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