IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

TERESA BEATTY, *et al.*,	:	3:22-cv-00380-JAM
Plaintiffs,	:	
v.	:	
MICHELLE GILMAN, *et al.*,	:	
Defendants.	:	JUNE 12, 2023

Defendants' Memorandum in Support of their Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint

Plaintiffs' amendment could—and did—not cure the defects that led to dismissal; no Plaintiff could establish jurisdiction when Plaintiffs brought this action, and no Plaintiff can do so now. Even if this action were not jurisdictionally barred, prudential ripeness counsels against reaching out to decide constitutional Excessive Fines Clause claims by Plaintiffs who do not allege facts that establish the amount and timing of the claimed reimbursement. If this Court nonetheless decides to reach the merits, the courts that have addressed Excessive Fines Clause challenges to comparable costs of incarceration laws have generally rejected those challenges, consistent with Supreme Court precedent. This Court should do the same here.

Factual Background

Plaintiffs allege as follows: The Connecticut laws and regulations requiring incarcerated people to contribute toward the costs of their incarceration that Plaintiffs challenge have been in place since 1997. *Second Amended Complaint*, ¶ 1 (ECF No. 49) ("*2dAC*" or "the Complaint"). "[L]egislative changes in May 2022 narrowed" the challenged laws' application, both by "narrow[ing] the groups of people from whom the state can collect prison debt," *id*. ¶ 77, and by "exempt[ing] up to $50,000 of a person's assets from a given collection attempt." *Id*. ¶ 79.

The Complaint names three Plaintiffs: Teresa Beatty, Natasha Tosado, and Douglas Johnson. *2dAC*, p. 1. Plaintiff Beatty was incarcerated "between 2000 and 2002 for charges stemming from drug possession." *Id.* ¶ 22. Her mother's estate is being administrated by the

Stamford Probate Court. *See id*. ¶ 30. The DAS filed a notice in the Probate Court before the challenged laws were amended asserting a claim for costs of incarceration in the amount of $83,762.26, *see id*. ¶ 36, that was calculated "at a rate of $123 and $122 per day." *Id.* ¶ 39. A house was the only item remaining in the estate and the house was sold for $625,000 in early April 2023. *See id*. ¶¶ 32 & 34. "[T]he proceeds will be distributed proportionally to" Plaintiff Beatty and other "heirs after all of the estate's debts and assets are assessed by its fiduciaries." *Id.* ¶ 34. Plaintiffs do not allege any facts regarding when the fiduciaries will complete their assessment and, by extension, when a distribution will occur. Plaintiffs also do not allege any facts regarding the estate's debts and assets, if any, other than the house.

Plaintiff Tosado was incarcerated "between July 2016 and April 2018" on unspecified charges. *Id*. ¶ 42. Her son was shot and killed by a Bridgeport police employee and the administrator of her son's estate settled a suit in December 2022. *See id.* ¶¶ 43 & 46. Plaintiff Tosado's total prison debt was calculated as $129,641 and the DAS notified the Probate Court that it "sought $44,028.98 to satisfy Ms. Tosado's lien." *Id.* ¶ 48. In calculating the amount, the DAS gave Plaintiff Tosado the benefit of the $50,000 exemption. *See id.* ¶ 48 n.2. The estate administrator is presently holding the $44,028.98 the state is owed under the challenged laws "in escrow . . . pending the outcome of Ms. Tosado's claim" in this action. *Id.* ¶ 48.

Plaintiff Johnson was incarcerated "from February 2002 to March 2004 for drug-related charges." *Id.* ¶ 56. His mother passed away in 2016 and left him and his brother an unspecified small sum of money. *See id.* ¶ 63. It is Plaintiff Johnson's "understanding" that an unspecified portion of that money was taken for costs of incarceration. *Id*. Plaintiff Johnson's father passed away in August 2021. *See id*. ¶ 64. An estate was admitted for administration and the DAS filed a Notice of Lien for $74,652.58. *See id.* ¶ 66. Plaintiff Johnson and his brother were left $10,000,

a boat, land and a cabin, and a truck. *Id.* ¶ 68. Plaintiffs do not allege the share of the estate Plaintiff Johnson is set to receive. Nor do Plaintiffs allege the value of the items.

Based on those allegations, Plaintiffs assert an official capacity only claim for violation of the Eighth Amendment's Excessive Fines Clause. *See id*. at p. 25. Plaintiffs ask this Court to: declare that Plaintiffs' "prison debt is invalid, null, void and unenforceable," *id*. at p. 26 ¶ (a); declare the entirety of the challenged statutes and regulations "unconstitutional and void," *id.* at p. 26 ¶ (b); enjoin Defendants and anyone from working with them from enforcing the challenged laws, *id.* at p. 26 ¶¶ (c) & (d); and award Plaintiffs costs and fees. *Id.* at p. 26 ¶ (e).[1]

Procedural Background

Plaintiffs filed their Initial Complaint on March 14, 2022 (ECF No. 1). Plaintiffs amended their Complaint as a matter of course on March 25, 2022 (ECF No. 11). Initial Defendants timely moved to dismiss Plaintiffs' first Amended Complaint on several grounds. After hearing argument, this Court granted Initial Defendants' Motion to Dismiss, holding that "all three" Initial Plaintiffs "lack[ed] standing to pursue their claims against the Attorney General," that "the Eleventh Amendment foreclose[d] the claims of Beatty and Weissinger, and Llorens' claim [wa]s not ripe for resolution." *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *29. "In light of the plaintiffs' request for leave to file an amended complaint," this Court's "order granting the motion to dismiss [wa]s without prejudice to the filing of an amended complaint that may name additional plaintiffs and defendants as appropriate." *Id*. at *30.

[1] Defendants will discuss Plaintiffs' allegations in more detail in the argument section below to the extent Plaintiffs' allegations are relevant to Defendants' arguments. Plaintiffs also purport to bring suit on behalf of a class. That should not change the analysis for purposes of this Motion to Dismiss. *See Beatty v. Tong*, 2023 U.S. Dist. LEXIS 36528, at *14 (D. Conn. Mar. 6, 2023) (Meyer, J.) (LEXIS version of ECF No. 45); *see also Justiniano v. First Student Management LLC*, 2017 U.S. Dist. LEXIS 65379, at *16 (E.D.N.Y. Apr. 26, 2017) (concluding that unnamed plaintiffs should not impact the analysis in the putative class action context, and citing cases including one granting a Rule 12(b)(6) motion to dismiss a putative class action where the named plaintiff failed to state a claim).

On April 20, 2023, Plaintiffs filed a Second Amended Complaint. As a courtesy intended to save Plaintiffs the burden and cost associated with formal service, Defendants agreed to accept electronic service of the Complaint. This Court later granted a consent Motion for Extension of Time setting Defendants' response deadline as June 12, 2023.

Argument

I. The Standard Applicable to this Motion to Dismiss

Defendants bring this Motion pursuant to Rule 12(b)(1) and 12(b)(6). A Rule 12(b)(1) motion is the proper vehicle to raise standing, constitutional ripeness, and the Eleventh Amendment. *See, e.g.*, *Liberian Community Assn. of Conn.* v. *Lamont*, 970 F.3d 174, 184 (2d Cir. 2020); *Lishan Wang v. Delphin-Rittmon*, 2023 U.S. Dist. LEXIS 50197, at *17 (D. Conn. Mar. 24, 2023) (Meyer, J.). A Rule 12(b)(6) motion is the proper vehicle to raise prudential ripeness. *See, e.g.*, *Global Art Exhibitions, Inc. v. Kuhn & Bülow Italia Versicherungsmakler GmbH, Ergo Versicherungs AG*, 607 F. Sup. 3d 421, 429 n.4 (S.D.N.Y. 2022).

As this Court recently recognized, "[t]he standard that governs a motion to dismiss under Rules 12(b)(1) and 12(b)(6) is well established." *Campbell v. City of Waterbury*, 2022 U.S. Dist. LEXIS 22999, at *7 (D. Conn. Feb. 9, 2022) (Meyer, J.). "A complaint may not survive unless it alleges facts that, taken as true, give rise to plausible grounds to sustain subject-matter jurisdiction and a plaintiff's claims for relief." *Id*. (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), *Kim v. Kimm*, 884 F.3d 98, 103 (2d Cir. 2018) and *Lapaglia v. Transamerica Cas. Ins. Co.*, 155 F. Supp. 3d 153, 155-56 (D. Conn. 2016)).

II. The Second Amended Complaint Could Not—and Does Not—Cure the Subject Matter Jurisdictional Defects that Existed at the Outset of this Case

Plaintiffs purport to amended to change Plaintiffs and Defendants and to alter Plaintiffs' factual allegations. Plaintiffs required this Court's leave for any amendment, and Plaintiffs

requested that leave—first in a footnote in Plaintiffs' Opposition to Defendants' Motion to Dismiss and later at oral argument. This Court granted leave over objection. However, the scope of this Court's leave is not clear; Plaintiffs requested leave to change Defendants but did not ask to add Plaintiffs or to supplement to allege facts that occurred after they filed the Complaint. This Court should dismiss the Complaint to the extent it exceeded this Court's leave.

To the extent the Complaint was within the scope of this Court's leave, the question becomes whether it cured the multiple jurisdictional defects this Court found in granting Defendants' Motion to Dismiss. It could not and did not. This Court correctly held that it lacked subject matter jurisdiction. Plaintiff Beatty—the sole remaining Initial Plaintiff—could not properly cure "defective jurisdiction itself" via amendment to the extent it changed the parties or alleged facts that were not in existence when Plaintiffs commenced this action. *Fund Liquidation Holdings LLC v. Bank of America Corp.*, 991 F.3d 370, 388 (2d Cir. 2021) ("*Fund Liquidation*").

Even if Plaintiff Beatty could theoretically properly amend to change Defendants to cure the standing and Eleventh Amendment defects this Court found, to avoid dismissal the Complaint would need to allege facts that show that Plaintiff Beatty had a factual basis to establish jurisdiction at "the case's inception." *Id*. It does not. To the contrary, the Complaint establishes that when Plaintiffs filed this action in March 2022 any injury to Plaintiff Beatty was neither certain nor imminent. Plaintiffs' Complaint filed in April 2023—over a year after Plaintiffs commenced this action—still offers no plausible factual basis to conclude that Plaintiff Beatty certainly will have to reimburse costs of incarceration or when she will have to reimburse them. That requires dismissal of this action in its entirety—if no Initial Plaintiff could establish jurisdiction at this case's inception, both the Rules and the Constitution's limitations on this Court's jurisdiction mandate that addition and deletion of parties cannot cure that defect. *See*

Fed. R. Civ. P. 12(h)(3). Even if they did not mandate dismissal, those defects, prudential ripeness, and the need to protect constitutional limitations on federal jurisdiction all weigh in favor of this Court exercising any available discretion to dismiss this action.

A. This Court Should Dismiss the Complaint to the Extent it Exceeds this Court's Leave

This Court correctly held "that there [were] multiple reasons why the Court lack[ed] jurisdiction over any of the plaintiffs' claims" and granted the initial Motion to Dismiss. *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *29-30. However, this Court gave Plaintiffs leave to file "**an amended complaint** that may name additional plaintiffs and defendants **as appropriate**" over Defendants' objection. *See id.* at *30 (emphasis added).[2]

Many of the changes Plaintiffs purport to make appear to be beyond the scope of this Court's leave. By way of background, Plaintiffs did not file a motion to amend with the proposed Complaint and redline attached. *See* D. Conn. L. R. 7(f). Instead, they "buried th[eir] request" to amend "in their opposition memorandum of law"—a practice courts generally "do[ ] not look favorably upon"—and mentioned amendment at oral argument. *Fox v. Bd. of Trustees of State Univ.*, 148 F.R.D. 474, 481 n.16 (N.D.N.Y. 1993). Those requests spoke only of amending to name the proper Defendants.[3]

Plaintiffs did not request leave to supplement (rather than amend) their Complaint by alleging facts that arose after Plaintiffs commenced this action. *Compare* Fed. R. Civ. P. 15(a)-(c) (amended pleadings), *with* Fed. R. Civ. P. 15(d) (supplemental pleadings). Second Circuit precedent precluded Plaintiffs from doing so. *See, e.g.*, *Hartford v. Glastonbury*, 561 F.2d 1032, 1051 n.3 (2d Cir. 1977) (En Banc) ("Events occurring after the filing of the complaint cannot

[2] *See Defs.' Reply*, pp. 6-7 (ECF No. 32) (objecting to Plaintiffs' request to amend).
[3] *See Opp. to Mot. to Dismiss*, p. 15 n.5 (ECF No. 31) (representing that Plaintiffs "will amend the complaint to join the Commissioner or Correction and/or the Commissioner of Administrative Services"); *10/31/22 Tr.*, pp. 24, 45 (A-2-3) (discussing amendment to name current Defendants, with no mention of adding Plaintiffs or other allegations).

operate so as to create standing where none previously existed."). The Complaint presumably exceeds this Court's leave to the extent it purports to supplement Plaintiffs' allegations in ways that Plaintiffs did not request, this Court did not reference, and are precluded.[4]

Plaintiffs also did not request leave to add named Plaintiffs. Although this Court nonetheless gave Plaintiffs leave to add Plaintiffs "as appropriate," adding Plaintiffs was not appropriate; this Court correctly held that it lacked jurisdiction and "[t]he longstanding and clear rule is that 'if jurisdiction is lacking at the commencement of [a] suit, it cannot be aided by the intervention of a [plaintiff] with a sufficient claim.'" *Pressroom Unions-Printers League Income Security Fund v. Continental Assurance Co.*, 700 F.2d 889, 893 (2d Cir. 1983) ("*Pressroom*") (quoting *Pianta v. H.M. Reich Co.*, 77 F.2d 888, 890 (2d Cir. 1935)).[5] The same is true for substitution of new plaintiffs. *See id.*[6]

Nor was Plaintiffs' amendment to change Defendants appropriate. Subject matter jurisdictional defects that result from naming the wrong defendants are not an exception to the concept underlying *Pressroom*; "'[w]hen there is no subject-matter jurisdiction over the original action between plaintiff and defendant, it cannot be created by adding a third-party claim over

[4] *See 2dAC*, ¶¶ 1-2, 4-6, 34-35, 37, 40 & n.1, 46-55 & n.2, 59-61, 70-73, 76-83, 85, 106, 128, 142, & 146 (setting out, in part or in whole, transactions, occurrences, or events that happened after Plaintiffs filed this action).

[5] *See also Disability Advocates, Inc. v. New York Coalition for Quality Assisted Living, Inc.*, 675 F.3d 149, 160-61 (2d Cir. 2012) (reiterating and applying *Pressroom*); *Life Ins. Fund Elite LLC v. Hamburg Commer. Bank AG*, 2023 U.S. Dist. LEXIS 20799, at *4-7 (S.D.N.Y. Feb. 7, 2023) (applying *Pressroom*, denying leave to amend, and dismissing the case based on an initial lack of subject matter jurisdiction without leave to amend); *Broad v. DKP Corp.*, 1998 U.S. Dist. LEXIS 12942, at *14 (S.D.N.Y. Aug. 18, 1998) (finding that "the Court of Appeals has explicitly rejected the practice of retroactive jurisdiction, i.e., permitting a plaintiff belatedly to attempt to assert subject matter jurisdiction by amendment," and citing *Pressroom*).

[6] *See also Fed. Recovery Servs. v. United States*, 72 F.3d 447, 453 (5th Cir. 1995) (holding "that Rule 15 does not permit a plaintiff from amending its complaint to substitute a new plaintiff in order to cure the lack of subject matter jurisdiction"); *MacGregor v. Milost Global, Inc.*, 2019 U.S. Dist. LEXIS 68009, at *21 (S.D.N.Y. Apr. 19, 2019) (noting that "[w]hen subject matter jurisdiction is wanting because the plaintiff presently named in the complaint lacks standing, a court cannot grant leave to amend under Rule 15 to add a plaintiff for purposes of curing the jurisdictional defect" and citing cases). That this is a putative class action does not change the analysis. *See, e.g., Walters v. Edgar*, 163 F.3d 430, 432-33 (7th Cir. 1998). To be clear, substitution of plaintiffs can be permitted under Rule 17(a) "when the change is merely formal and in no way alters the original complaint's factual allegations as to the events or the participants." *Advanced Magnetics, Inc. v. Bayfront Partners, Inc.*, 106 F.3d 11, 27 (2d Cir. 1997). Here, however, the Complaint alters the factual allegations as to both the events and the participants.

which there is jurisdiction.'" *S/N1 REO LLC v. City of New London*, 127 F. Supp. 2d 287, 296 (D. Conn. 2000) (Hall, J.) (quoting 6 Charles Alan Wright, Arthur R. Miller, & Mary Kay Keller, *Federal Practice and Procedure* Civil 2d § 1444, at 327 n.31 (1990) and referencing *Pressroom*) (holding that an amended third-party complaint that added the FDIC as a defendant could not cure a jurisdictional defect that existed at the case's inception)[7]; *see also Mills v. Maine*, 118 F.3d 37, 53 (1st Cir. 1997) (refusing to allow amendment to replace the State of Maine with the Maine Commissioner of Corrections as a defendant in order to invoke *Ex parte Young*).[8]

B. Subject Matter Jurisdiction was Lacking at the Commencement of this Suit and the Second Amended Complaint Cannot Cure that

Even if the Complaint were fully within the scope of this Court's leave, it could not properly avoid dismissal. As discussed above, "[t]he longstanding and clear rule is that 'if jurisdiction is lacking at the commencement of [a] suit, it cannot be aided by the intervention of a [plaintiff] with a sufficient claim.'" *Pressroom*, 700 F.2d at 893 (quoting *Pianta*, 77 F.2d at 890).[9] The same is true for substitution of new plaintiffs. *See id*. It is also true for addition of new defendants. *See, e.g.*, *S/N1 REO LLC*, 127 F. Supp. 2d at 296. So too for allegations regarding factual developments after Plaintiffs commenced this suit; "[e]vents occurring after the

[7] The Second Circuit has recognized a limited exception to the general rule that amendment cannot cure original subject matter jurisdictional defects. *See Hackner v. Guar. Trust Co.*, 117 F.2d 95 (2d Cir. 1941). That exception cannot cure the defects that led to dismissal. Even if it could, the exception does not apply where—as here—the attempt to amend comes over a year after the Complaint, after full briefing, argument, and decision on a motion to dismiss. *See, e.g.*, *Disability Advocates*, Inc., 675 F.3d at 161 (construing *Hackner*, holding that the exception was not applicable, and emphasizing that the substitution in *Hackner* occurred "*twenty two days* after the complaint was filed and before any action by the defendants had been taken" (emphasis in the original)).

[8] "[T]he same jurisdictional limitation on motions under Rule 15 applies to motions under Rule 21—if the plaintiff lacks standing at the start of the action, then the court does not have the authority to add a party under Rule 21 to cure that jurisdictional defect." *Wash. Tennis & Educ. Found., Inc. v. Clark Nexsen, Inc.*, 270 F. Supp. 3d 158, 167 (D.D.C. 2017) (citing *Salazar v. Allstate Tex. Lloyd's, Inc.*, 455 F.3d 571, 575 (5th Cir. 2006); *N. Trust Co. v. Bunge Corp.*, 899 F.2d 591, 597 (7th Cir. 1990); and *Field v. Volkswagenwerk AG*, 626 F.2d 293, 306 (3rd Cir. 1980)).

[9] The cases cited in the immediately preceding section support this argument as well and Plaintiffs and the Court should consider them incorporated in this section.

filing of the complaint cannot operate so as to create standing where none previously existed." *Hartford*, 561 F.2d at 1051 n.3.[10]

This Court has already correctly held that it "lack[ed] jurisdiction over any of" Plaintiffs' original claims for "multiple reasons." *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *29-30. That should be dispositive; "[w]hile Rule 15(a), governing amendments to pleadings, is liberally applied, it does not extend to cases where Plaintiff attempts to use an amendment to cure a standing defect." *D.J. v. Conn. State Board of Educ.*, 2019 U.S. Dist. LEXIS 58963, at *6-8 (D. Conn. Apr. 5, 2019) (Haight, J.) (citing cases). "Because lack of standing is a jurisdictional defect, a corollary of" the rule that standing is determined at the time the suit is commenced "is that courts cannot consider any amendments to the initial complaint or any post-filing" events "to determine whether plaintiffs have standing." *Clarex Ltd. v. Natixis Securities Am. LLC*, 2012 U.S. Dist. LEXIS 147485, at *11 (S.D.N.Y. Oct. 12, 2012) (citing *Fenstermaker v. Obama*, 354 F. App'x 452, 455 n.1 (2d Cir. 2009) (Summary Order)). The same principle applies to attempts to cure other constitutionally based jurisdictional defects, including Plaintiffs' attempt to name proper defendants. *See, e.g.*, *Mills*, 118 F.3d at 53.

C. The Passage of Time has Established that Plaintiff Beatty's Claimed Injury would Not have been Sufficiently Imminent in March 2022 to Support Standing, even if Plaintiffs had Named Proper Defendants

Second Circuit precedent would require dismissing the Complaint even if Plaintiffs' amendment was within the scope of this Court's leave and Plaintiffs could substitute Defendants to mitigate the jurisdictional defects that led to dismissal. Plaintiff Beatty is the only remaining Initial Plaintiff. The passage of time has established that she would not have had standing at the outset of this litigation even if Plaintiffs had named the proper Defendants. *See, e.g.*, *Chevron*

[10] *See also Murphy v. Lamont*, 2022 U.S. Dist. LEXIS 66267, at *16 (D. Conn. Apr. 11, 2022) (Hall, J.) (applying *Hartford*); *Sharehold Rep. Servs. LLC v. Sandoz Inc.*, 2013 U.S. Dist. LEXIS 111378, at *18 (S.D.N.Y. Aug. 7, 2013) (similar).

Corp. v. Donziger, 833 F.3d 74, 121 (2d Cir. 2016) ("'[T]he standing inquiry'" is "'focused on . . . when the suit was filed.'" (quoting *Davis v. FEC*, 554 U.S. 724, 734 (2008), emphasis in *Donziger*)). "[S]tanding requires an 'injury in fact' that must be 'concrete and particularized,' as well as 'actual or imminent.'" *Carney v. Adams*, 141 S. Ct. 493, 498 (2020) (quotation marks omitted). "It cannot be 'conjectural or hypothetical.'" *Id*. (quotation marks omitted).

Plaintiff Beatty's only arguably viable claim of injury for standing purposes was premised on the possibility that she may be required to reimburse costs of incarceration. *See, e.g.*, *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *23-29 (correctly rejecting Plaintiffs' argument that the mere existence of an inchoate claim was sufficient to establish standing and ripeness). She had not actually reimbursed any such costs when Plaintiffs filed this action in March 2022. Therefore, she could not properly rely on a concrete actual injury in fact to establish standing when Plaintiffs filed their Complaint in this action.

Nor could Plaintiff Beatty properly rely on a concrete imminent injury that was not conjectural or hypothetical. "Although 'imminence' is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 n.2 (1992) (quotation marks omitted; emphasis in *Lujan*). "It has been stretched beyond the breaking point when, as here, the plaintiff alleges only an injury at some indefinite future time, and the acts necessary to make the injury happen are at least partly within the plaintiff's own control." *Id*. When those circumstances are present, the Supreme Court has "insisted that the injury proceed with a high degree of immediacy, so as to reduce the possibility of deciding a case in which no injury would have occurred at all." *Id*.

Factual developments should remove any doubt that Plaintiff Beatty lacked the imminent and certainly impending injury necessary to establish standing when Plaintiffs commenced this action on March 14, 2022. Time has proven that Plaintiff Beatty's injury would not "proceed with [the] high degree of immediacy" required to establish standing under the circumstances. *Id*. Plaintiffs filed the Complaint over thirteen months after their original Complaint. Despite that passage of time, Plaintiff Beatty still had not reimbursed any costs of incarceration, and the Complaint offers no basis other than speculation to conclude that she ever will.

Although the Complaint alleges that the house in the estate eventually sold over a year after Plaintiffs filed this action, this "court[ ] cannot consider any amendments to the initial complaint or any post-filing" events to support Plaintiffs Beatty's claim to have had "standing" in March 2022. *Clarex Ltd.*, 2012 U.S. Dist. LEXIS 147485, at *11 (citing *Fenstermaker*, 354 F. App'x at 455 n.1); *see also Hartford*, 561 F.2d at 1051 n.3 (similar). In any event, Plaintiffs' allegations undermine rather than support any argument that Plaintiff Beatty had standing when Plaintiffs brought this action. Even at this late date, Plaintiffs still allege only that "the proceeds will be distributed proportionally to Ms. Mills's heirs after all of the estate's debts and assets are assessed by fiduciaries." *2dAC*, ¶ 34. Plaintiffs allege no facts regarding the estate's debts.[11] Nor do they allege any facts as to when the fiduciaries' assessments will be complete. As a result, Plaintiffs still have pled no non-speculative factual basis to conclude that Plaintiff Beatty's distribution will be reduced by costs of incarceration and, if so, when that distribution will be reduced in any amount by operation of the challenged laws. *Cf. Thomas v. County of Humboldt*,

[11] Plaintiffs do allege that "absent relief from this Court, Ms. Beatty will lose $83,762.26"—the full amount of the claim DAS filed before the challenged laws were amended. *2dAC*, ¶ 40. That is not plausible. Plaintiffs offer nothing other than speculation to support a conclusion that Plaintiff Beatty will receive any distribution after the estate's debts are assessed. Even if she does, the amendments created an "exemption for up to $50,000 of a [former] prisoner's property," *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *27, and Plaintiffs otherwise acknowledge that the DAS has applied the exception. *2dAC*, ¶ 48 n.2.

2023 U.S. Dist. LEXIS 83938, at *54-55 (N.D. Cal. May 12, 2023) (dismissing claims under the Excessive Fines Clause on standing grounds where the plaintiffs had not "actually paid a fine" and "assuming that they would ever pay a fine in any amount would also require a great deal of speculation—let alone assuming that they would pay an 'excessive' fine").[12] As this Court reasoned in ultimately rejecting a challenge to an aspect of the challenged statutes, the mere potential that Plaintiff may have to reimburse at some point in the future does not "constitute[ ] a sufficiently 'concrete' event or actual invasion of" Plaintiff's "rights to constitute an injury." *Bonilla v. Semple*, 2016 U.S. Dist. LEXIS 118022, at *11 (D. Conn. Sep. 1, 2016) (Bolden, J.).

D. Plaintiff Beatty's Claim is Not Constitutionally Ripe

Standing and constitutional ripeness are closely related. *See, e.g.*, *Lacewell v. Office of the Comptroller of the Currency*, 999 F.3d 130, 149 (2d Cir. 2021). "Crucially, the doctrine of constitutional ripeness overlaps with the standing doctrine, most notably in the shared requirement that the plaintiff's injury be imminent rather than conjectural or hypothetical." *Id.* (quotation marks omitted). Therefore, this Court lacked and lacks jurisdiction over Plaintiff Beatty's claim on constitutional ripeness grounds for the reasons discussed above.

Although standing and ripeness share many aspects, there is less certainty regarding when ripeness is measured. As discussed above, "the standing inquiry" is "focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed." *Chevron Corp.*, 833 F.3d at 121 (quotation marks omitted; emphasis in *Chevron Corp.*).

[12] In granting Defendants' Motion to Dismiss, this Court noted that Plaintiff Beatty had "alleged enough to plausibly show that she is subject to a threatened injury that is certainly impending and also that there is a substantial risk that harm to her will occur by means of the loss of more than $80,000 from her inheritance" before going on to hold that she lacked standing because Plaintiffs had named the Attorney General rather than a proper Defendant. *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *15-16. Defendants respectfully disagree with this Court's *dictum* regarding Plaintiff Beatty's claim of injury. In any event, this Court now has the benefit of the Complaint, which shows that any injury to Plaintiff Beatty was not "certainly impending" when Plaintiffs commenced this action in March 2022. *See id.*

By contrast, the Second Circuit has sent mixed signals on when ripeness is measured. Earlier decisions indicated that ripeness was measured at the time of decision rather than when the suit was filed.[13] However, the Second Circuit has more recently measured ripeness "[a]t the time of the complaint." *New York Civil Liberties Union v. Grandeau*, 528 F.3d 122, 131 (2d Cir. 2008) (Sotomayor, J.). To the extent the Second Circuit's decisions conflict, this Court must follow the more recent guidance.[14] Beyond that, *Grandeau* reflects the concept that "questions of ripeness involve the exercise of judicial restraint from unnecessary decision of constitutional issues." *Kremens v. Bartley*, 431 U.S. 119, 136 (1977). Consistent with *Grandeau*, several courts outside this Circuit have measured ripeness as of the filing of the complaint, either because they found *Regional Rail* and its progeny distinguishable or without addressing *Regional Rail*.[15]

Although measuring ripeness at the time of commencement makes it even more clear that Plaintiff Beatty's claim is not ripe, this Court should dismiss Plaintiff Beatty's claim on ripeness grounds regardless of when it measures ripeness. As discussed above, the Complaint does not allege any non-speculative factual basis to conclude that Plaintiff Beatty's distribution from the estate will be reduced by costs of incarceration and, if so, when that reduction will occur. "[R]ipeness is peculiarly a question of timing." *Regional Rail*, 419 U.S. at 140. In holding the

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[13] *See American Motorists Ins. Co. v. United Furnace Co*., 876 F.2d 293, 302 n.4 (2d Cir. 1989) ("*American Motorists*") (citing *inter alia Regional Rail Reorganization Act Cases*, 419 U.S. 102, 139-40 (1974) ("*Regional Rail*")); *see, e.g.*, *Hargrave v. Vermont*, 340 F.3d 27, 34 (2d Cir. 2003) (applying *American Motorists*).

[14] *See, e.g.*, *Pinter v. City of New York*, 976 F. Supp. 2d 539, 574 (S.D.N.Y. 2013) (noting a conflict between two Second Circuit decisions and following the "subsequent and more authoritative" decision, even though the Second Circuit's other decision was "in the instant case"); *Fireman's Fund Ins. Co. v. Plaza Oldsmobile Ltd.*, 600 F. Supp. 1452, 1458 (E.D.N.Y. 1985) (similar); *see also Fisher v. Aetna Life Ins. Co.*, 2020 U.S. Dist. LEXIS 94936, at *37 n.9 (S.D.N.Y. May 29, 2020) (noting that if a Second Circuit decision post-dates a Supreme Court decision, the district court "must follow the Second Circuit's interpretation" of the Supreme Court's decision even if the district court believed there was a conflict).

[15] *See Melwood Horticultural Training Ctr., Inc. v. U.S.*, 151 Fed. Cl. 297, 308 (2020) (concluding that *Regional Rail* and its progeny "are an exception, not the rule, to the ripeness doctrine" and that ripeness generally "'must be determined on the facts existing at the time the complaint under consideration was filed'" (quoting *Arrowhead Indus. Water, Inc. v. Ecolochem, Inc.*, 846 F.2d 731, 734 n.2 (Fed. Cir. 1988)); *see also Sullivan v. City of Augusta*, 406 F. Supp. 2d 92, 105 (D. Me. 2005), *aff'd in part and rev'd in part on other grounds*, 511 F.3d 16 (1st Cir. 2007) (concluding that "when the ripeness inquiry should be made—at the time of complaint or at the time of decision" is "hardly a straightforward issue" and citing several cases measuring ripeness at the time of the complaint).

claim at issue in *Regional Rail* ripe, the Court reasoned that "the implementation of the Rail Act will now lead inexorably to the final conveyance" on "a strict timetable." *Id*. at 140 & n.25. By contrast, the Complaint does not offer a factual basis to conclude either that yet more time will lead "inexorably to" Plaintiff Beatty's injury or that her injury—which still has not arrived over a year after Plaintiff Beatty filed suit—will materialize on a "strict timetable." *Id*.

E. If this Court Has Discretion, Discretionary Dismissal is Appropriate

Defendants believe this Court must dismiss the Complaint because of the jurisdictional defects this Court has already found and the others that are now evident. If this Court somehow concludes that it has discretion, this Court would be well within its discretion to—and should—dismiss the Complaint for the reasons discussed above. *See, e.g.*, *Pressroom*, 700 F.2d at 893-94 and n.9 (concluding that the District Court lacked jurisdiction to allow the amendment, and noting—apparently in the alternative—that the District Court's denial of the amendment would not have been an abuse of discretion). A lack of subject matter jurisdiction at the time of the initial Complaint amply supports discretionary dismissal. *See, e.g.*, *Am. Charities for Reasonable Fundraising Regulation, Inc. v. Shiffrin*, 46 F. Supp. 2d 143, 154 (D. Conn. 1999) (Arterton, J.).

So does prudential ripeness. Beyond that, discretionary dismissal would be consistent with concerns the Second Circuit has expressed about plaintiffs using unripe claims to invoke federal jurisdiction in the hope that their claims will ripen before the litigation ends.

1. Plaintiff Beatty's Claim is Not Prudentially Ripe

"[E]ven if" Plaintiff Beatty's[16] claim was constitutionally ripe, she "must satisfy prudential ripeness concerns" to avoid dismissal. *Pfizer Inc. v. United States HHS*, 2021 U.S. Dist. LEXIS 189381, at *19 (S.D.N.Y. Sep. 30, 2021) (concluding that the plaintiff's claims

[16] Ripeness, including prudential ripeness, is assessed claim by claim and plaintiff by plaintiff. *See, e.g.*, *Connecticut v. Duncan*, 612 F.3d 107, 111-15 (2d Cir. 2010); *United States v. Santana*, 761 F. Supp. 2d 131, 142 (S.D.N.Y. 2011) (citing *United Pub. Workers of Am. (C.I.O.) v. Mitchell*, 330 U.S. 75, 91-92 (1947)).

were constitutionally ripe but not prudentially ripe and dismissing them on that ground); *see also Simmonds v. INS*, 326 F.3d 351, 356-61 (2d Cir. 2003) (similar).[17] That she cannot do.

The Complaint raises a single Count under the Eighth Amendment's Excessive Fines Clause. As its name connotes, that clause bars only fines that are excessive. To determine whether a putative fine[18] is excessive, one needs to know the amount of the fine. The Complaint offers no plausible basis to determine that amount. Therefore, if this Court allows this claim to proceed on the record as it stands, the Court will have to decide a constitutional claim based on speculation about the crucial fact at issue.

That is precisely what prudential ripeness exists to avoid; it is "a tool that courts may use to enhance the accuracy of their decisions and to avoid becoming embroiled in adjudications that may later turn out to be unnecessary or may require premature examination of, especially, constitutional issues that time may make easier or less controversial." *Simmonds*, 326 F.3d at 359. The Second Circuit has "repeatedly observed that when a court declares that a case is not prudentially ripe, it means that the case will be *better* decided later . . . . [not] that the case is not a real or concrete dispute affecting cognizable current concerns of the parties." *Duncan*, 612 F.3d at 113-14 (quotation marks omitted; emphasis the Second Circuit's). At prudential ripeness' "heart is whether" the Court "would benefit from deferring initial review until the claims [it is] called on to consider have arisen in a more concrete and final form." *Id*. at 112-13 (quotation

[17] The Supreme Court long recognized and applied the doctrine of prudential ripeness. *See, e.g.*, *National Park Hospitality Assn. v. DOI*, 538 U.S. 803, 807-12 (2003) ("*National Park*") (raising the issue of prudential ripeness *sua sponte* and ordering dismissal on that ground). More recent Supreme Court decisions have questioned whether the doctrine remains viable. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014). "However, prudential ripeness is still presently part of the law" and the Second Circuit has continued to apply it. *In re Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation*, 2022 U.S. Dist. LEXIS 133759, at *6 n.8 (S.D.N.Y. July 27, 2022) (citing *Lab. Council for Latin Am. Advancement v. United States Env't Prot. Agency*, 12 F.4th 234, 253 & n.2 (2d Cir. 2021)). "Until the prudential ripeness doctrine is actually rejected by the Supreme Court, we are bound to follow . . . decades of precedent confirming the doctrine's vitality." *Vullo v. Office of the Comptroller of the Currency*, 2017 U.S. Dist. LEXIS 205259, at *24 n.5 (S.D.N.Y. Dec. 12, 2017).

[18] The costs are not fines for purposes of the Excessive Fines Clause for reasons Defendants will discuss below.

marks omitted). Prudential ripeness requires this Court "to evaluate (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration." *National Park*, 538 U.S. at 808. Both factors weigh in favor of dismissal on prudential ripeness grounds here.

"The 'fitness' analysis is concerned with whether the issues sought to be adjudicated are contingent on future events or may never occur." *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 691 (2d Cir. 2013). Plaintiff Beatty's claim is not fit for review. *Duncan* is instructive. There, the state argued that the federal government *inter alia* imposed an unlawful financial burden on the state. *See Duncan*, 612 F.3d at 112-13. The Second Circuit affirmed the district court's dismissal of the state's core claims on prudential ripeness grounds. *See id*. at 112-15. In so holding, the Court relied in part on the lack of clarity as to whether the state was exposed to fiscal liability and—if so—its extent. *See id*. at 114. The same logic supports dismissal here. "[T]he uncertainty that exists, at this time, over 'whether or when'" Plaintiff Beatty will be subject a putative excessive fine "reduce[s] the adjudicative fitness of the issues [s]he raises." *Simmonds*, 326 F.3d at 360 (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)).[19]

The hardship prong likewise weighs in favor of dismissing Plaintiff Beatty's claim. Plaintiff Beatty "has yet to pay a cent of" costs of incarceration "to anyone." *Ocean World Lines, Inc. v. Unipac Shipping, Inc.*, 2016 U.S. Dist. LEXIS 139080, at *12 (S.D.N.Y. Mar. 14, 2016). As discussed above, Plaintiffs allege no facts to support a conclusion that any loss to Plaintiff Beatty due to the challenged laws is "imminent." *Duncan*, 612 F.3d at 115. "The mere possibility of future injury, unless it is the cause of some present detriment, does not constitute hardship." *Id*. (quotation marks omitted). Plaintiffs allege no facts that would establish a present detriment.

[19] Even if Plaintiffs claim some hardship, "the scope and exact nature of the hardship is unclear and does not outweigh the serious fitness concerns identified." *TNB USA Inc. v. FRB of New York*, 2020 U.S. Dist. LEXIS 62676, at *29 (S.D.N.Y. Mar. 25, 2020).

At best, dismissal may result in a delay in addressing any claim that Plaintiff Beatty has if and when she suffers a financial loss. But "the delay *itself* is not the cause of any constitutional infringement that cannot otherwise be addressed in due course." *Id*. at 115 n.5 (emphasis in the original). Nor is "'mere uncertainty as to the validity'" of the challenged laws enough to establish hardship. *New York v. United States HHS*, 2008 U.S. Dist. LEXIS 101064, at *38 (S.D.N.Y. Dec. 15, 2008) (quoting *Nat'l Park Hospitality Ass'n*, 538 U.S. at 810-11). Any "amount of uncertainty and delay . . . may be aggravating, [but] it does not make the claims ripe for review." *New York*, 2008 U.S. Dist. LEXIS 101064, at *40.[20]

The Complaint does not allege that "a conclusive ruling regarding" Plaintiff Beatty's exposure to costs had been made. *Automobile Club of New York, Inc. v. Dykstra*, 354 F. App'x 570, 573 (2d Cir. 2009) (Summary Order). To the contrary, Plaintiffs make clear that no final determination had been made. *See, e.g., 2dAC*, ¶ 34 (alleging that the "proceeds" of the estate "will be distributed . . . after all of the estate's debts and assets are assessed by its fiduciaries"). Plaintiff Beatty's claim is not prudentially ripe. *See Dykstra*, 354 F. App'x at 573 (finding an argument prudentially unripe where the district court had found a party liable but it "deferred calculation" of the "fees and expenses and has, therefore, not made a conclusive ruling regarding" the issue). This Court "cannot coherently rule on a" challenge to a putative fine's constitutionality where Plaintiff does not plausibly allege either the amount of that fine or a factual basis to assess when it will cause injury. *Grandeau*, 528 F.3d at 130 (holding that a New York Civil Liberties Union challenge to a state policy was not prudentially ripe where judicial review would benefit from additional factual development and was in many ways contingent on

[20] *See also In re Basciano*, 542 F.3d 950, 958 (2d Cir. 2008) (finding challenge to use of evidence prudentially unripe where the potential for its use and the resulting hardship were speculative).

future events).[21] Therefore, it would be more "prudent for" this Court to "hear" Plaintiff Beatty's claim "at some later point, when" the Court and the parties will know the size of the putative fine at issue and be able to intelligently assess whether it is constitutionally excessive. *Simmonds*, 326 F.3d at 359. "[I]ssues have been deemed ripe when they would not benefit from any further factual development and when the court would be in no better position to adjudicate the issues in the future than it is now." *Id*. That is not the case here.

2. The Court Should Dismiss this Action to Prevent the Erosion of the Constitution's Limitations on Federal Jurisdiction

Even if this Court has discretion to allow this action to proceed, the multiple jurisdictional defects this action suffered from at its outset weigh heavily in favor of dismissal. Beyond that, the Second Circuit has expressed sensitivity to "unchecked abusive practices by plaintiffs" relating to jurisdictional allegations and substitutions, noting that even when jurisdiction is present district courts retain discretion to dismiss suits where allowing the changes at issue would *inter alia* "result in unfairness to defendants." *Fund Liquidation*, 991 F.3d at 391.

Defendants will not speculate as to Plaintiffs' intent. However, the result of Plaintiffs' actions is that Plaintiffs filed a suit in March 2022 over which this Court clearly lacked subject matter jurisdiction. To conserve the resources of the Court and the parties, Defendants offered Plaintiffs an opportunity to seek leave to amend at an early stage to attempt to cure at least some of those clear defects. Plaintiffs declined. It is now well over a year since Plaintiffs filed their Compliant. The sole-remaining Initial Plaintiff still has not been injured by any of the costs at issue, Plaintiffs still offer nothing more than speculation as to whether and when she will be,

[21] *See also Burnham v. Ruan Transportation*, 2013 U.S. Dist. LEXIS 198557, at *7-8 (C.D. Cal. Nov. 18, 2013) (denying a motion raising *inter alia* Excessive Fines Clause arguments on prudential ripeness grounds and reasoning that it is unclear how the moving party "thinks the Court could even go about deciding whether the penalties in this case are, for example, unjust, arbitrary and oppressive, or confiscatory," without the court knowing *inter alia* the "penalty amounts" (quotation marks omitted)).

and—as a result—her claim suffers from serious prudential ripeness issues (among others). Plaintiffs' initial speculative and unripe claims against the wrong Defendants kept this case on the Court's docket, consumed substantial judicial resources (and resources of the state), and bought time to locate two new named Plaintiffs.

The Second Circuit made clear that "[e]vents occurring after the filing of the complaint cannot operate so as to create standing where none previously existed" because "[a]ny other rule would permit lawsuits to be maintained in the mere hope that the lawsuit itself would generate a constitutional 'controversy' before the appellate process is complete." *Hartford*, 561 F.2d at 1051 n.3. Consistent with that, courts have refused to "countenance the revolving door theory of representation" where a lawsuit remains on the docket "in search of a sponsor." *Fox*, 148 F.R.D. at 489 (quotation marks omitted); *see also Summit Office Park, Inc. v. United States Steel Corp.*, 639 F.2d 1278, 1282 (5th Cir. 1981) (affirming a district court's denial of leave to amend where the original plaintiff had no standing). As a Circuit Judge aptly noted,

> If all an uninjured party need do to get around pesky Article III standing requirements is to file a complaint, then ask for liberal leave to supplement under Fed. R. Civ. P. 15(d) to allege after-acquired rights of those who were timely injured, the long-standing general rule which requires injury-in-fact at commencement of the action for standing to exist quickly would lose all force. Uninjured parties, particularly those in search of class action lead plaintiff status, could sue first, then trawl for those truly and timely injured.

Northstar Financial Advisors, Inc. v. Schwab Investments, 779 F.3d 1036, 1069 (9th Cir. 2015) (Bea, J., dissenting).[22] Whatever Plaintiffs' intent, allowing this case to proceed will encourage conduct that erodes the constitutional limitations on federal courts' jurisdiction. *See id*.

[22] The Second Circuit has recently indicated that it has "discussed the question in *dicta*" but "never squarely addressed whether events occurring after the filing of a complaint may cure a jurisdictional defect that existed at the time of initial filing." *Saleh v. Sulka Trading, Ltd.*, 957 F.3d 348, 354 (2d Cir. 2020); *see also Fund Liquidation*, 991 F.3d at 390-92 (similar). Neither *Saleh* nor *Fund Liquidation* mentioned the Second Circuit's *en banc* decision in *Hartford*, which—as discussed above—held that "[e]vents occurring after the filing of the complaint cannot operate so as to create standing where none previously existed." *Hartford*, 561 F.2d at 1051 n.3. To the extent there is any conflict between *Saleh* and *Hartford* and their respective progeny, this Court need not address the issue if it agrees

III. Even if the Complaint Could Proceed Despite the Jurisdictional Defects at the Outset of this Case, Plaintiffs' Claims would Still Be Subject to Dismissal on Standing, Prudential Ripeness, and Eleventh Amendment Grounds

For the reasons discussed above, Defendants believe this case suffered from incurable jurisdictional defects at its outset and that requires (or—at least—warrants) dismissal of this action in its entirety. If this Court somehow concludes otherwise, the question will become whether the Complaint provides a jurisdictional basis for Plaintiffs' claims. It does not.

As discussed above, this Court should measure whether it has jurisdiction over Initial Plaintiff Beatty's claim based "'upon the state of things at the time of the action brought.'" *Grupo Dataflux v. Atlas Global Group*, L.P., 541 U.S. 567, 570 (2004) (quoting *Mollan v. Torrance*, 22 U.S. 537 (1824)). If she had the ability to credibly allege facts that existed on March 14, 2022 and supported her invocation of jurisdiction but failed to do so, she could (at most) seek leave to fix her "error in the complaint's *allegations* of jurisdiction." *Fund Liquidation*, 991 F.3d at 388 (emphasis in the original). However, she could not cure "defective jurisdiction itself" through "amended pleadings." *Id*. at 389. That reflects the important distinction "between '[t]he state of things and the originally alleged state of things.'" *Id*. (quoting *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 473 (2007)). This Court should dismiss Plaintiff Beatty's claim and this action for the reasons discussed above.

Plaintiff Tosado and Plaintiff Johnson were not Plaintiffs when this action was brought. Therefore, "the operative complaint" for purposes of determining jurisdiction over their claims "is the one adding" them "to the action, and the operative date is" April 20, 2023 (the date of the Second Amended Complaint). *Lynch v. Leis*, 382 F.3d 642, 647 (6th Cir. 2004) (applying *County*

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that "even the expanded allegations in" the Complaint "are insufficient to confer jurisdiction." *Saleh*, 957 F.3d at 355. To the extent there is conflict among Second Circuit decisions, this Court is "obligated to follow 'the holdings of . . . cases, rather than their dicta.'" *Altissima Ltd. v. One Niagara LLC*, 2010 U.S. Dist. LEXIS 11718, at *11 (W.D.N.Y. Feb. 8, 2010) (quoting *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 379 (1994)). Defendants believe the relevant Second Circuit holdings require dismissal here.

of Riverside v. McLaughlin, 500 U.S. 44, 51 (1991)); *see also Barfield v. Semple*, 2019 U.S. Dist. LEXIS 130983, at *21-22 (D. Conn. Aug. 6, 2019) (Shea, J.) (measuring jurisdiction as to the original plaintiff at the time of the original complaint, and as to the added plaintiffs at the time of the complaint adding them). This Court lacks jurisdiction over Plaintiffs' claims in their entirety.

A. Plaintiffs Do Not Have Standing to Challenge Laws and Regulations that Have Not Impacted Named Plaintiffs

This Court correctly recognized that "[t]he fact that the named plaintiffs have framed this action as a class action does not relieve them from carrying their burden to plausibly allege that they themselves have standing." *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *14. To avoid dismissal, named Plaintiffs "'must demonstrate standing for each claim [they] seek[ ] to press.'" *Id*. at *13 (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)).

Plaintiffs ask this Court to "declar[e] Conn. Gen. Stat. §§ 18-85a through -85c and their implementing regulations to be unconstitutional and void," *2dAC*, p. 26 ¶ (b), and "enjoin[ ]" Defendants "and anyone working for or in concert with" Defendants or their "successors, from enforcing the challenged statutes through any means." *Id*. at p. 26 ¶¶ (c) and (d).[23] The relief Plaintiffs demand covers the entirety of Connecticut's laws and regulations regarding recovery of costs of incarceration. Plaintiffs do not have standing to obtain much of that relief.

The challenged laws apply to four general categories of individuals: (1) inmates that are currently serving a sentence or are within two years after their release from incarceration, *see* Conn. Gen. Stat. § 18-85a; (2) inmates subject to a lien on the proceeds of a cause of action, *see* Conn. Gen. Stat. § 18-85b(a); (3) inmates subject to a lien against an inheritance, Conn. Gen. Stat. § 18-85b(b); and (4) inmates subject to a claim against their estate upon their death. Conn. Gen. Stat. § 18-85c. All three named Plaintiffs fall within the third category covered by Conn.

[23] *See also 2dAC* at p. 1 (describing the relief Plaintiffs demand as *inter alia* enjoining Defendants "from ever using or enforcing the challenged laws"); *id*. at ¶ 6 (Plaintiffs seek "to have this unlawful statutory scheme stricken").

Gen. Stat. § 18-85b(b). No named Plaintiff falls within any of the other categories. This Court already recognized that the "aspect[s] of the" challenged laws that do not impact any named Plaintiff are not properly "challenged or at issue in this action." *Beatty*, 2023 U.S. Dist. LEXIS 36528, at *5 n.9 (discussing Conn. Gen. Stat. § 18-85c). That was plainly correct. As the Second Circuit recently reiterated—relying in part on Supreme Court precedent that Defendants cited in earlier briefing—even if Plaintiffs had standing to challenge Conn. Gen. Stat. § 18-85b(b), it would "not mean" that Plaintiffs would have "standing to challenge the entire" costs of incarceration law. *Brokamp v. James*, 66 F.4th 374, 389-90 (2d Cir. 2023) (quotation marks omitted). Rather, Plaintiffs can plausibly "claim imminent and concrete injury from, and therefore standing to challenge, only the" part of the challenged laws that impacts them. *Id*. "As the Supreme Court has observed, 'standing is not dispensed in gross.'" *Id*. (quoting *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996) and citing *Davis*, 554 U.S. at 733-34).[24] Therefore, this Court should dismiss the Complaint to the extent it purports to challenge the parts of the challenged laws other than Conn. Gen. Stat. § 18-85b(b). *See id*.

B. Plaintiff Johnson Lacks Standing and His Claim is Neither Constitutionally Ripe Nor Prudentially Ripe

Plaintiffs allege that the DAS filed a Notice of Lien regarding the estate on which Plaintiff Johnson's claim is premised in the amount of $74,652.58. *2dAC*, ¶ 71. Plaintiffs further allege that the fiduciary of the estate "has completed her work" but has "notified the probate court that she will delay the final accounting until this Court resolves" Plaintiff Johnson's "federal claim." *2dAC*, ¶ 71. Plaintiffs do not allege that the fiduciary has confirmed that the estate's assets are such that Plaintiff Johnson will certainly have to reimburse $74,652.58 in costs

[24] *See also Taveras v. New York City*, 2023 U.S. Dist. LEXIS 69420, at *11-17 (S.D.N.Y. Apr. 20, 2023) (holding that a plaintiff challenging the denials of his rifle/shotgun license lacked standing to challenge aspects of the state laws that did not contribute to the denial).

of incarceration absent this Court's intervention. Rather, Plaintiffs allege only that "Mr. Johnson's father left him and his brother $10,000 and a few, cherished items: a boat," "land and a cabin," and "a truck." *Id*. at ¶ 68.

Plaintiff Johnson lacks standing and his claim is not constitutionally ripe for the reasons discussed above as to Plaintiff Beatty—the potential that he may need to reimburse in the future does not "constitute[ ] a sufficiently 'concrete' event or an actual invasion of" Plaintiff Johnson's "rights to constitute an injury." *Bonilla*, 2016 U.S. Dist. LEXIS 118022, at *11. Plaintiff Johnson's claim is also prudentially unripe. Although one could speculate that Plaintiff Johnson's father had undisputed ownership of each and every one of those assets and that Plaintiff Johnson's share of the estate after all relevant fees and expenses are accounted for will be of sufficient size that he will have to reimburse the full $74,652.58 after receiving the benefit of the $50,000 exemption, that would be speculation. As discussed above, issues should be deemed prudentially "ripe when they would not benefit from any further factual development and when the court would be in no better position to adjudicate the issues in the future than it is now." *Simmonds*, 326 F.3d at 359. When time may either "enhance the accuracy" of the court's decision or avoid it entirely, a court should be especially careful "to avoid becoming embroiled in adjudications that may later turn out to be unnecessary or may require premature examination of, especially, constitutional issues that time may make easier or less controversial." *Id*.

Both the fitness and hardship parts of the analysis weigh in favor of dismissing Plaintiff Johnson's claims on prudential ripeness grounds. *See, e.g.*, *National Park*, 538 U.S. at 808 (discussing the factors). As to the fitness of the issues, the Complaint leaves uncertainty as to whether and when Plaintiff Johnson will be required to reimburse costs of incarceration and that uncertainty "reduce[s] the adjudicative fitness of the issues he raises." *Simmonds*, 326 F.3d at

360 (quoting *Texas*, 523 U.S. at 300). Even when a plaintiff alleges a financial impact resulting from government action sufficient to establish standing and constitutional ripeness, dismissal on prudential ripeness grounds is appropriate when the extent and timing of that impact is uncertain and important to the analysis (as it is in the Excessive Fines Clause context). *See, e.g.*, *Dykstra*, 354 F. App'x at 573; *Duncan*, 612 F.3d at 112-15.

As to hardship, Plaintiff Johnson has not yet reimbursed any costs of incarceration. *See Ocean World Lines, Inc.*, 2016 U.S. Dist. LEXIS 139080, at *12. It is possible he will have to in the future, but "[t]he mere possibility of future injury, unless it is the cause of some present detriment, does not constitute hardship." *Duncan*, 612 F.3d at 115 (quotation marks omitted). No present detriment is evident. Delay is not enough. *See id.* at 115 n.5. Nor is uncertainty as to the validity of the challenged laws. *See New York*, 2008 U.S. Dist. LEXIS 101064, at *38.

Ultimately, "'[i]f there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.'" *Taylor v. Rogich*, 2016 U.S. Dist. LEXIS 201781, at *4-6 (E.D.N.Y. Apr. 26, 2016) (quoting *Spector Motor Serv. v. McLaughlin*, 323 U.S. 101, 105 (1944)). Reflecting that principle, prudential ripeness counsels caution "especially" where—as here— "constitutional issues" are raised. *Id*. (quoting *Simmonds*, 326 F.3d at 357). It is difficult to see how this Court "could even go about deciding whether" the costs at issue violate the Excessive Fines Clause without certainly knowing the "amounts" actually at issue. *Burnham*, 2013 U.S. Dist. LEXIS 198557, at *7-8.

C. The Eleventh Amendment Bars Plaintiffs' Claims Seeking to Prevent Defendants from Collecting Accrued Liabilities

"It is well settled that the Eleventh Amendment bars suits for money damages against state officials acting in their official capacities." *Amato v. Elicker*, 534 F. Sup. 3d 196, 206 (D.

Conn. 2021) (Shea, J.) (quotation marks omitted) (citing cases, including *Ford v. Reynolds*, 316 F.3d 351, 354 (2d Cir. 2003)). Plaintiffs seek to invoke the *Ex parte Young* exception to the Eleventh Amendment, but that exception "is narrow." *Puerto Rico Aqueduct & Sewer Authority v. Metcalf & Eddy*, Inc., 506 U.S. 139, 146 (1993). "Relief that in essence serves to compensate a party injured in the past by an action of a state official in his official capacity that was illegal under federal law is barred . . . if the relief is tantamount to an award of damages for a past violation of federal law, even though styled as something else." *Papasan v. Allain*, 478 U.S. 265, 278 (1986). "In discerning on which side of the line a particular case falls, we look to the substance rather than to the form of the relief sought and will be guided by the policies underlying the decision in *Ex parte Young*." *Id*. at 279.

If the relief a Plaintiff demands "is essentially equivalent in economic terms to" an award of "an *accrued* monetary liability," the Eleventh Amendment bars it even if the Plaintiff purports to "seek only a prospective, injunctive remedy." *Id*. at 279, 281 (emphasis in *Papasan*) (quotation marks omitted). "The key question" is "whether the decree" Plaintiffs seek would "require[ ] the payment of funds or grants other [economically similar] relief, 'not as a necessary consequence of compliance in the future with a substantive federal-question determination, but as a form of compensation' or other relief based on or flowing from violations at a prior time when the defendant 'was under no court-imposed obligation to conform to a different standard.'" *Guardians Assn. v. Civil Service Commission*, 463 U.S. 582, 604 (1983) (White, J. announcing the judgment of the Court, joined by Rehnquist, J.) (quoting *Edelman* v. *Jordan*, 415 U.S. 651, 667 (1974)). If so, the Eleventh Amendment bars it.

That should be dispositive. As to Plaintiff Tosado, her debt "*encompasses costs accrued in the past*," *2dAC*, ¶ 75 (emphasis added), and she asks this Court to declare that debt "invalid,

null, void, and unenforceable" and enjoin its enforcement. *Id*. at p. 26 ¶ (b). Plaintiffs allege that the amount she owed after the relevant calculations and exemptions ($44,028.98) was "finalized[25]" before she entered this action. *Id*. at ¶ 48. Connecticut law required the Probate Court to "order distribution in accordance" with the lien notice. Conn. Gen. Stat. § 18-85b(b). Despite that, counsel for the estate administrator is holding the funds "in escrow . . . pending the outcome of Ms. Tosado's claim" in this action. *2dAC*, ¶ 48. If this Court rules in Plaintiff Tosado's favor based on a finding that the state law requiring her to partially reimburse for the costs of her incarceration "between July 2016 and April 2018" violated the Excessive Fines Clause, the economic effect will be indistinguishable from an award for an accrued monetary liability—money the state was owed to reimburse for a fraction of the costs the state incurred to incarcerate Plaintiff Tosado years before this action was filed[26] (and long before the state was put on notice of any constitutional issue[27]) will be given to Plaintiff Tosado as a direct result of a federal court order. *Id*. at ¶ 48.

Similar logic applies to Plaintiff Beatty's and Plaintiff Johnson's claims if this Court concludes—contrary to Judge Bolden's reasoning in *Bonilla*—that those Plaintiffs have suffered a concrete injury sufficient to support standing and constitutional ripeness and their claims are prudentially ripe. *See Bonilla*, 2016 U.S. Dist. LEXIS 118022, at *11. Each Plaintiffs' debt "encompasses costs accrued in the past." *2dAC*, ¶ 75. If the potential that those Plaintiffs may

[25] Plaintiffs' allegations in this paragraph (and elsewhere) appear to be inaccurate in ways that do not substantially impact Defendants' arguments. Given that Defendants are generally required to take Plaintiffs' allegations as true for purposes of this Motion, Defendants will identify and correct inaccuracies at this stage only where necessary to avoid material confusion.

[26] As Defendants will discuss in more detail below, the Complaint establishes that the amount Plaintiff Tosado is required to reimburse reflects a little over a third of the assessed cost, which itself is a fraction of the cost the state incurred. That Plaintiffs' debts arise out of their pre-suit incarceration supports finding their claims retrospective. *See, e.g.*, *Carroll v. DeBuono*, 998 F. Sup. 190, 199-201 (N.D.N.Y. 1998).

[27] The Supreme Court did not even hold that the Excessive Fines Clause was incorporated against the states until 2019, well after Plaintiffs' incarceration. *See Timbs v. Indiana*, 139 S. Ct. 682, 686-87 (2019) (vacating an Indiana Supreme Court decision finding the Excessive Fines Clause inapplicable to the states). In addition, as will be discussed below, courts have upheld cost of incarceration statutes against Excessive Fines Clause challenges.

have to reimburse a not yet finalized portion of that debt at some indeterminate point in the future is a sufficient injury to allow those Plaintiffs to invoke federal jurisdiction, there is no reason in law or logic why imposing a correlative injury on the state by depriving the state of its economic interest in that identical accrued liability would not violate the Eleventh Amendment.[28]

The Eleventh Amendment bars Plaintiffs' claims in their entirety to the extent (if any) this Court otherwise has jurisdiction; a decision in their favor "would effectively prevent the State from collecting monies otherwise due to it, and it is difficult to draw a rational distinction between a [debtor's] attempt to recover funds already paid to the state" (which the Eleventh Amendment plainly bars) "from one that seeks to discharge present debts to the state." *Mitchell v. Franchise Tax Board (In re Mitchell)*, 209 F.3d 1111, 1117 (9th Cir. 2000).[29] Plaintiffs "cannot be permitted to reframe [their] past alleged injury as a prospective or future harm warranting injunctive relief solely to circumvent sovereign immunity." *Cassidy v. New York State Ins. Fund*, 2023 U.S. Dist. LEXIS 37369, at *16 (N.D.N.Y. Mar. 7, 2023) (Appeal Filed).

Dismissal on Eleventh Amendment grounds would be fully consistent with the "policies underlying the decision in *Ex parte Young*." *Papasan*, 478 U.S. at 279. The "compensatory or

[28] Judge Bolden rejected an Eleventh Amendment argument in *Bonilla* before going on to reject that challenge to the costs of incarceration statute on its merits. *See Bonilla*, 2016 U.S. Dist. LEXIS 118022, at *6-13. It is unclear whether Judge Bolden would reach the same jurisdictional result in these circumstances—in *Bonilla*, the defendants did not raise standing or ripeness. In any event, *Bonilla*'s substantial reliance on a distinction between a payment that a plaintiff has already made and one the plaintiff "has not yet made" was inconsistent with Supreme Court and Second Circuit Eleventh Amendment guidance focusing on the practical effect of the relief sought. *Id.* at 13; *see also Cory v. White*, 457 U.S. 85, 90 (1982) (rejecting the conclusion "that the Eleventh Amendment never applies unless a judgment for money payable from the state treasury is sought"). In addition, the Court should not have addressed the complex Eleventh Amendment retroactivity issues given that the Court (correctly) concluded that the plaintiff's action should be dismissed based on a Rule 12(b)(6) analysis. *See, e.g.*, *Springfield Hospital, Inc. v. Guzman*, 28 F.4th 403, 417 & ns. 17 & 18 (2d Cir. 2022). If this Court concludes that Plaintiffs' claims fail on their merits, it need not—and should not—address any Eleventh Amendment issues it considers complex. *See id*.

[29] *See, e.g.*, *Williams v. Marinelli*, 987 F.3d 188, 197 (2d Cir. 2021); *New York City Health & Hospitals Corp. v. Perales*, 50 F.3d 129, 133-37 (2d Cir. 1995); *Council 31 of the American Federation of State, County & Municipal Emples. v. Quinn*, 680 F.3d 875, 881-84 (7th Cir. 2012); *Barton v. Summers*, 293 F.3d 944, 951 (6th Cir. 2002); *Floyd v. Thompson*, 111 F. Supp. 2d 1097, 1101 (W.D. Wis. 1999), *aff'd on other grounds*, 227 F.3d 1029, 1034 (7th Cir. 2000); *Strawser v. Lawton*, 126 F. Supp. 2d 994, 1003 (S.D. W. Va. 2001); *Burton v. Lynch*, 664 F. Supp. 2d 349, 359 (S.D.N.Y. 2009). In the interest of candor, Defendants acknowledge that other courts have come to different conclusions. *See, e.g.*, *Harris v. Owens*, 264 F.3d 1282, 1291 (10th Cir. 2001).

deterrence interests" Plaintiffs seek to vindicate by avoiding their accrued reimbursement obligations "are insufficient to overcome the dictates of the Eleventh Amendment." *Green v. Mansour*, 474 U.S. 64, 68 (1985).[30]

IV. Plaintiffs' Eighth Amendment Count Fails to State a Claim

Plaintiffs sole count asserts that "the challenged statutes and regulations[31] violate the Excessive Fines Clause." *2dAC* ¶ 158. The Supreme Court did not "consider[ ] an application of the Excessive Fines Clause" for the first time until 1989. *Browning-Ferris Industries v. Kelco Disposal*, 492 U.S. 257, 262 (1989) ("*Browning-Ferris*").[32] "By its plain language, the Excessive Fines Clause of the Eighth Amendment is violated only if the disputed fees are both 'fines' and 'excessive.'" *Tillman v. Lebanon County Correctional Facility*, 221 F.3d 410, 420 (3d Cir. 2000) (citing *United States v. Bajakajian*, 524 U.S. 321 (1998)).

Consistent with the Excessive Fines Clause's plain language, the first step in the analysis is to "look to the origins of the Clause and the purposes which directed its Framers" to determine whether the challenged fees constituted fines to which the Excessive Fines Clause applied when the Eighth Amendment was ratified in 1791. *Browning-Ferris*, 492 U.S. at 264 n.4; *see Timbs*, 139 S. Ct. at 687 (noting that the Bill of Rights was "ratified in 1791"). If the historical analysis indicates that the Clause did not apply to comparable fees at the time of ratification, that ends the inquiry. *See id*. at 264-276 (holding that the Excessive Fines Clause does not apply to civil punitive damages awards based on a historical analysis).

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[30] That would not leave Plaintiffs unable to obtain federal review. *See, e.g.*, *Timbs*, 139 S. Ct. at 686-87 (reviewing an Excessive Fines Clause challenge against a state after the challenge was raised in state court). To be clear, Defendants believe the challenged laws are constitutional and will defend them in all fora.

[31] Plaintiffs' alleged injuries are based on the challenged laws as they applied during their incarceration. Therefore, this 12(b)(6) analysis is based on the challenged laws as they existed at that time except to the extent amendments could impact named Plaintiffs prospectively.

[32] The Court did not incorporate the Excessive Fines Clause as to the states until 2019. *See Timbs*, 139 S. Ct. at 687.

If the historical analysis indicates that the Excessive Fines Clause applied to comparable fees at the time of ratification, the Court "turn[s] next to" the second step and "consider[s] whether" the challenged fees "are properly considered punishment today" and the Excessive Fines Clause continues to apply. *Austin v. United States*, 509 U.S. 602, 619 (1993). That involves an examination of the relevant statutes and "their legislative history" to determine whether those materials "contradict the historical understanding of" the challenged fees "as punishment." *Id*.

Only if the first two steps establish that the fees are fines for Eighth Amendment purposes does the Court reach the third step and consider whether the fines are "constitutionally 'excessive.'" *Id*. at 622; *see also Bajakajian*, 524 U.S. at 334 ("Because the forfeiture of respondent's currency constitutes punishment and is thus a 'fine' within the meaning of the Excessive Fines Clause, we now turn to the question of whether it is 'excessive.'"). The Court has indicated that a fine "violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense." *Bajakajian*, 524 U.S. at 334. The Court has "emphasized . . . that judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Id*. at 336. That said, a fine may be constitutionally excessive if "it bears no articulable correlation to any injury suffered by the Government." *Id*. at 340.

"'The burden rests on the [challenger of the fine] to show the unconstitutionality'" of the fine. *Greenport Gardens, LLC v. Village of Greenport*, 2021 U.S. Dist. LEXIS 188876, at *41 (E.D.N.Y. Sep. 30, 2021) (quoting *United States v. Castello*, 611 F.3d 116, 120 (2d Cir. 2010) (quotation marks omitted; modifications in *Greenport Gardens, LLC*)). Plaintiffs have not met—and cannot meet—that burden. "Courts have generally held that charging inmates for room and board to defray costs of incarceration fails to state an actionable constitutional claim under the Eighth Amendment Excessive Fines Clause or the Fourteenth Amendment Due Process Clause."

Hooks v. Kentucky, 2016 U.S. Dist. LEXIS 103238, at *6-7 (W.D. Ky. Aug. 4, 2016) (citing cases). This Court should reach the same result here; costs of incarceration payments serve remedial purposes that the Supreme Court has held are outside the historical and modern domain of the Excessive Fines Clause and such payments, by their nature, are not grossly disproportionate to the cost an inmate's incarceration imposes on the state and its citizens.

A. Requiring Inmates to Contribute Toward the Costs of their Incarceration was Not Historically Considered a Fine or Punishment

"The Eighth Amendment received little debate in the First Congress and the Excessive Fines Clause received even less attention." *Browning-Ferris*, 492 U.S. at 264. However, by its terms, "the Amendment is addressed to bail, fines, and punishments," so Supreme Court "cases long . . . understood it to apply primarily, and perhaps exclusively, to criminal prosecutions and punishments." *Id*. at 262. The Supreme Court has since held that the Excessive Fines Clause applies outside the purely criminal context—specifically to some civil *in rem* forfeitures—but the Court has continued to emphasize that "[t]he Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, 'as *punishment* for some offense.'" *Austin*, 509 U.S. at 610 (quoting *Browning-Ferris*, 492 U.S. at 265 (emphasis in *Austin*)). Therefore, the initial question before this Court is whether "at the time the Eighth Amendment was ratified" a sovereign's requirement that inmates contribute toward the costs of their incarceration would have been "understood at least in part as punishment." *Id*. If not, the Excessive Fines Clause does not apply. *Browning-Ferris*, 492 U.S. at 264 n.4.

The Court should dismiss Plaintiffs' claim as a matter of law because costs of incarceration fees are outside the Excessive Fines Clause's domain. *See, e.g.*, *Merritt v. Shuttle, Inc.*, 13 F. Supp. 2d 371, 383 (E.D.N.Y. 1998), *remanded on other grounds*, 187 F.3d 263 (2d Cir. 1999) (granting a motion to dismiss an Eighth Amendment claim where the plaintiff did not

allege that he was required to "pay a fine" nor did he allege that he was subjected to "'punishment' within the scope of the Eighth Amendment"). Statutes requiring the payment of money to secure the rights of the government were not historically "considered punishments for criminal offenses." *Bajakajian*, 524 U.S. at 341. Rather, such statutes were considered "'fully . . . remedial in . . . character,'" and therefore the Eighth Amendment did not apply to them. *Id*. at 342 (quoting *Stockwell v. United States*, 80 U.S. 531, 13 Wall. 531, 546 (1871)). Such forfeitures "have been recognized as enforcible by civil proceedings since the original revenue law of 1789" and "[i]n spite of their comparative severity," their "remedial character. . . has been made clear by this Court in passing upon similar legislation." *Helvering v. Mitchell*, 303 U.S. 391, 400-01 (1938). They are remedial because "[t]hey are provided primarily as a safeguard for the protection of the revenue and to reimburse the Government for the heavy expense of investigation and the loss resulting from the taxpayer's fraud." *Id*. at 401.

When the consequences of an individual's actions negatively impact the public fisc, remedying that impact via statutes that allow the government to seize the individual's funds was historically considered "'a fit subject for indemnity.'" *Bajakajian,* 524 U.S. at 341 (quoting *Stockwell*, 13 Wall. at 546). That was true even where "the forfeiture was a multiple of the value of the goods" involved in the criminal action; where there was an impairment of a "'government right,'" the government could recover multiples of the value of the goods to remedy that impairment by statute without it being punishment governed by the Eighth Amendment. *Id*. (quoting *Stockwell*, 13 Wall. at 546). "Because they were viewed as nonpunitive, such forfeitures traditionally were considered to occupy a place outside the domain of the Excessive Fines Clause." *Id*. at 331. The Second Circuit has likewise recognized that "forfeitures . . . intended not to punish the defendant but to compensate the Government for a loss . . . fall outside the scope of

the Excessive Fines Clause." *United States v. Viloski*, 814 F.3d 104, 109 (2d Cir. 2016) (citing *Bajakajian*, 524 U.S. at 329).

That logic applies with equal force here and requires dismissal of Plaintiffs' claims; at ratification the payments required by the costs of incarceration statutes would have been "considered not as punishment for an offense, but rather serving the remedial purpose of reimbursing the Government for the losses accruing from" the individual's imprisonment. *Bajakajian*, 524 U.S. at 342. "[T]he concept that jail inmates could be made to pay some type of room and board or confinement cost has deep roots in the Anglo-American legal tradition" and "[i]n the United States, versions of this general requirement have been imposed on inmates since the Colonial Era." Leah A. Plunkett, *Article: Captive Markets*, 65 Hastings L.J. 57, 65-66 (Dec. 2013) (footnotes omitted); *see, e.g.*, *Souza* v. *Sheriff of Bristol County*, 918 N.E.2d 823, 829 n.9 (2010) (noting that there was no dispute that sheriffs were historically authorized to charge inmates certain fees for *inter alia* "'diet'" and citing laws as early as 1663). "Reimbursement for services rendered" is not "properly labeled a 'fine'" for Eighth Amendment purposes. *United States v. Leone*, 813 F. App'x 665, 669-70 (2d Cir. 2020) (Summary Order) (citing *Bajakajian*, 524 U.S. at 327-28) (holding that a Monitoring Condition requiring the payment of the "full cost of monitoring services" was not a fine covered by the Eighth Amendment).

B. Requiring Inmates to Contribute Toward the Costs of their Incarceration is Not Punishment Today

Given that the historical analysis establishes that the costs of incarceration fees would not have been considered fines, the Court need not determine whether the passage of time has changed matters in a way that would lead to a different result. *See, e.g.*, *Browning-Ferris*, 492 U.S. at 273-76 (holding that the modernizing aspect of the Court's Eighth Amendment jurisprudence did not have force where the challenged action was not "a strictly modern

creation"). In any event, modern jurisprudence establishes that costs of incarceration fees are not "properly considered punishment today." *Austin*, 509 U.S. at 619.[33]

As noted above, courts to address the issue "have generally held that charging inmates for room and board to defray costs of incarceration fails to state an actionable constitutional claim under the Eighth Amendment Excessive Fines Clause or the Fourteenth Amendment Due Process Clause." *Hooks*, 2016 U.S. Dist. LEXIS 103238, at *6-7 (citing cases). The Third Circuit's decision in *Tillman* is instructive. Like this action, *Tillman* involved an Excessive Fines Clause challenge to a program requiring a prisoner to pay costs associated with his incarceration. *See Tillman*, 221 F.3d at 413.

The Third Circuit rejected the Excessive Fines Clause challenge. *See id*. at 420-21. The court began by analyzing whether the requirement that the prisoner pay costs constituted a "fine" for purposes of the Eighth Amendment. *See id*. at 420. The court reasoned that "[t]he fees here . . . do not appear to fit that mold" for multiple reasons: (1) "A prisoner's term of incarceration cannot be extended, nor can he be reincarcerated, for failure to pay a negative balance."; (2) "The daily fees do not vary with the gravity of the offense and can neither be increased nor waived."; (3) "[T]he undisputed evidence show[ed] that the fees" were not "being used to punish"; and (4) "[T]he fees c[ould] hardly be called fines when they merely represent[ed] partial reimbursement of the prisoner's daily cost of maintenance, something he or she would be expected to pay on the outside." *Id*.; *see also* 28 C.F.R. § 505.1 ("establish[ing] procedures for the assessment and collection of a fee to cover the cost of incarceration" and distinguishing between that "fee imposed by the Bureau" and a "fine" imposed by the court).[34]

[33] As discussed above, "today" for purposes of this analysis is when the challenged laws were applied to Plaintiffs.
[34] The Third Circuit ultimately did not decide whether the costs were fines because it concluded "as a matter of law that the amounts were not 'excessive' under the Eighth Amendment" and rejected the Excessive Fines Clause challenge on that basis. *Id.* at 421. However, courts have followed the Third Circuit's analysis on the fine issue and

Similarly, the costs of incarceration statues at issue do not fit the "mold" of constitutional fines. *See Tillman*, 221 F.3d at 420.The "nature of the statute[s]" at issue is "more important to the inquiry" than some other factors. *United States v. An Antique Platter of Gold*, 184 F.3d 131, 140 (2d Cir. 1999). The nature of the statutes at issue was non-punitive; their "language . . . suggests a non-punitive purpose." *LeDuc v. Tilley*, 2005 U.S. Dist. LEXIS 12416, at *13 (D. Conn. June 21, 2005) (Kravitz, J.).[35] Plaintiffs' terms of incarceration could not be extended and they could not be incarcerated for failure to pay. *See Tillman*, 221 F.3d at 420. The daily fee was calculated as an average and uniform across all inmates, regardless of their offense. *See* Regs. of Conn. State Agencies § 18-85a-1(a) (A-18). The fees could not be increased or waived based on the gravity of the offense. *See Tillman*, 221 F.3d at 420.[36]

In addition, the legislative history of the statutes at issue indicates that they were primarily intended for the remedial purpose of reimbursing the state for some of the costs resulting from inmates' incarceration and are not "being used to punish." *Id.*; *see also Bajakajian*, 524 U.S. at 342 (the Eighth Amendment does not apply to statutes that are "'fully . . . remedial in . . . character'" (quoting *Stockwell*, 13 Wall. at 546)); *Austin*, 509 U.S. at 619 (looking to provisions' "legislative history to" determine whether they constituted "punishment" for Eighth Amendment purposes). "[I]t is apparent from a review of the full legislative history of the enactment that the General Assembly's intention in passing the legislation was, primarily, the recoupment of expense and not punishment for the prior crime." *Strickland*, 2002 Conn.

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this Court should as well. *See, e.g.*, *Benjamin v. Clark*, 2021 U.S. Dist. LEXIS 21191, at *13-14 (M.D. Pa. Feb. 4, 2021).

[35] *See also State v. Strickland*, 2002 Conn. Super. LEXIS 3714, at *11, 36 Conn. L. Rptr. 21 (Nov. 18, 2002), *aff'd on other grounds*, 86 Conn. App. 677 (2004) (finding that "the legislation on its face has the significant non-punitive goals of reimbursement of taxpayer expenses and, to a degree, rehabilitation in the sense that inmates realize that they have some responsibility for their own care").

[36] During the relevant time period for Plaintiffs' claims, the laws did not condition the fees based on the inmate's offense (*see* A-5). By contrast, the 2022 amendments to the challenged laws enacted after named Plaintiffs' incarcerations deny certain exemptions to inmates incarcerated for certain types of murder and sexual offenses. No named Plaintiff was incarcerated for such an offense. *See*, *e.g.*, Conn. Gen. Stat. § 18-85a(b) (as amended).

Super. LEXIS 3714, at *12. The secondary purpose was to ensure inmates understand the financial impacts of their incarceration. *Id*. "A thorough review of the legislative history shows that the only mention of 'punishment' was advanced by the Connecticut Civil Liberties Union, which opposed the bill in its entirety." *Id*. at *14. Under Connecticut law, "[t]his opposition cannot, of course, be used to determine legislative intent." *Id*.[37] As the Connecticut Superior Court found in striking an Eighth Amendment defense to an action brought by the state pursuant to Conn. Gen. Stat. § 18-85a, "neither the legislative history nor the specific wording of the statute in question impose 'punishment.'" *State* v. *Sebben*, 2018 Conn. Super. LEXIS 9902, at *3 (Apr. 19, 2018).[38]

The text and legislative history of the challenged laws indicates that they were primarily intended for the remedial purpose of partially reimbursing the state for the cost of Plaintiffs' incarceration and to serve purely remedial purposes. Both the Supreme Court and the Second Circuit have made clear that "'the Excessive Fines Clause prohibits only the imposition of 'excessive' fines, and a fine that serves purely remedial purposes cannot be considered 'excessive' in any event." *United States v. Ortiz*, 1999 U.S. App. LEXIS 13322, at *3 (2d Cir. June 11, 1999) (Summary Order) (quoting *Ursery*, 518 U.S. at 287).[39] That is true even when the

[37] The remedial nature of the costs of incarceration mechanisms at issue here and in *Tillman* distinguishes them from the mechanism the Ninth Circuit held constituted a fine in *Wright v. Riveland*, 219 F.3d 905, 915-16 (9th Cir. 2000).
[38] *See also Alexander v. Commissioner of Administrative Services*, 2003 Conn. Super. LEXIS 3197, at *12 (Nov. 12, 2003), *aff'd*, 86 Conn. App. 677 (2004) ("[R]andom liens, like random tax audits, are not criminal punishments and are constitutionally permissible as long as they are neither invidiously nor illegitimately employed.").
[39] *See also Abrahams v. Conn. Dept. of Social Services*, 2018 U.S. Dist. LEXIS 27870, at *23 (D. Conn. Feb. 21, 2018) (Haight, J.) (rejecting an Excessive Fines Clause claim where "the Defendants sought to recover monies fraudulently obtained from the state of Connecticut" and holding that"[t]he monetary recovery sought was remedial, not punitive, in nature," citing *U.S. v. Davis*, 648 F.3d 84, 96 (2d Cir. 2011)).; *United States v. Inc. Village of Island Park*, 2008 U.S. Dist. LEXIS 88677, at *17-18 (E.D.N.Y. Oct. 22, 2008) ("*Island Park*") (rejecting an Excessive Fines Clause challenge to False Claims Act penalties, holding that Supreme Court and Second Circuit precedent "compelled" the conclusion that the penalties were remedial because they were intended to make the government "completely whole" (citing *United States v. Bornstein*, 423 U.S. 303, 313 (1976) and *United States ex rel Stevens v. State of Vermont*, 162 F.3d 195, 207 (2d Cir. 1998)); *Ford Motor Credit Co. v. New York City Police Dept.*, 394 F. Supp. 2d 600, 618 (S.D.N.Y. 2005) (holding that a deduction was "not subject to Eighth Amendment analysis"

amount of the payment is large. *See, e.g., United States v. Puello*, 2016 U.S. Dist. LEXIS 19760, at *7, *11 (E.D.N.Y. Feb. 18, 2016) (holding that the government's recovery of "$39,462,079.00" was purely remedial where "defendants received reimbursement from the government to which they were not entitled and were thereby enriched at the expense of the government"); *Island Park*, 2008 U.S. Dist. LEXIS 88677, at *17-18 (rejecting an Excessive Fines Clause claim where the "judgment of $ 5,206,048 was entirely remedial").[40]

"Absent a showing that" the challenged statutes were "enacted for punitive purposes," Plaintiffs' "excessive-fines claim[s]" should "fail[ ]." *Blaise v. McKinney*, 1999 U.S. App. LEXIS 15669, at *3 (8th Cir. July 12, 1999) (Per Curiam) (Unpublished) (affirming a district court's rejection of an Excessive Fines Clause challenge to a "'pay-for-stay' incarceration fee" (citing *Austin*, 509 U.S. at 609)).[41] The challenged costs of incarceration statutes and regulations serve remedial purposes[42] and the Court should therefore dismiss Plaintiffs' claim under the Excessive Fines Clause as a matter of law.

Modern jurisprudence, the provisions at issue, and their "legislative history" are consistent with "the historical understanding" that requiring Plaintiffs to contribute to the costs associated with their incarceration is not "punishment" for Eighth Amendment purposes. *Austin*,

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because it "was remedial, as it is imposed to compensate the City for administrative expenses incurred in the disposition of the vehicles" and "plainly not punitive").

[40] The amount of the costs is not part of the analysis of whether they are fines for Eighth Amendment purposes; the Supreme Court has stated that "[i]t is unnecessary in a case under the Excessive Fines Clause to inquire at a preliminary stage whether the civil sanction imposed in that particular case is totally inconsistent with any remedial goal." *United States v. Ursery*, 518 U.S. 267, 287 (1996). "Because the second stage of inquiry under the Excessive Fines Clause asks whether the particular sanction in question is so large as to be excessive, a preliminary-stage inquiry that focused on the disproportionality of a particular sanction would be duplicative of the excessiveness analysis that would follow." *Id.* (internal citation omitted).

[41] *See also In re Personal Restraint of Metcalf*, 963 P.2d 911, 919-20 (Wash. App. 1998) (rejecting an Excessive Fines Clause challenge to a costs of incarceration fee, holding that "[t]he purpose of collecting reimbursement for costs of incarceration is thus remedial, not punitive").

[42] The challenged provisions were designed "solely to serve a remedial purpose" and therefore are not punitive. *Austin*, 509 U.S. at 610. Even if there could be any doubt that the provisions are solely remedial, since *Austin*, the Supreme Court and the Second Circuit have indicated that a statute can be remedial even if it "'serves a variety of purposes'" as long as it is "'designed primarily'" to be remedial. *Ortiz*, 1999 U.S. App. LEXIS 13322, at *3 (quoting *Ursery*, 518 U.S. at 284). The challenged laws easily meet that standard.

509 U.S. at 619. Rather, requiring Plaintiffs to contribute "serve[s] the remedial purpose of compensating the Government for [the] loss" associated with incurring the costs related to Plaintiffs' incarceration. *Bajakajian*, 524 U.S. at 329 (citing Black's Law Dictionary 1293 (6th ed. 1990) and *One Lot Emerald Cut Stones v. United States*, 409 U.S. (1972) (Per Curiam)). As a result, this Court should dismiss Plaintiffs' Excessive Fines Clause claims as a matter of law.

C. The Costs of Incarceration Are Not Excessive

This Court need not—and should not—reach the issue of excessiveness given that the challenged statutes are remedial and therefore outside the Excessive Fines Clause's scope. *See, e.g.*, *Ursery*, 518 U.S. at 287. In the event the Court does reach the excessiveness analysis, Plaintiffs bear a heavy burden; they must show that the challenged fees are "'*grossly* disproportional to the gravity of the defendant's offense.'" *Viloski*, 814 F.3d at 113 (quoting *Bajakajian*, 524 U.S. at 337 (emphasis in *Viloski*)). The applicable test "is highly deferential" to the legislative determination at issue. *Id*. (quotation marks omitted).

Whether the costs of incarceration assessed on Plaintiffs are constitutionally excessive is a question of law at this stage and under these circumstances. *See Wright*, 219 F.3d at 916-18; *see also Bajakajian*, 524 U.S. at 336 n.10 (holding that "the question of whether a fine is constitutionally excessive calls for the application of a constitutional standard to the facts of a particular case, and in this context *de novo* review of that question is appropriate"). This Court should reject Plaintiffs' claims as a matter of law; as the Ninth Circuit reasoned, "[b]y definition, it seems that a fine based on a criminal's cost of incarceration will always be proportional to the crime committed." *Wright*, 219 F.3d at 917. "'Because lengthier sentences are more costly, a fine linked to the convict's costs of incarceration reflects the degree of harm caused by the convict's offense.'" *Id*. (quoting *United States v. Zakhor*, 58 F.3d 464, 466 (9th Cir. 1995)).

The challenged laws based the assessed cost of incarceration on the costs the state incurs resulting from the inmate's incarceration. Regs. of Conn. State Agencies § 18-85a-1(a) (A-18). Plaintiffs are critical of the amount of those assessed costs but do not allege that the assessed costs did not, in fact, reflect the costs to the state. Nor could Plaintiffs credibly make such allegations. *See, e.g.*, *State v. Sebben*, 243 A.3d 365, 376 (Conn. Super. 2019), *aff'd*, 201 Conn. App. 376 (2020), *cert. denied*, 336 Conn. 919 (2021) (rejecting a former inmate's argument that the costs of incarceration sought by the state were "based upon an unreliable calculation").[43]

The costs at issue reflect a portion—and only a portion[44]—of the costs the state (and, by extension, the state's taxpayers) bore as a result of Plaintiffs' actions that resulted in their incarceration. For example, Plaintiffs allege that "[t]he state calculated Ms. Tosado's total prison debt as $129,641" and ultimately sought to recover only $44,028.98. *2dAC*, ¶ 48.[45] The amount the state sought to recover was a little over a third of the total, which—Plaintiffs correctly admit—did not reflect all of the state's costs. See id. at ¶ 97 n.3.

That is not constitutionally excessive as a matter of law; Plaintiffs do not plausibly allege that they have been required to reimburse costs that are "'*grossly* disproportional to the'" costs the state had to pay. *Viloski*, 814 F.3d at 113 (quotation marks omitted; emphasis in *Viloski*).

[43] To the extent Plaintiffs have concerns about the accuracy of the cost calculations, they may challenge the costs in the state collection proceedings. *See, e.g.*, *Sebben*, 243 A.3d at 375-77 (addressing an objection based on the alleged unreliability of the calculation of the costs of incarceration). That would preclude Plaintiffs' claims if they could somehow be construed as being based on incorrect calculations; "[a] § 1983 claim" is "unavailable" where Plaintiffs "have an adequate state-law remedy" to challenge the calculations' accuracy. *Gilbert v. Sinclair*, 2019 U.S. Dist. LEXIS 122727, at *9 (W.D. Wash. May 22, 2019).

[44] Regardless of the amount owed, the state's recovery is limited to no more than half of the proceeds of a cause of action (after the payment of expenses) or inheritance received within twenty years of release, *see* Conn. Gen. Stat. § 18-85b, and an inmate's general liability both is limited by several exceptions, including one that exempts most property "acquired by such inmate after the inmate is released from incarceration," and is also time-limited to two years after release (absent fraudulent concealment). *See* Conn. Gen. Stat. § 18-85a.

[45] Because the existence, amount, and timing of the purported fine is uncertain as to Plaintiff Beatty and Plaintiff Johnson (as discussed above), this analysis will focus on Plaintiff Tosado. However, all named Plaintiffs fail to state a claim for the reasons discussed in this section.

Assuming *arguendo* that the costs at issue should be treated as a punitive fine (which Defendants dispute), the Second Circuit has identified four non-exhaustive[46] factors to consider:

> (1) the essence of the crime of the defendant and its relation to other criminal activity, (2) whether the defendant fits into the class of persons for whom the statute was principally designed, (3) the maximum sentence and fine that could have been imposed, and (4) the nature of the harm caused by the defendant's conduct.

Id. at 110 (quotation marks omitted). Plaintiffs do not allege any facts regarding Plaintiff Tosado's crime, which precludes them from establishing that the first and fourth factors weigh in their favor and alone warrants dismissal. Even if the Court looks past that (it should not), it is clear that Plaintiff Tosado—as a former inmate—"fits into the class of persons" the statutes cover. *See Viloski*, 814 F.3d at 113. That weighs in favor of finding the reimbursements lawful.

That leaves the third factor—the maximum sentence and fine that could have been imposed. Records of which this Court may take judicial notice indicate that Plaintiff Tosado was convicted of four Class D felonies, a Class B misdemeanor, and a Class C misdemeanor. *See* A-27-31.[47] Under Connecticut law, the statutory maximum sentence and fine that could have been imposed appears to have been 20 years and nine months imprisonment and a $21,500 fine.[48] Those "figures suggest substantial culpability and support the conclusion that the challenged [reimbursement] is constitutional"—Plaintiff Tosado was exposed to nearly twice as long a maximum imprisonment term (249 months vs. 135) as the individual at issue in *Viloski*, which

[46] A court may, but "need not," consider whether the fine would "destroy a defendant's *future* livelihood." *Viloski*, 814 F.3d at 112 (emphasis in the original). On the other hand, "courts may not consider as a discrete factor a defendant's personal circumstances." *Id*. Plaintiffs do not allege that requiring reimbursement will destroy Plaintiff Tosado's future livelihood, nor do they allege any factual basis to conclude that Plaintiff Tosado's inability to receive part of what Plaintiffs allege has been considered a "[w]indfall[ ]" would have such an effect. *2dAC*, ¶ 134 n.7. That weighs in favor of dismissal. *See Viloski*, 814 F.3d at 114-15 & n.17.

[47] This Court may take judicial notice of conviction information from the Connecticut Judicial Branch website for purposes of this Motion. *See, e.g.*, *Henry v. Brzeski*, 2023 U.S. Dist. LEXIS 13841, at *12 (E.D.N.Y. Jan. 26, 2023) (citing cases, including *Schwartz v. Capital Liquidators, Inc.*, 984 F.2d 53, 54 (2d Cir. 1993)); *see also Rynasko v. New York University*, 63 F.4th 186, 191 n.4 (2d Cir. 2023).

[48] *See* Conn. Gen. Stat. § 53a-35a(8); § 53a-36(2) & (3); § 53a-41(4); § 53a-42(2) & (3). That calculation is based solely on judicial notice information at this stage and for purposes of this Motion and may change based on additional information.

upheld a $1,273,285.50 forfeiture. *See id*. at 114. Although the $44,028.98 the state seeks to require Plaintiff Tosado to reimburse appears to be more than twice the maximum fine, the purpose of looking at the maximum sentence and fine is to measure the legislature's assessment of the gravity of the conduct at issue and a maximum term of over 20 years amply establishes gravity.[49] In any event, the Second Circuit has upheld financial multiples that mirror and even far exceed the one at issue here.[50] Plaintiffs' claims lack merit and this Court should dismiss them.

D. The Eighth Amendment is Inapplicable to the Extent Plaintiffs' Claims are Based on Pretrial Detention

Plaintiffs rely in part on allegations relating to pretrial detainees. "[T]he Eighth Amendment has no application" to pretrial detainees. *Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983). To the extent Plaintiffs rely on allegations relating to when they were "pre-trial detainee[s]," their "claims [a]re governed by the due process clause, rather than the eighth amendment." *Covino v. Vermont Dept. of Corrections*, 933 F.2d 128, 129 (2d Cir. 1991) (citing *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979)). Therefore, the Court should dismiss Plaintiffs' Eighth Amendment claims to the extent they are based on pretrial detention. *See, e.g.*, *Slade v. Hampton Roads Regional Jail*, 407 F.3d 243, 250 (4th Cir. 2005); *see* Conn. Gen. Stat. § 18-98.

V. Conclusion

For the foregoing reasons, Defendants respectfully request that the Court grant this Motion and dismiss Plaintiffs' Second Amended Complaint in its entirety.

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[49] Plaintiffs' claims arise under the federal constitution, so comparative federal fines and laws inform the excessiveness analysis. Although Plaintiffs have not alleged facts that would allow a full precise federal Guidelines determination, "[i]n general, the maximum fine permitted by law as to each count of conviction is $250,000 for a felony." United States Sentencing Commission, *Guidelines Manual*, § 5E1.2, cmt. 2 (Nov. 2021).

[50] *See, e.g.*, *Oles v. City of New York*, 2023 U.S. App. LEXIS 11074, at *4-5 (2d Cir. May 5, 2023) (Summary Order) (affirming dismissal of an Excessive Fines Clause challenge to a fine of slightly over twice the statutory maximum); *United States v. 38 Whalers Cove Drive*, 954 F.2d 29, 32, 39 (2d Cir. 1991) (holding that even if a $68,000 forfeiture was "truly a punishment," it did not violate the Excessive Fines Clause in the context of a $250 drug sale).

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 12, 2023 a copy of the foregoing was electronically filed. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Robert J. Deichert
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