UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TERESA BEATTY, NATASHA TOSADO, and DOUGLAS JOHNSON, individually and on behalf of all others similarly situated**,** *Plaintiffs*, v. **MICHELLE GILMAN,** Commissioner of the Connecticut Department of Administrative Services**, AND ANGEL QUIROS,** Commissioner of the Connecticut Department of Corrections**,** in their official capacities**.** *Defendants.*	Civil Action No. 22-cv-380 June 30, 2023

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

I. INTRODUCTION

Plaintiffs Teresa Beatty, Natasha Tosado, and Douglas Johnson (collectively, the "Plaintiffs"), submit this memorandum of law in opposition to the Motion to Dismiss, dated June 12, 2023, filed by Defendants Michelle Gilman and Angel Quiros, in their official capacities (collectively, the "Defendants"). ECF No. 59 ("Defs' Mot."). Defendants seek to dismiss Plaintiffs' Second Amended Complaint dated April 20, 2023 (ECF No. 49) (the "Second Amended Complaint") pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6).

In this single-count Excessive Fines Clause challenge, the Court ruled in March that (1) the plaintiffs named the wrong official-capacity defendants for Eleventh Amendment purposes, (2) two of the plaintiffs lacked the injury prong of standing, and (3) one—Ms. Teresa Beatty—demonstrated injury and redressability but lacked traceability on account of naming the

wrong nominal defendants.[1] Availing herself of the leave granted by the Court to "name additional plaintiffs and defendants as appropriate," and to account for changes to the challenged statutes,[2] Ms. Beatty cured both the Eleventh Amendment and traceability problems by impleading the two state officials currently demanding money from her.[3] She also added two co-plaintiffs, Natasha Tosado and Douglas Johnson, in identical circumstances who thus also possess standing. The new Defendants do not contest that they are properly named for purposes of the Eleventh Amendment, but repeat all the other arguments for dismissal made last year. Each of those reprised contentions is wrong, and so their motion must be denied.

II. BACKGROUND FACTS

A. CONNECTICUT PRISON DEBT AND THE CHALLENGED STATUTES

Unique in New England, Connecticut mandates that every person imprisoned by the state after October 1997 owes it "for the costs of such [person]'s incarceration." Conn. Gen. Stat. § 18-85a(b). Connecticut prison debt is expressed as a dollar amount for each day a person is imprisoned, Conn. Agencies Regs. § 18-85a-1(a), including pre-trial detention on a charge resulting in a prison sentence[4] and future expenditures until a person's maximum release date. *Id.*

Defendant Angel Quiros, the Commissioner of Correction, calculates every person's prison debt by multiplying "the average per capita cost, per diem, of all component facilities within the Department of Correction" for each state fiscal year in which the person was confined, by the duration of the person's confinement. *Id.*

[1] Ruling on Defs.' Mot. to Dismiss [ECF No. 45].
[2] *Id.* at 22-23.
[3] Second Am. Compl. [ECF No. 49].
[4] Second Am. Compl. ¶ 90.

Quiros sets the daily rate—or "assessed cost," as Connecticut refers to the per diem debt—with the consultative assistance of the state comptroller by (1) summing all Department of Correction expenditures at the state's prisons during the fiscal year, (2) dividing that sum by the daily average population of Connecticut's prisons during the fiscal year, and (3) dividing *that* amount by 365 to arrive at a per-person, per-day cost.[5]

Because the assessed cost is based on government expenditures tallied after the fiscal year closes, the figure is often not known until years later. This means that a person obligated to pay Connecticut prison debt will not know how much they owe on the day of their sentencing—and in fact, not until quite some time after each fiscal year of their imprisonment closes.

Worse for people owing prison debt is that the assessed cost depends entirely on decisions by third parties, rather than on the debtors' conviction facts. The first assessed cost element, total expenditures, is controlled by the executive and legislative branches of Connecticut government.[6] And the results of the elected branches' decisions are monumental: the Department of Correction typically spends around three-quarters of a billion dollars each year.

The second assessed cost element—the number of people in prison—also lies beyond prison debtors' control. The state's prosecutors are responsible for pressing charges, offering pleas, and demanding prison time, and judges ultimately decide how much time someone will spend in a Connecticut prison.[7] Reductions in the number of people inside prison walls during any fiscal year cause each incarcerated person's daily debt to rise, while population increases spread the annual expenditures out over more debtors.[8]

[5] Second Am. Compl. ¶ 96.
[6] Second Am. Compl. ¶¶ 101-108.
[7] Second Am. Compl. ¶¶ 109-112.
[8] Second Am. Compl. ¶¶ 113-114.

The results of the prison debt scheme's math are staggering. For state fiscal year 2015, the assessed cost is $145 per day, or $59,925 per year. For fiscal year 2020, the assessed cost is $249 per day, or $90,885 per year.[9] There is not yet an assessed cost for 2021, 2022, or 2023, though if history is any indication, they are likely to be much higher.

Connecticut can only collect prison debts in certain ways. While a person is incarcerated, the state may attempt collection from any property owned by the person. Conn. Gen. Stat. § 18-85a(b). At any time during incarceration or up to twenty years thereafter, the state may attempt to collect from the proceeds of any lawsuit filed by a person convicted of a handful of listed offenses, taking the lesser of the full debt amount or half of any judgment or settlement that the person obtains. *Id.* §§ 18-85b(a), 18-85a(b). During that same time frame, Connecticut may attempt to collect the lesser of the full debt amount or half of any inheritance given to a person subject to prison debt. *Id.* § 18-85b(b). It may also attempt to collect the entire debt amount from the estate of any person who owed prison debt and died while incarcerated or within twenty years of being freed. *Id.* § 18-85c. Whichever route it uses, Connecticut may not collect against the first $50,000 of most debtors' assets during any given collection attempt, except for those convicted of a handful of listed offenses. *Id.* §§ 18-85a(b).

Working in tandem with Defendant Quiros, Defendant Michelle Gilman is integral to the debts' collection in her capacity as the Commissioner of the Department of Administrative Services ("DAS"). Gilman is notified by Quiros whenever an incarcerated person has money added to their trust account. She also monitors the Connecticut Superior Court docket for lawsuits by prison debtors, and her department is automatically notified by the Connecticut Probate Court when the estate of a prison debtor is opened for administration or when the

[9] Second Am. Compl. ¶¶ 117-122.

beneficiary of any estate is a prison debtor. Gilman typically issues lien notices to debtors reflecting the amounts recorded by Quiros, and in probate cases files the notices with the court in order to obtain the amounts she claims are due.[10] According to DAS's own records, the Defendants have asserted carceral liens against more than 1,000 people or estates since May 2022, when the statute was amended.[11]

B. THE PLAINTIFFS

Plaintiff Teresa Beatty is a certified nursing assistant who grew up in Stamford, Connecticut. She was incarcerated by Connecticut between 2000 and 2002 for charges stemming from drug possession.[12] When Ms. Beatty's mother, Minnie Mills, passed away in 2020, Defendant Gilman's DAS immediately filed a notice in Stamford Probate Court alleging that Ms. Beatty owes Connecticut $83,762.26 for her time in custody. At the time, Ms. Beatty and her siblings each stood to inherit a share of their childhood home, where Ms. Beatty still lived. In April 2023, the home sold for $625,000. Ms. Beatty plans to use her forty percent share of the sale proceeds to cover the costs of substitute housing.[13]

Plaintiff Natasha Tosado is a resident of Hamden, Connecticut, who works as a pharmacist and peer mentor for women who have survived domestic violence. She was incarcerated by Connecticut between July 2016 and April 2018. Ms. Tosado is—heartbreakingly—one of her children's heirs, because Bridgeport police employee James Boulay shot and killed her fifteen-year-old son, Jayson Negron, in 2017.[14] A resultant lawsuit ended in settlement, and as one of two beneficiaries of her son's estate, Ms. Tosado was entitled to receive

[10] Second Am. Compl. ¶¶ 131-136.
[11] Second Am. Compl. ¶ 146.
[12] Second Am. Compl. ¶¶ 21-29.
[13] Second Am. Compl. ¶¶ 30-35.
[14] Second Am. Compl. ¶¶ 41-43.

half.[15] Shortly after the lawsuit settled, Defendant Gilman's DAS filed a notice in Bridgeport Probate Court alleging that Ms. Tosado owes Connecticut approximately $129,000 for the roughly two years she was incarcerated. Accounting for the settlement amount and Jayson having two heirs, Gilman's DAS demanded $44,028.98 from Ms. Tosado's inheritance.[16]

Finally, Plaintiff Douglas Johnson is a Branford, Connecticut resident who works as a stonemason and volunteers in the recovery community. Mr. Johnson was imprisoned by the state of Connecticut from February 2002 to March 2004 for drug-related charges.[17] In August 2021, Mr. Johnson's father, Richard, died. Shortly thereafter, DAS filed a notice of lien in Branford-North Branford District of the Connecticut Probate Court for the full amount of Douglas's incarceration: $74,652.58. Mr. Johnson's father left Douglas and his brother $10,000 and a few, cherished items, including a boat, land and a cabin in North Guilford that has been in the family for over fifty years, and a truck that the elder Mr. Johnson used to drive.[18]

C. PROCEDURAL HISTORY

Ms. Beatty, Michael Llorens, and Karl Weissinger filed this suit in March 2022, alleging a single Excessive Fines Clause count and asking the Court to declare Connecticut's prison debt statutes, Conn. Gen. Stat. §§ 18-85a, -85b, and -85c, unconstitutional and permanently enjoin their use. The Court ruled in March 2023 that plaintiffs Weissinger and Llorens did not have standing, and that Llorens' claim was not constitutionally ripe.[19] The Court also decided that Ms. Beatty needed to name lower-ranking official capacity defendants for purposes of the Eleventh

[15] Second Am. Compl. ¶¶ 45-46.
[16] Second Am. Compl. ¶¶ 47-48.
[17] Second Am. Compl. ¶¶ 55-58.
[18] Second Am. Compl. ¶¶ 64-70.
[19] Ruling on Defs.' Mot. to Dismiss at 19-20.

Amendment,[20] and held that, solely because of the wrong nominal defendants, she lacked the traceability prong of Article III standing.[21]

However, the Court expressly rejected the defendants' assertion that Ms. Beatty lacked Article III injury. It held that because Ms. Beatty had pleaded facts showing that her mother's estate was being probated and that she was to inherit forty percent of her mother's house, the State's lien demand demonstrated that Ms. Beatty "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."[22]

The Court granted Ms. Beatty permission to "fil[e] an amended complaint . . . nam[ing] additional plaintiffs and defendants" and accounting for the May 2022 legislative amendments to the challenged statutes.[23] In April 2023, she did just that, updating her allegations to address the 2022 amendments where relevant and impleading the two state officials demanding money from her inheritance, Gilman and Quiros.[24] She also added two co-plaintiffs, Ms. Tosado and Mr. Johnson, who are in the precise same situation that she is, and hence, also have Article III standing. They seek declarations that Connecticut's prison debt statutes violate the Excessive Fines Clause and that any prison debt imposed may never be collected. They also seek injunctive relief barring Defendants and their successors in office from collecting prison debt or representing to any court, entity, or person that such debt is valid or enforceable.

[20] *Id.* at 13, 16.
[21] *Id.* at 13.
[22] *Id.* at 12-13.
[23] *Id.* at 22.
[24] Second Am. Compl. ¶¶ 9-20.

III. LEGAL STANDARDS AND ARGUMENT

A. ALL THREE PLAINTIFFS POSSESS ARTICLE III STANDING AND PRESENT THIS COURT WITH CLAIMS THAT ARE RIPE FOR LITIGATION.

1. Ms. Beatty's Standing Has Remained Unchanged Throughout This Litigation, and the Court's Prior Conclusion as to Her Standing Should Similarly Remain Unchanged.

Defendants do not contest that Ms. Tosado has standing. But as for Mr. Johnson and Ms. Beatty, Quiros and Gilman rehash the same standing arguments that the Court explicitly rejected in March. *See* ECF No. 23-1 at 12-13 (arguing that Ms. Beatty has not suffered an injury in fact); Ruling on Defs.' Mot. to Dismiss at 12-13 (Court holding that Ms. Beatty is threatened with an imminent injury in fact); Defs.' Mot. at 9-12 (arguing, yet again, that Ms. Beatty must wait to be deemed injured).

This Court need not revisit its previous, correct, conclusion. First, the law of the case doctrine dictates that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Arizona v. California*, 460 U.S. 605, 618 (1983). The doctrine applies to "a court's own decisions" and "expresses the practice of courts generally to refuse to reopen what has been decided." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816-17 (1988). Accordingly, although "a court has the power to revisit prior decision of its own . . . as a rule [it] should be loath to do so." *Id.* at 817.

In March, the Court concluded that Ms. Beatty is threatened with a constitutional injury. At the time, Defendant Gilman's DAS had already appeared in Probate Court to demand $83,762.26 of Ms. Beatty's inheritance. ECF No. 31-5 at 2. Since then, DAS has not changed its demand. Yet Defendants continue to paint a portrait of Ms. Beatty's lien as enigmatic and unknowable, going so far to suggest that the sale of her house only underscores a lack of

concrete injury. Defs.' Mot. to Dismiss at 11. Of course, the opposite is true: Defendant Gilman made her demand and is simply awaiting a check. Second Am. Compl. ¶¶ 36-40. The language of the lien, like the language of the statute, is mandatory: "The Court of Probate shall accept any such lien notice filed by the commissioner or the commissioner's designee with the court" and "shall order distribution in accordance therewith." Conn. Gen. Stat. § 18-85b(b). Absent relief from this Court, Ms. Beatty will lose title to her property in violation of the Excessive Fines Clause.

Mr. Johnson is in the same situation. Like Ms. Beatty, he lost a parent and then came face-to-face with a DAS lien in probate court. Second Am. Compl. ¶¶ 64-71; *see also* Johnson lien notice, a copy of which is attached as Exhibit A. As with Ms. Beatty, the State's claim is against Mr. Johnson's property in whatever form he takes it from his father's estate, whether tangible (the boat, truck, and land) or fungible (the $10,000). Either way, Defendants have represented to the Probate Court that they are owed approximately $75,000 from Mr. Johnson's inheritance.

Given the lack of change in Ms. Beatty's circumstances, there is no reason to depart from the Court's prior ruling that Ms. Beatty has suffered an injury in fact sufficient for Article III standing. *Fresh Air for Eastside, Inc. v. Waste Mgt. of New York, L.L.C.*, 18-CV-6588-FPG, 2020 WL 6291483, at *3 (W.D.N.Y. Oct. 27, 2020) (finding "no reason to depart from the law of the case because Defendants have failed to present 'an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice") (internal citation omitted). The addition of Mr. Johnson as a plaintiff likewise changes nothing: "[T]he allegations made by the later-added plaintiffs are identical to those . . . originally sought to dismiss; the addition of these . . . plaintiffs therefore changes nothing for purposes of the law

of the case." *In re MTC Elec. Techs. Shareholder Litig.*, 74 F. Supp. 2d 276, 282 (E.D.N.Y. 1999). Defendants have formally made statutory demand to both plaintiffs, who must now either pay their prison debt or obtain relief declaring otherwise.

To the extent Defendants argue that Plaintiffs do not have standing to challenge the entire carceral debt statute, Plaintiffs are affected by the inheritance portion of the challenged debt system, located within § 18-85b(b). Nonetheless, the debt scheme operates as a unified whole. It is established by § 18-85a(a), which authorizes the Commissioner of Correction to adopt regulations "concerning the assessment of inmates of correctional institutions or facilities for the costs of their incarceration." Conn. Gen. Stat. § 18-85a(a). The challenged statutes are then interwoven: § 18-85a sets out the lien obligation generally, in addition to listing how it can be enforced against assets of current prisoners. Meanwhile, § 18-85b and § 18-85c explain how the lien can be enforced against lawsuit proceeds, inheritances, and estates. In doing so, § 18-85b and § 18-85c explicitly refer back to § 18-85a. Hence, to the extent that the challenged laws are applied as a unified statutory scheme to Plaintiffs, Plaintiffs have standing to challenge them.

2. Because Ms. Beatty Suffered an Imminent Injury In Fact Since the Inception of This Suit, This Court Has Always Had Subject Matter Jurisdiction.

Defendants continue to take issue with this Court's determination that the initial complaint sufficiently alleged Ms. Beatty suffered an injury in fact. They thus devote pages and pages to arguing that amending a complaint cannot cure standing deficiencies. They also contend that Ms. Beatty is trying to rely on events that postdate the filing of the initial complaint. But these arguments are not an accurate depiction of this case.

On Defendants' previous motion to dismiss, this Court agreed with Defendants and held that the Attorney General was not a proper defendant under *Ex parte Young*. Ruling on Defs.' Mot. to Dismiss at 15-16. As a result, the Court found that Ms. Beatty's injury (which she had

already suffered) was not traceable to the Attorney General. In other words, the Court's holding on Ms. Beatty's injury's traceability was derivative of its holding on the Eleventh Amendment issue as to the Attorney General.

While Plaintiffs respectfully disagree with this holding, they requested to add two new official-capacity defendants: the Commissioners of Correction and Administrative Services. In adding new defendants, however, Plaintiffs' allegations about Ms. Beatty have not changed. Nor do Plaintiffs rely on any factual development or event postdating the commencement of the suit for Ms. Beatty's standing. Ms. Beatty had suffered an injury in fact, then as now.[25]

The cases that Defendants cite for the proposition that the Second Amended Complaint cannot cure subject matter jurisdiction bear little resemblance to this one. Cases like *City of Hartford v. Town of Glastonbury*, for example, are beside the point—Ms. Beatty does not rely on any new facts or factual developments in the Second Amended Complaint. In *City of Hartford*, the *en banc* Second Circuit noted in a footnote that a town's potential eventual forfeiture of grant money could not be taken into account to determine standing. 561 F.2d 1032, 1051 (2d Cir. 1976). *But see Saleh v. Sulka Trading, Ltd*., 957 F.3d 348, 354 (2d Cir. 2020) (explaining that this Circuit has "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.").

Regardless, there are no new facts here. From the outset, Ms. Beatty had suffered an injury in fact. While it happens that her mother's house sold between the filing of the initial complaint and today, the Court correctly found that the house did not need to be sold to establish

[25] Ms. Tosado and Mr. Johnson are not substituted plaintiffs, but additional plaintiffs who might serve as additional (putative) class representatives. Given that Ms. Tosado and Mr. Johnson are identically factually situated to Ms. Beatty, Defendants' suggestions that Plaintiffs "bought time to locate two new named Plaintiffs" is entirely misplaced, and unwarranted. Defs.' Mot. at 19.

standing. The impending constitutional injury was and is that Connecticut will take title to some of Ms. Beatty's property in contravention of the Excessive Fines Clause.

Defendants' other cases, meanwhile, are more nuanced than Defendants' arguments would suggest. In *Pressroom,* while noting that permission to amend should be freely given to avoid dismissals of actions on technical grounds, the Second Circuit affirmed a district judge's "discretion" to refuse a pension fund's request to substitute plan participants for the plan as a plaintiff. *Pressroom Unions-Printers League Income Sec. Fund v. Cont'l Assur. Co.*, 700 F.2d 889, 894 (2d Cir. 1983). In a footnote, the Second Circuit carefully elaborated on its reasoning:

> Though we have previously recognized that an amendment adding a party that brings the case within a district court's jurisdiction can be granted, such an amendment, where new service is required, does not relate back to the original suit, and would be a new action. In such circumstances, the district court has discretion whether to permit the amendment . . ..

Id. at 893 n.9 (internal citations and quotations omitted). In fact, the *Pressroom* court then went on to discuss a different district court case in which a court had, in its discretion, permitted that very amendment. *Id.* at 894. This dispute is similar. The Court exercised its discretion to allow Plaintiffs to implead the new defendants to address this Court's twin Eleventh Amendment and traceability conclusions, and the substitution of one agency head for another did not change anything about Ms. Beatty's injury.

Defendants' other cited cases are likewise inapposite. In S*/N1 Reo Liab. Co. v. City of New London ex rel. Ballestrini*, Judge Hall determined that the later addition of a third-party defendant could not cure the Tax Injunction Act's initial withdrawal of jurisdiction. 127 F. Supp. 2d 287, 296 (D. Conn. 2000). In *Mills v. State of Maine,* the First Circuit refused to allow the substitution of a different official capacity defendant for a plethora of reasons, including that the substitution was requested on appeal, it would not cure the Eleventh Amendment issue, and

injunctive relief was unavailable under the Fair Labor Standards Act. 118 F.3d 37, 53 (1st Cir. 1997).

Plaintiffs are unable to identify, nor have Defendants cited to, any Second Circuit caselaw where substitution of one official-capacity defendant for another, to address an Eleventh Amendment issue, meant that the action must be dismissed for lack of initial jurisdiction. Rather, cases where leave to substitute a party was denied involve fundamental jurisdictional flaws not present here. For example, a litigant was unable to show even the most basic injury in fact. *Kinra v. Chicago Bridge & Iron Co*., No. 17 CIV. 4251, 2018 WL 2371030, at *5 (S.D.N.Y. May 24, 2018). Or, a litigant attempted to predicate jurisdiction on the intervention of a new party after trial had already taken place. *Disability Advocs., Inc. v. New York Coal. for Quality Assisted Living, Inc*., 675 F.3d 149, 162 (2d Cir. 2012). Those cases bear little resemblance to this one.

Of course, it is possible for the Court to dismiss this action and force Plaintiffs to refile the same complaint, verbatim, and re-serve the same defendants. The net result is that Defendants would have a few additional weeks to re-file their motion to dismiss, minus some pages. Taking this route would elevate form over substance. Any issue with Ms. Beatty's standing allegations regarding the proper official-capacity defendant is exactly the type of technical deficiency best resolved by amendment.

This is particularly true given that, as Defendants concede, the operative complaint for purposes of determining jurisdiction over Ms. Tosado's and Mr. Johnson's claims is the Second Amended Complaint. Defs.' Mot. at 20. Defendants allege no standing deficiency for Ms. Tosado, and the one they allege for Mr. Johnson—that he has not suffered an injury in fact—has already been rejected by this Court vis-à-vis Ms. Beatty. As a result, dismissal of the entire case on Ms. Beatty's sole account makes even less sense. "Re-litigating a substantively identical

matter would be wasteful of the parties' and the Court's time and resources: this is the rare case in which permitting amendment is the *more* expeditious course of action." *D.J. through O.W. v. Connecticut State Bd. of Educ.*, No. 3:16-CV-01197, 2019 WL 1499377, at *5 (D. Conn. Apr. 5, 2019). If, as Defendants bemoan, this case has already "consumed substantial judicial resources (and resources of the state)," *see* Defs.' Mot. at 19, restarting from square one would only consume more.

The better course is that "practical considerations may ultimately prevail." *Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370, 391 (2d Cir. 2021). *Fund Litigation* is instructive. There, the Second Circuit rejected arguments that do little to advance the concerns animating Article III in favor of a sensible approach, allowing a real party in interest to assume litigant status. *Id* at 388. As the Second Circuit wrote, "there appears to be no constitutional magic behind whether the name of a nominal plaintiff or a real party in interest is initially put in the caption of a pleading." Thus, "Article III would therefore seem to be satisfied so long as the real party in interest is willing to join the case and has had standing since the case's inception." *Id.* This Court should adopt *Fund Litigation*'s approach, and reject Defendants' demand to needlessly relitigate the same thing in a few months with a different case number.[26]

[26] Adjacent to their contentions about standing, Defendants argue that Plaintiffs exceeded this Court's leave in their amendment. *See, e.g.*, ECF No. 45 at 6-8. The Court explicitly granted Ms. Beatty permission to "name additional plaintiffs and defendants as appropriate," ECF No. 45 at 22; nothing more was required. Similarly perplexing is Defendants' suggestion that Plaintiffs should not have updated their allegations given the passage of time—for example, to note that Ms. Beatty's house had sold. If Defendants mean to imply that Plaintiffs should have retained incorrect and/or outdated information in an amended complaint simply for the sake of not changing anything, doing so stands in direct contravention of counsel's duty of candor to the Court. Ultimately, Defendants' argument reduces to a repeat of their unconvincing argument about standing.

3. As They Are Threatened With An Impending Constitutional Violation, Ms. Beatty and Mr. Johnson's Claims Are Constitutionally Ripe.

As with standing, Defendants do not challenge the ripeness of Ms. Tosado's claims. But they posit that Ms. Beatty and Mr. Johnson's claims are constitutionally unripe. In the Second Circuit, the "best way to think of constitutional ripeness is as a specific application of the actual injury aspect of Article III standing." *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 688 (2d Cir. 2013). And that dooms Quiros and Gilman's constitutional ripeness objections.

Because of the "overlap" between standing and constitutional ripeness, courts have found—with little inquiry—constitutional ripeness whenever a plaintiff's injury is imminent. *Ross v. Bank of America*, N.A., 524 F.3d 217, 226 (2d Cir. 2008) (writing that plaintiffs' claims are ripe "[f]or the same reasons" that their alleged injuries are not speculative or hypothetical); *see also In re Methyl Tertiary Butyl Ether (MTBE)*, 725 F.3d 65, 110 (2d Cir. 2013) ("Here, our determination above that the City has satisfied the requirement of Article III standing leads us easily to conclude that its claims are constitutionally ripe").

This Court previously established that Ms. Beatty—through DAS's lien notice, the mandatory distribution of her inheritance by the probate court under § 18-85b(b), and the inevitable sale of her mother's house (which has now been sold)—has alleged enough facts to show that she is facing imminent injury. Ruling on Defs.' Mot. to Dismiss at 11-12. Mr. Johnson is in an identical position to Ms. Beatty. All three plaintiffs therefore bring constitutionally ripe claims.

4. Facing a Set Monetary Demand They Must Pay Absent Relief, Ms. Beatty and Mr. Johnson Present a Prudentially Ripe Dispute for Resolution.

Defendants also raise a prudential ripeness argument, claiming that certain unspecified probate unknowns counsel holding off on entertaining Plaintiffs' claims. But Plaintiffs are in the

same ready-for-decision posture that this Court routinely sees, in which one party has made a firm, itemized demand for money that the other asserts is forbidden by federal law.

"Ripeness is a term that has been used to describe two overlapping threshold criteria for the exercise of a federal court's jurisdiction." *Simmonds v. I.N.S.*, 326 F. 3d 351, 356-57 (2d Cir. 2003) (internal quotations omitted). While constitutional ripeness is concerned with Article III limitations, prudential ripeness "is drawn from prudential reasons for refusing to exercise jurisdiction." *In re Methyl Tertiary Butyl Ether (MTBE) Prod. Liab. Litig.*, 725 F.3d at 110. "[W]hen a court declares that a case is not prudentially ripe, it means that the case will be *better* decided later." *Simmonds*, 326 F.3d at 357. Where constitutional ripeness is satisfied—as it is for Plaintiffs here—courts make a fact-specific determination to establish prudential ripeness. *United States v. Quinones*, 313 F.3d 49, 58 (2d Cir. 2002).[27] This inquiry asks "whether (1) the issues are fit for judicial consideration, and (2) withholding . . . will cause substantial hardship to the parties." *Id.*

Plaintiffs' Eighth Amendment claim meets both criteria. First, their claim is squarely fit for judicial consideration. "The 'fitness' analysis is concerned with whether the issues sought to be adjudicated are contingent on future events or may never occur." *Walsh*, 714 F.3d at 691 (*citing New York Civil Liberties Union v. Grandeau*, 528 F.3d 122, 132 (2d Cir. 2008)) (internal quotations omitted). As decided by this Court, there is nothing speculative about the money that

[27] As Defendants note, the Supreme Court has acknowledged that the prudential ripeness doctrine is "in some tension" with a federal court's "virtually unflagging" obligation to hear and decide cases within its jurisdiction. *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014). While the Second Circuit has "cast doubt" on the applicability of this doctrine, courts assume that it is still good law. *Revitalizing Auto Communities Env't Response Tr. v. Nat'l Grid USA*, 10 F.4th 87, 102 (2d Cir. 2021); *see also Variscite NY One, Inc. v. New York*, No. 122CV1013GLSDJS, 2023 WL 1420662, at *2, n.2 (N.D.N.Y. Jan. 31, 2023).

Ms. Beatty currently owes for the cost of her incarceration. Because Mr. Johnson's circumstances are akin to Ms. Beatty's, the same applies to him.

Defendant Gilman's DAS has asserted liens in probate proceedings for $83,762.26 against Ms. Beatty's inheritance, and for $74,625.58 against Mr. Johnson's.[28] The only item in Ms. Beatty's mother's estate—a house—was sold for $625,000 earlier this year, and the forty percent that Ms. Beatty is set to inherit will be used to satisfy her carceral lien. Mr. Johnson was left $10,000, a truck, a boat, and a cabin by his father. To pay for Mr. Johnson's incarceration, his family's cherished items must be sold at least in part. Contrary to Defendants' contentions, the amounts that they themselves presented to the Probate Court as their statutory demands are certain, and the mandatory language of § 18-85b(b) ensures their collection. Accordingly, Plaintiffs' single count has "sharpened into a live case which is fit for judicial decision." *Walsh*, 714 F.3d at 691 (internal quotations omitted).

Defendants' attempts to obscure the certainty surrounding Plaintiffs' carceral debts are unavailing. In *Connecticut v. Duncan*, 612 F.3d 107 (2d Cir. 2010), for example, Connecticut litigated a provision of the No Child Left Behind Act requiring the national Department of Education's approval of compliance plans for education funding, and mandating that the Department pay any overage. Connecticut filed a plan seeking excusal from some of the Act's mandates, which the Department denied while pointing out its view that Connecticut overstated its costs. *Id.* at 110-111, 114. But the Department did not take any enforcement action against Connecticut for failing to present an acceptable plan. *Id.* at 111. Nonetheless, the state filed suit

[28] Defendants suggest Mr. Johnson's amount will "benefit" from the $50,000 exemption (though simultaneously arguing that he is not subject to § 18-85a, where the exemption is memorialized). In any case, Defendants' arbitrary application of the exemption means it is not clear if Mr. Johnson will or will not receive it; regardless, he will still owe the remainder of his lien. Second Am. Compl. ¶ 82.

in this Court, contending that denying the waivers while not increasing funding to cover the non-waived mandates would cause the state to "pay[] more to comply than it is receiving." *Id.* at 111. The Second Circuit cited the Act's contemplated administrative back-and-forth to conclude that the dispute was prudentially unripe. It held that the Department's decision not to take any enforcement action did not leave Connecticut in jeopardy during further administrative proceedings "for the parties to design an amended plan that satisfies the State's specific fiscal objections" while meeting the Act's mandates. *Id.* at 114.

Here, however, this Court is presented with two parties in a standard litigation confrontation rather than an ongoing administrative proceeding. One side has demanded tens of thousands of dollars from the other pursuant to state law, and the other side has filed this action for a declaration that they need not pay because the state statutes are trumped by federal law. Unlike the No Child Left Behind Act, Connecticut's prison debt statutes do not provide for an iterative process in which Defendants propose an obligation and Ms. Beatty or Mr. Johnson may propose alternatives. Unlike the Department of Education in *Duncan*, Defendants here have not stayed their hands and permitted the plaintiffs to take clear title to their inheritances while discussions continue.[29] Gilman and Quiros have instead presented the Probate Court with a detailed invoice and accompanying claim to be paid, now. That is more than enough to create a sharp dispute that ought to be resolved in this Court straightaway.

[29] And unlike in *Simmonds*—where it was unknown whether plaintiff would be detained, the removal order would be executed, or immigration laws would remain the same—there is no "uncertainty" that derails the ripeness of Plaintiffs' claims. 326 F.3d at 360. *See also Auto. Club of New York, Inc. v. Dykstra*, 354 F. App'x 570, 572 (2d Cir. 2009) (affirming that the district court did not err in failing to provide for payment of post-judgment interest where it deferred calculation and did not make a conclusive ruling on post-judgment interest).

Moreover, Plaintiffs' hardships are "manifestly present here." *Edwards v. I.N.S.*, 393 F.3d 299, 306 (2d Cir. 2004). Ms. Beatty and Mr. Johnson, like Ms. Tosado, have inheritances that *will* be taken from them absent a judgment from this Court. Defendants' assertion that there is no present detriment for Plaintiffs because they have "yet to pay a cent" misses the mark. *Ocean World Lines, Inc. v. Unipac Shipping, Inc.*, No. 1:13-CV-740, 2016 WL 5339408, at *4 (S.D.N.Y. Mar. 14, 2016). Defendants ignore that DAS has taken steps to enforce the State's claim by filing lien notices, and they ignore the mandatory duty on the probate court to order distribution of the inheritances. *See* Conn. Gen. Stat. § 18-85(b). Absent a decision from this Court, Plaintiffs may lose their inheritances to pay for Connecticut's unconstitutional prison debt scheme. Accordingly, their claims are prudentially ripe.

B. RELIEF AGAINST AN IMMINENT FEDERAL LAW VIOLATION IS THE HEART OF *EX PARTE YOUNG*'S EXCEPTION TO THE ELEVENTH AMENDMENT, AND SO PERMITS THE DECLARATION AND INJUNCTION SOUGHT HERE.

According to Defendants, because declaratory or injunctive relief would bar collection of revenue from people who are or were imprisoned, the relief sought is retrospective and akin to damages. Whether or not Connecticut loses money is not how retrospective relief is identified for purposes of the Eleventh Amendment, though. Instead, the question is whether the constitutional violation for which relief is sought has already taken place. By that proper measure, the Eleventh Amendment has no applicability to this dispute.

Where a plaintiff "alleges an ongoing violation of federal law and seeks relief properly characterized as prospective," *Ex parte Young* permits suit. *Verizon Maryland, Inc. v. Pub. Serv. Comm'n of Maryland*, 535 U.S. 635, 645 (2002). On the other hand, where a plaintiff claims "a monetary loss resulting from a *past breach* of a legal duty," an order functionally reimbursing

the plaintiff for those lost monies is normally forbidden by the Eleventh Amendment. *Id.* at 646 (emphasis added) (internal quotation omitted).

For example, the Eleventh Amendment is no barrier to an injunction requiring a State to pay certain Medicaid provider claims at a higher rate going forward. *New York City Health & Hosps. Corp. v. Perales*, 50 F.3d 129, 135-37 (2d Cir. 1995). But, it forbids an order mandating reimbursement of past claims at that new rate. *Id*. Here, simply because a litigation loss for Defendants would cause Connecticut to cease collecting prison debt does not mean that the Eleventh Amendment is relevant. So long as this Court enjoins a current or future federal law violation, there is no constitutional problem even if a diminution in revenue is "the necessary result of compliance." *Edelman v. Jordan*, 415 U.S. 651, 667–68 (1974) (affirming permanent injunction requiring Illinois to process future disability benefit applications within time limits set by federal law). *See, e.g.*, *Seneca Nation v. Hochul*, 58 F.4th 664, 671-72 (2d Cir. 2023) (turning aside Eleventh Amendment defense to request for injunction against State toll collection on highway running through tribal nation).[30]

Ms. Beatty, Ms. Tosado, and Mr. Johnson fit into this settled understanding. They allege that the challenged statutes apply to Plaintiffs and those similarly situated because of their time in prison; that Defendants are currently attempting to collect from them;[31] and that as a result of the impending Excessive Fines Clause violation, this Court may declare the challenged statutes

[30] *See also, e.g.*, *Vega v. Semple*, 963 F.3d 259, 282 (2d Cir. 2020) (injunction mandating future monitoring for incarcerated people exposed to dangerous levels of radon gas); *State Emps. Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 97–98 (2d Cir. 2007) (order "to rehire plaintiffs into existing positions or create new positions in the State workforce" as a remedy for their retaliatory firing); *In re Deposit Ins. Agency*, 482 F.3d 612, 618–19 (2d Cir. 2007) (injunction stopping state banking regulator from continuing with insolvency proceedings, and forcing surrender of $100m in failed bank assets to the relevant bankruptcy estates).

[31] Second Am. Compl. ¶¶ 36-38 (Ms. Beatty), ¶¶ 47-48 (Ms. Tosado), ¶¶ 66 (Mr. Johnson).

unconstitutional and enjoin Defendants from taking their money.[32] Because Connecticut has not actually extracted money from Plaintiffs' inheritance, none of Defendants' requested relief would have the Court "presently compensating victims for conduct and consequences completed in the past." *Milliken v. Bradley*, 433 U.S. 267, 290 n.21 (1977). As this Court correctly concluded seven years ago when rejecting the same defense to a Connecticut prison debt challenge, Plaintiffs do not ask for repayment of funds paid, but "seek[] the answer to a legal question as to whether a payment is necessary . . . before any money has changed hands." *Bonilla v. Semple*, No. 15-cv-1614, 2016 WL 4582038, at *4 (D. Conn. Sep. 1, 2016).

To recast a declaration that no money need be paid in the future as tantamount to a damages award for a concluded injury, Gilman and Quiros slightly alter two elements of the inquiry: (1) what an accrued liability is, and (2) to whom it is owed. According to them, because Ms. Beatty, Ms. Tosado, and Mr. Johnson served their time in prison, they 'accrued' prison debt under the challenged statutes, and, a declaration that they need never pay such unconstitutional debt "would be indistinguishable from an award" of damages from the State in that amount. Defs.' Mot. at 26. Both alterations are a bridge too far.

First, the past-accrual principle of *Papasan v. Allain* that Quiros and Gilman rely so heavily upon is simply that federal plaintiffs may not base their claim for relief on an official capacity defendant's *current or future refusal* to pay for a *past* harm. 478 U.S. 265, 280 (1986). For Eleventh Amendment purposes, an injury occurring in the past entitles a plaintiff to the legal system's only retrospective remedy: damages. This is confirmed by the tobacco cases Defendants cite. The legal injuries for which smokers sought payment were the smoking-related diseases themselves, rather than the State's ongoing refusal to pay a portion of the blockbuster

[32] Second Am. Compl. ¶ 26.

multi-state tobacco settlement funds to them. *Barton v. Summers*, 293 F.3d 944, 949 (6th Cir. 2002); *Floyd v. Thompson*, 111 F. Supp. 2d 1097, 1099, 1101 (W.D. Wisc. 1999).[33]

Mr. Johnson and his co-plaintiffs do not present this Court with that forbidden formulation. They are heirs against whose inheritances Defendants are pursuing payment, and they seek orders preventing Connecticut from consummating the constitutional violation by actually extracting the claimed money. *Bonilla*, 2016 WL 4582038 at *4 ("The injury here will occur when Connecticut actually recovers the [funds] it believes it is owed under [§ 18-85b]."). *Papasan* and Defendants' cited tobacco cases would be relevant only if Ms. Tosado, Mr. Johnson, and Ms. Beatty's inheritances had already been depleted by the State, and they came to this Court seeking an injunction curing the State's continued refusal to reimburse them for the unconstitutional loss. But the State has not yet taken their money, and of course, no plaintiff has made a demand for a refund of prison debt already paid.[34]

Second, although the defendants make much of using the word 'accrued' to describe something the plaintiffs owe to Connecticut, they omit that the Eleventh Amendment prohibition speaks to "the award of an accrued monetary liability which must be met from the general revenues of a State," rather than a monetary liability accrued in favor of a State and met from the bank account of a person. *Edelman v. Jordan*, 415 U.S. 651, 664 (1974). All but one of the cases

[33] Two other cases cited by Defendants simply reinforce the Eleventh Amendment maxim—mirrored in the redressability prong of Article III standing decisions—that a federal injunction may not issue where there is no ongoing or future violation of federal law to be remedied. *See Green v. Mansour*, 474 U.S. 64, 71 (1985) (declining to issue injunction concerning statutory language amended during litigation to moot claim); *Strawser v. Lawton*, 126 F. Supp. 2d 994, 1000 (S.D. W. Va. 2001) (same where statute relied upon by plaintiffs harmed by tobacco smoke could not be construed to permit challenging a State's expenditure of its multi-state tobacco settlement share). Tellingly, Quiros and Gilman do not argue that Ms. Beatty, Ms. Tosado, and Mr. Johnson's requested relief would be pointless.

[34] This is true even though Mr. Johnson previously paid prison debt. Second Am. Compl. ¶ 63 (alleging that the state took money from Mr. Johnson's mother's estate around 2016).

Quiros and Gilman rely on feature a plaintiff seeking recompense for something owed *by* a State—not *to* one—thus rendering them non sequiturs here.

The lone case cited by Defendants in which a plaintiff sought relief from a past liability *to* a State is in a much different context: an adversarial proceeding in bankruptcy over discharge of back taxes. *See Mitchell v. Franchise Tax Board*, 209 F.3d 1111, 1117 (9th Cir. 2000). But state taxes generally comprise a periodic, affirmative obligation to file a calculation of what is owed and to pay that amount, whether the government ever attempts collection or even sends a bill. *See, e.g.*, Conn. Gen. Stat. § 12-735 (setting out penalties for failing to file income tax return and pay tax owed on or before date set by Department of Revenue Services); *Id.* § 12-146 (defining date on which property or motor vehicle excise taxes owed to a municipality are automatically deemed delinquent). The prison debt statutes litigated in this action lack an automatic payment obligation or due date, they limit collection to a narrow set of conditions, and at any rate they functionally prevent a debtor from even knowing the amount of their purported obligation until years after being freed.[35]

In short, Defendants have unconvincingly dressed up an objection to a preemptive suit in the clothing of the Eleventh Amendment. Lawsuits like this one are a perfectly permissible "pre-emptive assertion in equity of a defense that would otherwise have been available in" a state court proceeding filed by Gilman or Quiros against Ms. Beatty or her co-plaintiffs. *Virginia Office for Prot. & Advocacy v. Stewart*, 563 U.S. 247, 262 (2011) (Kennedy, J., concurring) (explaining why *Ex parte Young* permits preemption claims). *Accord*, *e.g.*, *Fleet Bank, Nat'l Ass'n v. Burke*, 160 F.3d 883, 888 (2d Cir. 1998) (noting that it is "beyond dispute that federal

[35] Second Am. Compl. ¶¶ 92-96.

courts have jurisdiction over suits" seeking to enjoin state laws alleged to violate federal ones). Gilman and Quiros's motion must be denied.

C. CONNECTICUT PRISON DEBT VIOLATES THE EXCESSIVE FINES CLAUSE.

The Excessive Fines Clause forbids "excessive fines imposed," U.S. Const. amend. 8, cl. 2, meaning that it acts as an outer limit to the severity of any "payment to a sovereign as punishment for some offense." *Browning-Ferris Indus. of Vt. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989). Quiros and Gilman do not dispute that Connecticut is a "sovereign" for those purposes, nor that Plaintiffs' remittance of their inheritances would represent "payment."

To determine whether those payments comprise a "fine" that is "excessive," this Court looks to each element in turn. "At the first stage, [it] determine[s] whether" the penalty at issue "constitutes 'a fine'" because the extraction "may be characterized, at least in part, as 'punitive.'" *United States v. Viloski*, 814 F.3d 104, 108-09 (2d Cir. 2016). If the answer is affirmative, then the Court asks whether the penalty is excessive. *Id.* at 108. Connecticut prison debt satisfies both inquiries.

1. Connecticut Prison Debt Is a 'Fine' for Purposes of the Clause Because It Is Imposed at the End of a Criminal Proceeding, Does Not Apply to Innocent Parties, and the Convicted Person Is Personally Liable for the Debt.

As the Excessive Fines Clause categorizes them, fiscal penalties imposed by a government can be only one of two things. They are either "purely 'remedial' forfeitures," which are those "intended not to punish the defendant but to compensate the [g]overnment for a loss or to restore property to its rightful owner." *Viloski*, 814 F.3d at 109. Remedial forfeitures are not 'fines' for purposes of the Clause. *Id*. Or, they are "non-remedial forfeitures—uncompensated takings of property—[that] clearly serve retributive goals." *United States v. Private Sanitation Indus. Ass'n of Nassau/Suffolk, Inc.*, 44 F.3d 1082, 1088 (2d Cir. 1995) (Heaney, J., dissenting).

These "constitute punishment for an offense," and are therefore 'fines.' *United States v. Bajakajian*, 524 U.S. 321, 328 (1998).

Importantly, *any* measure of punishment, retribution, or deterrence makes a penalty a 'fine,' even if the penalty also has a remedial or non-punitive purpose. *Austin v. United States*, 509 U.S. 602, 621-22 (1993). The rule of *Austin* means that a penalty by any name or in any form—civil or criminal, *in personam* or *in rem*—is "a 'fine' for Eighth Amendment purposes" if it comprises "punishment *even in part.*" *Bajakajian*, 524 U.S. at 331 n.6 (emphasis added).

To apply *Austin* and detect whether a challenged penalty "may be characterized, at least in part, as punitive," *von Hofe v. United States*, 492 F.3d 175, 182 (2d Cir. 2007), courts look to hallmarks like the challenger's having been made "personally liable" for it, *Viloski*, 814 F.3d at 109, or the penalty's having been levied as "part of a criminal prosecution," *United States v. An Antique Platter of Gold*, 184 F.3d 131, 139 (2d Cir. 1999), or having been "imposed at the culmination of a criminal proceeding and required a conviction of the underlying felony," or the penalty's not being able to be "imposed upon an innocent party." *Bajakajian*, 524 U.S. at 328. When the penalty is levied against a person in connection with a criminal sentence, there is "no threshold question concerning the applicability of" the Clause; such a penalty "is clearly a form of monetary punishment." *Alexander v. United States*, 509 U.S. 544, 558-59 n.4 (1993).

That settles the first element of Plaintiffs' claim here. Connecticut prison debt is automatically imposed upon people who are imprisoned by the state. Conn. Gen. Stat. § 18-85a(b); Conn. Agencies Regs. § 18-85a-2. And under Connecticut law, there is only one route to imprisonment: after conviction, by order of the superior court committing a person to the prison system, Conn. Gen. Stat. § 54-92a. No person who has *not* been convicted of a crime and imprisoned owes the debt. That is, the challenged debt is "imposed at the culmination of a

criminal proceeding and requires conviction" and may not be "imposed upon an innocent owner." *Bajakajian*, 524 U.S. at 328. The debts Plaintiffs challenge here are punitive, and are therefore 'fines' for purposes of the Clause.

a. Penalties Imposed After Criminal Proceedings, for which a Person Is Individually Liable, Are Always 'Fines,' and so Defendants Cannot Avoid the Clause by Casting Prison Debts as Remedial Forfeitures.

Alexander and *Bajakajian* established that—categorically—forfeitures for which a person is liable and which are imposed upon the guilty at the culmination of criminal proceedings are punitive (and therefore, a 'fine'), period.

Alexander first articulated the rule. After Ferris Alexander's conviction for tax, obscenity and RICO offenses, he was ordered to forfeit "certain assets that were directly related to his racketeering activity." 509 U.S. at 546. He raised an Excessive Fines Clause objection, and the Supreme Court found "no threshold question concerning [its] applicability." *Id.* at 559 n.4. As the Court held: "The *in personam* criminal forfeiture at issue here is clearly a form of monetary punishment no different, for Eighth Amendment purposes, from a traditional 'fine.'" *Id.* at 558.

Bajakajian elaborated, explaining that monetary penalties imposed directly upon a person in connection with a criminal proceeding have been "part of the punishment imposed for felonies and treason in the Middle Ages and at common law." 524 U.S. at 332. Accordingly, deprivations "imposed at the culmination of a criminal proceeding" which "require[] conviction of an underlying felony" and "cannot be imposed upon an innocent owner" of property are 'fines' as the Clause knows them. *Id.* at 328. *Compare Viloski*, 814 F.3d at 109 (applying *Bajakajian* to reject a government argument that a forfeiture "expressly linked to specific offenses" and imposed by a criminal proceeding could be deemed remedial), *with, e.g.*, *Ford Motor Credit v. N.Y.C. Police Dep't*, 394 F. Supp. 2d 600, 618 (S.D.N.Y. 2005) (no 'fine' in administrative fee

on seized vehicles where fine "applied universally, regardless of whether any given lienholder had responsibility for the allegedly illicit activity").

Defendants do not acknowledge the weight of controlling caselaw, or engage with it directly, to explain how prison debt could be anything but a 'fine' under *Alexander*, *Austin*, and *Bajakajian*. Nor do Defendants present any argument that *Alexander* and *Bajakajian* should be overruled. Instead, they suggest that Conn. Gen. Stat. §§ 18-85a, -85b, and -85c comprise remedial forfeitures for the "consequences of an individual's actions negatively impact[ing] the public fisc," *i.e.*, a person's incarceration. Defs.' Mot. at 31.[36] But there is no merit to viewing lawful conduct as a 'loss' to the state permitting remediation through forfeiture. Plaintiffs' service of their incarceration sentences represents compliance with Connecticut's penal code, not a deviation from it. So, unlike every remedial forfeiture case, the 'loss' for which Connecticut claims to compensate itself is attributable to the plaintiffs' obedience to the law, and the defendants' citations to remedial forfeiture cases are inapposite. *See United States v. Ortiz*, 182 F.3d 902, 902 (2d Cir. 1999) (summary order) (disgorgement of drug proceeds); *Abrahams v. Conn. Dep't of Social Servs.*, No. 16-cv-552, 2018 WL 995106, at *10 (D. Conn. Feb. 21, 2018) (recovery of the amounts "fraudulently obtained from the state of Connecticut").

Further, the bulk of what drives any given person's Connecticut prison debt is the actions of the government itself, making it impossible to conclude that a 'loss' of the Department of Correction may be attributed to the debtors. Plaintiffs and everyone like them have zero control over political decisions to spend more or less on prisons, including staffing levels and costly

[36] When it comes to remedial forfeiture, Quiros and Gilman do not contend that Plaintiffs' inheritances may be taken because wrongdoing can be attributed to the inheritances themselves. Nonetheless, they cite contraband seizure cases only applicable to such facts. *See, e.g., One Lot Emerald Cut Stones v. United States*, 409 U.S. 232 (1972).

overtime. Nor do they have any control over police, prosecutors, and judges in their decisions to charge imprisonment-bearing offenses, seek incarceration or the length thereof, or sentence people to prison. And, of course, incarcerated people lack a say in the number of days they would be responsible to pay Connecticut, since they are not at liberty to declare their sentences served and walk through the prison gates. Simply put, Connecticut cannot blame Plaintiffs for a debt-generating occurrence over which it exercises sole and plenary control.

Moreover, *Austin* forbids Defendants from treating fiscal penalties imposed at the culmination of criminal proceedings as relating to any societal cost for a criminal act. "The forfeiture of property is a penalty that has absolutely no correlation to any damages sustained by society or to the cost of enforcing the law." *Austin*, 509 U.S. at 621 (internal quotation omitted). Instead, any loss-payback for a criminal act must be calculated as restitution, tied tightly "to the bedrock principle that restitution should reflect the consequences of the defendant's own conduct," and calculated according to proof of a victim's losses as part of the criminal proceeding itself. *Paroline v. United States*, 572 U.S. 434, 454-5 (2014).[37] That is not what Conn. Gen. Stat. § 18-85a pretends to do. It simply lays claim to the present and future assets of

[37] *Paroline* is particularly instructive for being the only case to address a third-party causation-of-loss theory as unmoored as Defendants' here. Paroline was convicted of distributing a single-digit number of child pornography images depicting a person referred to pseudonymously as Amy. The relevant statute permitted the district court to order restitution for distress caused Amy by distribution of the images; Amy sought restitution of $3.4 million, 572 U.S. at 442, reflecting not just Paroline's distribution of her images, but "the entire aggregately caused" distress generated by all past and future distributions, whether involving Paroline or not. *Id.* at 454. The Supreme Court explained that Amy's theory was beyond the traditional boundaries of loss causation because "each possessor of [her] images would bear the consequences of the many thousands who possessed these images," *id.* at 453, making each "liable for the combined consequences of the acts of not 2, 5, or even 100 independently acting offenders, but instead, a number that may reach into the thousands." *Id.* at 454. The theory was "so severe it might raise questions under the Excessive Fines Clause." *Id.* at 455-56.

anyone Connecticut incarcerates, tying the amount of the forfeiture to the state's future spending, prosecution, and sentencing decisions.

b. Defendants' Selective Quotes from *Bajakajian* and the Legislative Record Do Not Trump Controlling Precedent.

Defendants' second disregard of governing caselaw comes in the form of their historical argument section. They pick scattered quotes from *Bajakajian* to give the impression that prison debt would not historically be treated as punishment. *See* Defs' Mot. at 30-32. But they avoid *Bajakajian*'s very conclusion: when a government lays claim to a person's property through "a criminal conviction of [the owner] personally" rather than a legal proceeding against the owner's property itself, "[t]he forfeiture serves no remedial purpose, is designed to punish the offender, and cannot be imposed upon innocent owners," thereby comprising "a 'fine' within the meaning of the Excessive Fines Clause." *Bajakajian*, 524 U.S. at 331–32, 334.

To the extent Defendants wished to argue the Supreme Court got it wrong, their failure to do so gives this Court no occasion to depart from precedent. Property forfeitures effected as part of a criminal proceeding are "clearly a form of monetary punishment no different, for Eighth Amendment purposes, from a traditional 'fine.'" *Alexander*, 509 U.S. at 558.

Finally, Defendants appeal to the legislative record, discerning some non-punitive purposes in the history of the challenged statutes. But even if the legislative record could be interpreted to conclude that the prison debt statutes were "primarily intended for the remedial purpose of reimbursing the state for some of the costs resulting from inmates' incarceration," Defs.' Mot. at 34, *Austin*'s bright line rule renders irrelevant such considerations. The only sanctions that are non-punitive (and hence, not 'fines') are those serving "*solely* a remedial purpose." *Austin*, 509 U.S. at 622, 610 (emphasis added).

Gilman and Quiros's appeal to a partial reimbursement motivation merely repeats the error of other defendants who failed to appreciate the force of *Austin*'s rule. In *Bajakajian*, for example, the United States tried the same approach, contending that the criminal forfeiture order contested there "also serve[d] important remedial purposes," even though it was imposed at the culmination of a criminal proceeding. *Bajakajian*, 524 U.S. at 329 (internal quotation omitted). That court rejected the argument, just as this one should: "Even if the Government were correct in claiming that the forfeiture of respondent's currency is remedial in some way, the forfeiture would still be punitive in part . . . This is sufficient to bring [it] within the purview of the Excessive Fines Clause." *Id.* at 329 n.4.

c. Cases That Apply the Double Jeopardy Clause Are Not Relevant to Plaintiffs' Excessive Fines Clause Challenge.

Lastly with respect to the fine-or-not inquiry, Gilman and Quiros cite numerous cases that do not involve the Excessive Fines Clause at all, apply the wrong standard, or discuss 'fines' in dicta. Not one of these cases provides a basis to avoid the conclusion that Connecticut prison debt comprises a 'fine.'

i. The Double Jeopardy Cases Defendants Cite Are Irrelevant.

The first group of such cases that Defendants cites rely on the Double Jeopardy Clause's test for 'punishment,' which is the opposite of the Excessive Fines one.

The Constitution's Double Jeopardy Clause prevents people "from being twice punished for the same offen[s]e," *Witte v. United States*, 515 U.S. 389, 396 (1995) (internal quotation omitted). so claims under it begin with an assessment of whether a challenged sanction comprises "criminal punishment." *Marcus v. Hess*, 317 U.S. 537, 549 (1943). The Ex Post Facto Clause is similarly predicated, as it guards against measures that "retroactively . . . increase the

punishment for criminal acts." *California Dep't of Corr. v. Morales*, 514 U.S. 499, 504 (1995) (internal quotation omitted).

To trigger the Double Jeopardy Clause, a penalty must be shown via "only the clearest proof" to be 'punishment' in either intent or effect, *Hudson v. United States*, 522 U.S. 93, 100 (1997) (internal quotation omitted). For Double Jeopardy, then, a mixed remedial and deterrent purpose or effect is insufficient to find 'punishment,' while for Excessive Fines, the same mixed purpose compels the conclusion. *Compare Hudson*, 523 U.S. at 105 ("[T]he mere presence" of deterrence "is insufficient to render a sanction criminal, as deterrence may serve civil as well as criminal goals") *with Austin*, 509 U.S. at 610 ("We need not exclude the possibility that a forfeiture serves remedial purposes to conclude that it is subject to the limitations of the Excessive Fines Clause.").

As the Excessive Fines Clause is "a constitutional provision which we never have understood as parallel to, or even related to, the Double Jeopardy Clause," *United States v. Ursery*, 518 U.S. 267, 286-87 (1996), cases dealing with the latter have nothing to do with the former. A challenged penalty can very well be 'punishment' for Excessive Fines purposes without comprising 'punishment' for Double Jeopardy ones, as illustrated by *Ursery* and *Austin*. Both cases challenged the same controlled substances statute, 21 U.S.C. § 881(a), and its authorization of property seizures. Ursery and his fellow respondent challenged it under the Double Jeopardy Clause, 518 U.S. at 271, 272, while Austin litigated under the Excessive Fines Clause. 509 U.S. at 604. Sure enough, the *Ursery* decision held that the statute was not 'punishment' for Double Jeopardy purposes, 518 U.S. at 292, while the *Austin* decision held that it was punishment for purposes of the Excessive Fines Clause. 509 U.S. at 622. Still, Gilman and Quiros cite *Ursery* and cases relying on it in support of their Motion.

Defendants also cite cases that wrongly apply the Double Jeopardy analysis to an Excessive Fines claim. These include a *pro se* Eighth Circuit table decision doing just that, *Blaise v. McKinney*, 187 F.3d 640, 640 (8th Cir. 1999) (table), notwithstanding a precedential decision from the same court faithfully keeping the two definitions of punishment separate. *United States v. Aleff*, 772 F.3d 508, 512 (8th Cir. 2014) (holding that a $1.3m False Claims Act award was "not punishment barred by the Double Jeopardy Clause," but was indeed "punitive for the purposes of the Excessive Fines Clause."). Defendants similarly cite a case wrongly applying Double Jeopardy cases to an Excessive Fines claim over prison fees, *In re Metcalf*, 963 P.2d 911, 919 (Wash. Ct. App. 1998), without making plain that a later Ninth Circuit decision explicitly identified the error and held—based on *Austin*—that the very same fees were 'fines' for Clause purposes. *Wright v. Riveland*, 219 F.3d 905, 916 (9th Cir. 2000).

No more useful or persuasive are cases identified by Defendants that quote from decisions in which the Clause was not raised or decided; in which a court decided a Clause claim without applying *Austin*; or in which a court summarily decided such a claim without analysis.[38]

[38] *See, e.g.*, *United States v. Village of Island Park*, No. 90-cv-992, 2008 WL 4790724, at *6 (E.D.N.Y. Nov. 3, 2008) (discussing False Claims Act's damages provisions, but relying solely on cases in which no litigant raised—and no court applied—the Excessive Fines Clause); *United States v. Bornstein*, 423 U.S. 303 (1976) (statutory interpretation challenge); *Stevens v. Vermont Agency of Nat. Res.*, 162 F.3d 195, 207 (2d Cir. 1998) (statutory interpretation challenge)).

Other cases are irrelevant because they do not involve Excessive Fines Clause claims *at all*.[39] And two provide no precedential value, although they contain mention of the Clause.[40]

ii. Cases Cited by Defendants Concerning the Excessive Fines Clause and Prison Debt Address 'Fines' in Dicta Perfunctorily.

Finally, Defendants cite a few cases involving challenges to modest prison fees which *do* purport to apply the Clause. But none reached the *Austin* analysis, and therefore none is persuasive authority. First, Defendants cobble together quotations from *Tillman v. Lebanon County Correctional Facility*, a Third Circuit case, as standing for the proposition that the prison debt laws challenged here are not 'fines.' But in that case, the Third Circuit expressly declined to rule on the Excessive Fines Clause's first prong and instead jumped directly to the second prong. The said nothing about *Bajakajian*, noted that the challenged jail fees might be partially punitive, then simply announced: "We need not reach that issue." *Tillman*, 221 F.3d 410, 420 (3d Cir. 2000).

The same dicta problems are present in *LeDuc v. Tilley*, No. 05-cv-157, 2005 WL 1475334, at *6 (D. Conn. June 22, 2005), in which this Court expressly concluded that it "need not at this time decide" the *pro se* plaintiff's Clause claim because no proper defendant was

[39] *See Stockwell v. United States*, 80 U.S. 531, 541, 550 (1871) (statutory interpretation); *Merritt v. Shuttle, Inc.*, 13 F. Supp. 2d 371, 383 (E.D.N.Y. 1998) (*pro se* plaintiff pleaded an Excessive Fines Clause violation but failed to allege that he had been assessed any monetary penalty); *Alexander v. Comm'r of Admin. Servs*, No. 468821, 2003 WL 22853652, at *4 (Conn. Super. Ct. Nov. 12, 2003) (Equal Protection claim), *affirmed*, 862 A.2d 851, 855 (Conn. App. Ct. 2004) (same); *State v. Strickland*, No. CV-00-803071-S, 2002 WL 31761963, at *4 (Conn. Super. Ct. Nov. 19, 2002) (discussing punishment in context of claim that prison debt was bill of attainder).

[40] In *United States v. Puello*, No. 92-cv-5040, 2016 WL 660879, at *3 (E.D.N.Y. Feb. 18, 2016), the court devoted a lone sentence to the Clause in denying reconsideration of a summary judgment decision that itself cited a single Depression-era case in which no constitutional issue was litigated. In *State v. Sebben*, No. HHD-CV15-5039364-S, 2018 WL 8582120, at *2 (Conn. Super. Ct. Apr. 19, 2018), the superior court uttered a single sentence striking a *pro se* Clause defense to prison debt collection without citing any case law.

named. *See also United States v. Leone*, 813 F. App'x 665, 669 (2d Cir. 2020) (summary order finding Clause objections unripe because defendant could seek exemption); *Hooks v. Kentucky*, No. 16-cv-187, 2016 WL 4180003, at *3 (W.D.Ky. Aug. 5, 2016) (pro se case that simply announced its view of what "[c]ourts have generally held," based on two cases that summarily referenced the Clause).

Benjamin v. Clark, No. 20-cv-1991, 2021 WL 391987, at *6 (M.D. Pa. Feb. 4, 2021) suffers from the same flaws. Mr. Benjamin litigated the Dauphin County Prison's practice of assessing certain fees; the court noted that a prior *pro se* case—relying on *Tillman*—had held the same fees at the same jail to comport with the Clause, thus in its view "foreclos[ing]" Benjamin's litigation. *Benjamin*, 2021 WL 391987, at *6. The prior *pro se* case simply reiterated *Tillman*'s dicta to conclude that modest daily fees that in part reimburse the government were not 'fines.' *Heim v. Dauphin County Prison*, No. 10-cv-1656, 2013 WL 1833777, at *5 (M.D.Pa. May 1, 2013).

In short, nothing that Quiros or Gilman cite in their Motion avoids the conclusion that Plaintiffs have satisfied the first element of their Clause claim by demonstrating that Connecticut prison debts are 'fines.'

2. Connecticut Prison Debt Is Per Se Excessive Because It Depends on the Actions of Third Parties, and Is Levied in Enormous Amounts that Dwarf the Maximum Applicable Statutory Fines.

Once the Court concludes—as it must—that Connecticut prison debt is a 'fine,' it must decide whether the fine is excessive. *E.g.*, *Viloski*, 814 F.3d at 108.

The "touchstone" of this inquiry is the relationship between the criminal conduct generating the conviction and the penalty the government extracts for it. *Austin*, 509 U.S. at 627 (1993) (Scalia, J., concurring) (emphasis added). The Supreme Court has said so in unmistakable

terms. *See Bajakajian*, 524 U.S. at 336-37 (directing the lower courts to resolve Clause claims by "compar[ing] the amount of the forfeiture to the gravity of the defendant's offense"); *Alexander*, 509 U.S. at 545 (remanding for consideration of the criminal forfeiture order at issue "in light of the extensive criminal activities the petitioner apparently conducted"). Thus, all subsequent cases applying the Clause to people convicted of crime use the conviction conduct as the denominator in the analysis—and not third-party, post-conviction conduct like a government's spending habits, or the size of its incarcerated population.[41]

Gilman and Quiros do not address that anomaly in the statutes they defend. Instead, they mechanically apply the factors distilled in *Viloski* to contend that Connecticut prison debt is constitutional. That exercise does no good here, because, unlike in *Viloski*, the challenged statutes base Plaintiffs'—and putative class members'—fiscal punishment on post-conviction conduct, *i.e.*, what the government decided to spend *after* the debtor was sentenced to prison. A government's post-conviction statewide budgeting and incarceration decisions are never commensurate with "the essence of the crime of the defendant," or with "the maximum sentence and fine" for that crime, or with "the nature of the harm caused by" the conviction conduct,

[41] *See, e.g.*, *Viloski*, 814 F.3d at 113 (summing forfeiture of funds skimmed through "a multi-year conspiracy . . . of money laundering, mail fraud, wire fraud, and related offenses"); *United States v. George*, 779 F.3d 113, 123 (2d Cir. 2015) (gauging forfeiture of home against conduct of "harbor[ing] an illegal alien in her home for more than five years in order to secure the alien's unauthorized labor"); *United States v. Castello*, 611 F.3d 116, 118-19, 122 (2d Cir. 2010) (weighing forfeiture of amount equal to the commission made on the transactions for which the defendant failed to file currency transaction reports); *United States v. Sabhnani*, 599 F.3d 215, 225, 262 (2d Cir. 2010) (comparing forfeiture of interest in home with having committed "harboring, peonage, forced labor, and document servitude" upon two women held in it); *United States v. Varrone*, 554 F.3d 327, 332 (2d Cir. 2009) (remanding for application of *Bajakajian* factors to defendant's failure to file currency transaction reports); *United States v. Elfgeeh*, 515 F.3d 100, 139 (2d Cir. 2008) (measuring forfeiture amount against defendants' having run a money-transfer operation without filing currency transaction reports).

because those governmental decisions are made later in time, and without reference to, that conduct. *Viloski*, 814 F.3d at 110.

The lone relation that Conn. Gen. Stat. §§ 18-85a, -85b, and 85c have to Plaintiffs' conviction conduct is once-removed at best, inasmuch as the statutes impose debt based on each year of imprisonment, and each debtor's sentencing judge is presumed to have considered the offense when picking the length of incarceration. Simply because a number is multiplied by the total days of incarceration does not relieve Defendants of justifying the other side of the equation: how many employees, prisoners, and dollars they choose to involve in their prison system each year.

Neither is it an answer for Defendants to impose post-sentence governmental decisions onto pre-sentence conduct and observe that there might be configurations in which the net effect of their debt calculations is lawful. *See* Defs.' Mot. at 39. Defendants' rationale might occasionally result in a total debt figure that does not appear outrageous (most likely, in the cases of people given short sentences for minor crimes). But that exercise is no better than comparing a person's conviction history to the results of a random number generator. It is constitutionally forbidden for the state to impose a fine unmoored from the conviction conduct for which the debtor was sent to prison in the first place.

Moreover, Gilman and Quiros's focus on the mechanics of the debt calculation obscures the Clause's concern with the substantive relationship between a penalty and the conduct for which it was imposed, however the number is reached. In the simplest form, a hypothetical statute straightforwardly imposing a $1 million penalty for each conviction count of the State's lowest-grade larceny offense might be said to appear calculated "in relation to the offense," since one merely multiplies the counts by the millions to reach the total penalty. *Austin*, 509 U.S. at

627 (Scalia, J., concurring). But the Clause is also concerned with the comparison between the "*amount* of the forfeiture . . . to the gravity of the defendant's offense." *Bajakajian*, 524 U.S. at 336-37 (emphases added). And no court is likely to consider a million dollar fine proportional to the taking of less than $500. *See* Conn. Gen. Stat. § 53a-125b (larceny of $500 or less).

The amounts that Connecticut's prison debt statutes obligate people to pay represent multiples of the maximum criminal fines that can be levied in the state's courts. When its prison debt laws took effect, Connecticut indebted prisoners at 1.6 times the maximum allowable felony fine for each year's imprisonment, and 16 times the maximum misdemeanor fine for the same period. Today, a single year of prison costs incarcerated people 4.5 times the maximum felony fine, and 45 times the highest permissible misdemeanor fine.[42] As such, Defendants' citation to the Third Circuit decision in *Tillman* compares apples to oranges. In that case—which reached only excessiveness—the challenged jail fees totaled just $10 a day, with Tillman contesting the approximately $4,000 in debt he owed by the end of his term. *Tillman*, 221 F.3d at 414. Connecticut's scheme, which currently heaps debt upon incarcerated people twenty-four times as quickly, leaves no question about its excessiveness.

Lastly, the single count that Ms. Tosado and her co-plaintiffs have asserted is not a mere quibble with how Connecticut spends its money. Their allegations about how Connecticut decides to fund incarceration, and make charging or sentencing decisions,[43] establish, for present procedural purposes, that the debt scheme they attack is disproportionate. None of those choices made by the elected branches or the judiciary involves any consideration of the past acts for which the plaintiffs were sentenced to prison. Thus, the resulting debt bears zero "relation to the

[42] Second Am. Compl. ¶¶ 125-127.
[43] Second Am. Compl. ¶¶ 101-115.

offense" for which plaintiffs now find their inheritances imperiled. *Austin*, 509 U.S. at 627 (1993) (Scalia, J., concurring). The motion to dismiss should be denied.

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