administrator or the Director of OCPM shall not be subject to further appeal.

Placement on Special Monitoring upon completion of Administrative Segregation, Chronic Discipline, Close Custody, Close Monitoring or Special Needs Management shall not be subject to appeal. An appeal of a Special Monitoring placement (for reasons other than stated above) shall be decided by the appropriate District Administrator. The decision of the District Administrator shall not be subject to further appeal.

Transitional Supervision denials and inmates with a firm voted-to-parole date who have been denied halfway house placement are not required to submit an appeal. These denials shall be automatically reviewed by the appropriate District Administrator. The decision of the District Administrator shall not be subject to further appeal.

8. Appeal of a Special Management Decision. An initial special management decision may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of a decision regarding:

A. Administrative Segregation;
B. Special Needs Management;
C. High Security;
D. Chronic Discipline; and,
E. Protective Custody.

The Deputy Commissioner of Operations shall respond in writing within 15 business days of receipt of the appeal. The decision of the Deputy Commissioner of Operations shall not be subject to further appeal.

9. Appeal of a Security Risk Group Member Designation. An initial Security Risk Group Member designation may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of the notice of designation. The appropriate District Administrator shall respond in writing within 15 business days of receipt of the appeal. The decision of the District Administrator shall not be subject to further appeal.

In reviewing an inmate's appeal, the District Administrator shall consult with the Director of Security prior to changing an inmate's Security Risk Group Member designation.

10. Appeal of a Disciplinary Action. A guilty finding received at a disciplinary hearing may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of the notice of decision. Form CN 9602, Inmate Administrative Remedy Form shall be reviewed by the District Administrator of the district where the disciplinary report was adjudicated. The District Administrator shall respond to any appeal within 15 business days of the receipt. The District Administrator shall not delegate the authority to respond to any disciplinary appeal. Disciplinary action resulting from a guilty plea shall not be subject to an appeal.

The District Administrator may alter disciplinary action in any way that best serves the correctional objectives of the State of Connecticut. The

decision of the District Administrator shall not be subject to further appeal.

Any disciplinary sanction/penalty given to an inmate as a result of a guilty finding that is subsequently overturned on appeal shall not be imposed, only to the extent it has not yet been served or completed.

11. Appeal of Decision to Reject Religious or Educational Tapes/CDs Not Available in the Commissary. A facility decision to reject tapes/CDs that are religious or educational in nature (not available in the commissary) may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of receipt of CN 61007, Outside Tape/CD Rejection Notice. The Unit Administrator shall respond in writing within 15 business days of receipt of the appeal. The decision of the Unit Administrator shall not be subject to further appeal.

12. Appeal of a Media Review Committee Decision. A Media Review Committee decision may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of receipt of CN 61007, Outside Tape/CD Rejection Notice or CN 100702, Publication Rejection Notice, as appropriate. The Commissioner's designee, the Director of Security, shall respond in writing within 15 business days of receipt of the appeal. The decision of the Director of Security shall not be subject to further appeal.

13. Appeal of a Decision to Reject Unacceptable Correspondence. A decision to reject unacceptable correspondence may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of notification of the decision to reject the unacceptable correspondence. The facility appropriate District Administrator shall be the appeal respondent with final authority regarding matters other than Security Risk Group materials. The Director of Security shall respond in writing within 15 business days of receipt of the appeal of a decision to reject Security Risk Group correspondence. The decision of the Director of Security shall not be subject to further appeal.

14. Appeal of a Furlough Decision. A furlough decision may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of the notice of decision. The Unit Administrator shall respond in writing within 15 business days of receipt of the appeal. The decision of the Unit Administrator shall not be subject to further appeal.

15. Appeal of an Americans with Disabilities Act (ADA) Decision. An ADA decision may be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of meeting with the Unit ADA Coordinator.

    The Department ADA Coordinator in consultation with the appropriate District Administrator shall respond in writing within 15 business days of receipt of the appeal. The decision of the Department ADA Coordinator shall not be subject to further appeal.

16. Property Claim. The Department's Lost Property Board shall hear and determine any claim by an inmate in a correctional facility who seeks

compensation not exceeding three thousand five hundred dollars ($3,500.00) for lost or damaged personal property. Denied property claims exceeding three thousand five hundred dollars ($3,500.00) or property claims filed by inmates not in a Connecticut correctional facility must be filed with the State Claims Commissioner in accordance with Section 16(F) of this Directive.

A. Composition of Lost Property Board. Lost Property Board members shall be appointed by the Deputy Commissioner of Operations.

B. Property Claim Procedure. If an inmate contends the Department is responsible for the loss of or damage to, any of the inmate's personal property, the inmate shall follow the property claims procedure. Property claims must be filed within one (1) year of when the inmate knew or should have known of the loss or damage. The property claim filing procedure shall be as follows.

1. The inmate shall complete and deposit CN 9609, Lost/Damaged Property Investigation Form in the Administrative Remedies box. Form CN 9609, Lost/Damaged Property Investigation Form, shall be available in all housing units. The inmate shall attach CN 9601, Inmate Request Form, to CN 9609, Lost/Damaged Property Investigation Form, indicating that the inmate has attempted to resolve the property issue informally in accordance with Administrative Directive 6.10, Inmate Property. If the property issue is resolved at this level, the inmate shall complete and submit CN 9610, Property Investigation Withdrawal, to the Administrative Remedies Coordinator to indicate that the issue has been resolved.
2. If issue is still unresolved after submitting CN 9609, Lost/Damaged Property Investigation Form, the inmate may elect to continue pursuing resolution by completing CN 9611, Property Claim. The inmate shall obtain CN 9611, Property Claim from the Administrative Remedies Coordinator.
3. The inmate shall mail the completed and notarized claim form, along with related documents, to the attention of the Lost Property Board at 24 Wolcott Hill Road, Wethersfield, Connecticut 06109.

C. Submission of Documentation. The Administrative Remedies Coordinator shall provide the Lost Property Board with a written report on the claim, to include a copy of CN 9611, Property Claim, along with all applicable documentation within 30 calendar days of request of an investigation.

When a property complaint is resolved at the facility level, the original CN 9610, Property Investigation Withdrawal, shall be placed in the inmate's central property file at the facility. If, after a property claim has been filed, the issue is resolved prior to the conclusion of the Lost Property Board's investigation, CN 9613, Property Claim Settlement, shall be completed. The original CN 9613, Property Claim Settlement, shall be placed in the claim file and a copy in the inmate's central property file.

D. Claim Fees. A $25.00 filing fee shall be required for all claims filed with the Lost Property Board. Fees may be waived for good cause by the Department's Claims Office. If the inmate has insufficient funds to pay the filing fee, the inmate may submit CN

9612, Application for Deferment of Filing Fee. Payment of the fee may either be waived or an obligation may be established on the inmate's trust fund account. If an obligation is established on the trust fund account, twenty percent (20%) of all subsequent funds received by the inmate shall be credited against the obligation until the obligation is satisfied.

E. Decision. The Lost Property Board shall review all documents related to the claim and decide the claim on its merits. If, upon review of the documents presented, the Lost Property Board determines that the claim has merit as presented, it shall award appropriate damages to the inmate. Otherwise, the Lost Property Board shall hold a hearing to determine whether or not the Department is liable for the loss and the appropriate damages. If the Lost Property Board determines that a hearing shall be held, the inmate shall be given at least 24 hours notice utilizing CN 9614, Property Claim Hearing Notification, and an opportunity to be heard at the hearing. The inmate may present witness testimony in the form of written statements.

The Lost Property Board shall have up to one (1) year from the date the inmate's property claim is received to review, investigate and render a decision. The one (1) year limit may be extended when justified by good cause. Extensions to the one (1) year limit shall be documented on CN 9614, Property Claim Hearing Notification.

F. Filing a Claim with the State's Claims Commissioner. If the Lost Property Board denies a claim in whole or in part, the inmate may, not later than 60 calendar days after such decision, present the claim to the Claims Commissioner by forwarding the same CN 9611, Property Claim, along with any relevant documents, to the attention of the State Claims Commissioner at 165 Capitol Avenue Room 123 Hartford, Connecticut 06106.

17. Appeal of Determination of Retroactive RREC credits. The determination of the number of retroactive credits an inmate may receive can be appealed by completing and depositing CN 9602, Inmate Administrative Remedy Form, in the Administrative Remedies box within 15 calendar days of the notice of decision. The Unit Administrator shall respond in writing within 15 business days of receipt of the appeal. The decision of the Unit Administrator shall not be subject to further appeal.

18. Forms and Attachments. The following forms and attachments are applicable to this Administrative Directive and shall be utilized for their intended function:

A. CN 9601, Inmate Request Form;
B. CN 9602, Inmate Administrative Remedy Form;
C. CN 9603, Administrative Remedy Receipt;
D. CN 9604, Inmate Grievance Appeal Form – Levels 2/3;
E. CN 9605, Inmate Grievance Procedure – Notice of Time Extension;
F. CN 9606, Grievance Returned Without Disposition;
G. CN 9607, Inmate Grievance Withdrawal Form;
H. CN 9608, Grievance Log;
I. CN 9609, Lost/Damaged Property Investigation Form;
J. CN 9610, Property Investigation Withdrawal;
K. CN 9611, Property Claim;
L. CN 9612, Application for Deferment of Filing Fee;

M. CN 9613, Property Claim Settlement;
N. CN 9614, Property Claim Hearing Notification;
O. CN 9615, Agency Findings; and,
P. Attachment A, Administrative Remedies Routing Chart.

19. Exceptions. Any exceptions to the procedures in this Administrative Directive shall require prior written approval from the Commissioner.

General Information

Court	United States District Court for the District of Connecticut; United States District Court for the District of Connecticut
Federal Nature of Suit	Prisoner Petitions - Civil Rights[550]
Docket Number	3:20-cv-00534