

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

TRE MCPHERSON, PATTIKATE WILLIAMS-VOID,
JOHN DOE, JOHN ROE, and THOMAS CAVES, *on*
behalf of themselves and all others similarly situated,
Plaintiffs,

v.

NED LAMONT and ROLLIN COOK, *in their official*
capacities,
Defendants.

Civil No. 3:20cv534 (JBA)

JULY 10, 2020

CLASS MEMBERS' OBJECTION TO CLASS ACTION SETTLEMENT

WHEREAS, we the people who are incarcerated in Connecticut correctional facilities are interested in resolving the present litigation only through a just and fair settlement that takes into account our interests in life, liberty, and due process of law in the time of COVID-19;

WHEREAS, the Connecticut Department of Correction ("DOC") has failed to protect people in their custody from reckless exposure to Coronavirus Disease 2019 (COVID-19) within correctional facilities, resulting in more than 10% of the population getting infected and resulting in the deaths of at least eight individuals;

WHEREAS, despite DOC's public statements and the statements in the Settlement Agreement and General Release in this lawsuit, DOC, its employees, and its agents continue to recklessly disregard guidelines for the management of COVID-19, including by making no meaningful effort to ensure that policies, procedures, and guidelines are being followed;

WHEREAS the Settlement Agreement dated June 6, 2020, in the case entitled *McPherson, et al. v. Lamont, et al.*, No.3:20-cv-0534-JBA (D.Conn. 2020), fails to redress the unconstitutional

conditions of confinement of thousands of individuals whose interests are meant to be represented by the Settlement Agreement;

NOW, THEREFORE, the undersigned individuals in DOC custody object to the Settlement Agreement as follows:

I. FACTS ON THE GROUND

We feel the need to correct the misimpression created by the Settlement Agreement's statements about DOC's alleged efforts to prevent the spread of COVID-19 within its facilities. Specifically, we have observed the following:

- Even before the onset of COVID-19, CT-DOC has had a long history of inflicting abuse and violence against incarcerated people, denying them medical care and communication with the outside world, and lying to the public about the conditions inside its facilities.
- For months, DOC has used the threat of torture via solitary confinement, especially at the notorious Northern Correctional Institution, to intimidate incarcerated people into not reporting COVID-19 symptoms.
- State courts have consistently rejected incarcerated people's motions for bail reductions and sentence modifications throughout the pandemic, frequently providing little or no justification for the rejections.
- Almost all applications for medical parole and compassionate release have been denied.
- With the re-opening of the state of CT, the number of people in pretrial detention facilities has been steadily increasing.
- People who have contracted COVID-19 in DOC have been denied treatment, testing, and access to medical care. Many who tested positive were sent to Northern, a torture facility,

where they have been denied contact with their families and lawyers. For months, testing involved only temperature checks, but not viral swabs or antibody tests.

- Throughout the pandemic, Correction Officers have been refusing to wear masks inside the facilities, leading to the infection and death of incarcerated people.
- Plumbing issues, dilution of cleaning supplies, and lack of professional cleaning have generated a total lack of sanitation, especially in jail facilities, leading to increased transmission.
- Despite telling the public otherwise, DOC has not offered weekly soap provisions to incarcerated people.
- Many incarcerated people, especially those in pretrial detention, have been unable to access legal representation or information.
- The numbers of incarcerated people infected with COVID-19 have been deflated by DOC through the use of viral tests instead of antibody tests.

II. ARGUMENT

1. BECAUSE THE CURRENT SETTLEMENT AGREEMENT IS UNFAIR AND INADEQUATE, WE MAKE THE FOLLOWING DEMANDS

The provisions of the Settlement Agreement are inadequate to represent our interests. We do not believe that a class action settlement will be fair or adequate unless it contains the following provisions modifying the agreement:

- The State of CT must offer a public apology to incarcerated people and their families for its history of human rights abuses.
- To address overcrowding and over-punishment, the State of CT must initiate large-scale decarceration, releasing at least 50% of incarcerated people before the end of 2020.

- The State of CT must stop denying applications for Parole, Transitional Supervision, halfway house eligibility, and other avenues for release. These large-scale releases must not be used to justify expanding oppressive surveillance systems over formerly incarcerated people.
- The State of CT must reduce public expenditures on incarceration by 50% in 2020, and must allocate the cost savings towards housing, healthcare, and employment for formerly incarcerated people and their families.
- The State of CT must establish an independent body and a new process to review Sentence Modification motions and other similar motions for release. This body should not include prosecutors and/or law enforcement.
- The State of CT must increase funding and oversight mechanisms to dramatically improve healthcare resources for incarcerated people.
- The State must implement a grievance procedure for incarcerated people who seek to report medical abuse and neglect, overseen by an independent agency outside of DOC.
- The State of CT must dramatically increase access to legal services and information for incarcerated people. This should include the creation of legal resource centers in every facility across the state.
- The State of CT must implement a new investigative body and grievance procedure that incarcerated people can follow to seek redress for misconduct and violence perpetrated by CT-DOC and other state agencies. This body should be independent and should reflect the voices and interests of impacted communities.

- The State of CT should provide after-care resources, including housing, for people who are released from its custody after having contracted COVID-19 while incarcerated.
- The State of CT should make high-quality cleaning products and PPE available to all incarcerated people. The State should publicly apologize for lying about the provision of PPE.
- DOC should institute a penalty in the form of a monetary fine against Correctional Officers who are found not wearing a PPE mask.

2. THE PARTIES SHOULD BE REQUIRED TO RETURN TO THE NEGOTIATING TABLE TO TAKE INTO ACCOUNT OUR DEMANDS

No evidence has been presented and no formal discovery has taken place in this case. The hearings in this matter were continually continued until the settlement was reached. The settlement directs its most meaningful relief to a small section of the class membership, which comprises more than 10,000 individuals. We humbly submit that the procedure for the negotiation of this settlement was inadequate and that the parties should return to the negotiating table with a process that includes the voices of people who are incarcerated.

3. IF OUR OBJECTIONS ARE NOT MET, WE ASK TO OPT-OUT

This Court has the discretion to allow individuals to opt-out of membership in a class action, even a mandatory Rule 23(b)(2) class action. *See McReynolds v. Richards-Cantave*, 588 F.3d 790, 800 (2d Cir. 2008) (citing, *inter alia*, *Eubanks v. Billington*, 110 F.3d 87, 93 (D.C. Cir. 1997) & *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295 (2d Cir.1990)). The decision to allow an opt-out from a mandatory class action is reviewed for abuse of discretion. *In re Joint E. & S. Dist. Asbestos Litig.*, 14 F.3d 151, 156 (2d Cir. 1994) (approving of opt-out in mandatory class action as within discretion of trial court).

We are under 65 years old and do not have medical scores of 4 or 5 within DOC facilities.

We do not believe that the settlement agreement's provisions regarding CDC guidelines, monitoring, testing, or sanitation provide us with any meaningful protection from the constitutionally intolerable conditions within DOC's facilities. We do not believe that these measures are worth denying us the ability to seek justice in Court through a petition for a Writ of Habeas Corpus or by seeking relief in our pending Habeas Corpus cases.

III. CONCLUSION

WHEREFORE, objectors pray for relief in the nature of a Court order:

- (1) modifying the settlement agreement to include our demands;
- (2) rejecting the settlement agreement as unfair and inadequate; or
- (3) allowing the undersigned objectors to opt-out of the settlement.

Respectfully Submitted,

PEOPLE WHO ARE INCARCERATED IN CONNECTICUT

CARL ROBINSON CI

DARRELL A. FLOYD
DOC # 100071