

Lawsuit over solitary confinement in limbo as state pushes for mediation

Attorneys for prisoners want the lawsuit to go on. A federal judge heard arguments Thursday.

JUSTICE :: by KELAN LYONS | APRIL 30, 2021 | "EXIT CLEAN READ"



KELAN LYONS :: CT MIRROR

Northern Correctional Institution, in Somers, will close by July 1.

State attorneys and lawyers representing incarcerated people with mental health conditions argued Thursday over how to proceed in a lawsuit filed in February seeking to prohibit the use of in-cell shackling and solitary confinement of individuals with mental illnesses.

The state wants the case to be suspended while they try to mediate the lawsuit outside the bounds of litigation and await a court ruling on their motion to get the case dismissed, while attorneys for the incarcerated want the negotiations and lawsuit to proceed in tandem.

Lawyers for the Attorney General's office say the timing is ideal for the parties to mediate the dispute, considering the imminent closure of Northern Correctional Institution – the Somers prison that was the subject of the original lawsuit before attorneys amended their complaint following the announcement that it would close this summer – and the potential passage of a bill that would largely end the practice of solitary confinement. After all, the lawyers said, there were only 43 people at Northern as of Wednesday night; every day, prison officials are transferring people to other correctional facilities.

“It’s a good time for them to come to the table if they have specific concerns about constituents at Northern as they transition [to another prison],” Edward Rowley, assistant attorney general, said in a Zoom hearing Thursday.

Attorneys for the incarcerated, meanwhile, argue that in-cell shackling is a “fairly black and white issue.” They want a pledge for systemic change before they take a seat at the negotiating table.

“The issue is, are mentally ill prisoners going to be subject to in-cell shackling without the supervision of mental health staff?” said Kyle Mooney, an attorney for Morrison & Foerster LLP, who is representing Disability Rights Connecticut alongside the ACLU of Connecticut and the Yale Law School’s Lowenstein International Human Rights Law Clinic. “If we get some sort of a signal from the DOC that they’re willing to discuss the potential end to that process, sure, we’ll sit down and discuss that.”

Lawyers made their case to U.S. District Judge Kari A. Dooley Thursday afternoon. The federal judge did not issue a ruling but acknowledged that the use of isolated confinement and in-cell shackling will continue once Northern is closed.

“Whether it’s at Northern or somewhere else, I think there’s no question that these issues are going to persist,” Dooley said. “For me, the question is, what’s the quickest way to get the issues resolved?”

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The conditions

The lawsuit claims the state discriminates against prisoners with mental illnesses by failing to modify DOC procedures so individuals with mental health conditions can access programs, services and opportunities that their incarcerated peers have. It alleges the DOC regularly incarcerates people with mental illnesses at Northern, confining them to their concrete cells for up to 24 hours per day, in a “world of near total social and sensory deprivation.” The conditions often lead to self harm. People incarcerated there bang their heads against the wall, cover their cells in excrement or stab themselves. Some try to kill themselves.

The DOC often responds by performing cell extractions – removing the prisoner from their cell – and then placing them into in-cell shackling. They are then placed in cold concrete “strip cells,” left alone but still shackled. It is not unusual for people confined there to develop skin rashes and infections.

The shackled are served food in Styrofoam cups without utensils.

“Many prisoners are unable to even lift a cup to their mouth because of the shortness of the tether chain; in these instances, the only way for them to consume the contents of the cup is to dump it out on the bed or floor and eat like a dog,” the lawsuit alleges.

In his confirmation hearing in January, Commissioner Angel Quiros pledged to reform the DOC’s “restrictive status program, to reduce unnecessary restrictions, while providing more rehabilitative programming in a matter that continues to prioritize the safety and security of our staff and the incarcerated population” once the pandemic is over.

The attorneys for the incarcerated claim the DOC has not yet revised its policies on in-cell shackling and prolonged isolation.

“To the contrary, in response to Northern’s fluctuating population and outside scrutiny, DOC has periodically shifted parts of the Isolative Statuses to other prisons, including Cheshire Correctional Institution, Corrigan Correctional Institution, Garner Correctional Institution, and Walker Correctional Institution,” the lawyers wrote in an amended complaint filed Feb. 18. “DOC has also run parallel programs for women at York Correctional Institution and for young people at Manson Youth Institution.”

Even when Northern closes, the complaint reads, Disability Rights Connecticut’s constituents “will remain in DOC custody and remain subject to and/or at imminent risk of prolonged isolation and in-cell shackling in other

Connecticut state correctional institutions.”

The state, meanwhile, is trying to get rid of the case. They filed a motion to dismiss it, along with a motion that would prevent any discovery in the case until the court rules on whether to dismiss the lawsuit.

The state claims Disability Rights Connecticut has not exhausted its administrative remedies and that they didn't give state officials enough details or time to respond to a letter the attorneys sent them before filing the lawsuit.

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“Given the broad allegations outlined in the letter, the lack of specific examples of inmates with mental illness presently subjected to such conditions, and the need for DOC to review the claims and provide a substantive response, it cannot be said that DRCT gave DOC a reasonable opportunity to respond and attempt to mediate the issues through administrative channels,” Rowley and Terrence M. O’Neill, assistant attorney general, wrote in a March 12 court filing. “In fact, the actions of DRCT in filing this lawsuit less than a month after DOC received DRCT’s letter, despite DOC’s indication that a substantive response was forthcoming, indicates that DRCT had very little interest in engaging with the defendants through administrative channels in an attempt to mediate any of the identified issues.”

They also claim that the original lawsuit dealt specifically with facts from Northern. The prisoners named in the lawsuit were all at Northern, there were extensive photographs and descriptions of Northern’s alleged affect on people incarcerated there, and the allegations specifically centered on certain practices at the Somers prison.

“The Amended Complaint is virtually bereft of any factual allegations regarding specific incidents or other examples of interactions between inmates and staff from which a meaningful response could be offered,” Rowley and O’Neill wrote. “In short, DRCT’s complaint is less a pleading and more a press release.”

Discovery

The state wants the lawsuit to essentially be put on pause while they await a ruling on the motion to dismiss. On March 25, attorneys filed a motion to stay discovery, an exchange of documents that could provide clarity on the DOC's transition plans for prisoners transferred from Northern, and the department's use of isolated confinement and in-cell shackling.

State lawyers argued DRCT is seeking "broad and extensive discovery in this matter," which would put a "substantial" burden on the state if the discovery stay wasn't granted. The whole process could take more than a year to complete, attorneys said.

"The defendants would be forced to be subjected to expansive discovery on extremely broad and generalized issues, which do not have the benefit of being narrowed or more focused through administrative channels," Rowley and O'Neill wrote.

In fact, the attorneys note, on March 24, DRCT served the state with several written discovery requests, including 90 requests for production of documents, 17 interrogatories directed at each defendant and a request to inspect Northern.

"As demonstrated by DRCT's proposed discovery needs, as well as the expansive written discovery recently served, the defendants would face substantial burdens and expenses in responding to and being subjected to such expansive discovery if a stay is not granted," Rowley and O'Neill wrote.

Attorneys for the incarcerated strongly disagreed. "Defendants' claim that a stay will 'benefit' DRCT betrays a stunning disregard for the barbaric conditions that Defendants continue to subject prisoners with mental illness to even as this motion is briefed," they wrote in a filing on April 5, calling the state's proposal for the parties to resolve the disputes through administrative channels a "ruse" since 132 days have passed without a "substantive response" to DRCT's letter demanding the state stop subjecting prisoners with mental illness to prolonged isolation and in-cell shackling.

The legislative session ends June 9. If legislators pass the PROTECT Act, the lawsuit's focus could be narrowed, Dooley said – not to mention that Northern will be closed in less than 90 days.

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“It’s not clear to me that, A, the stay would do much by way of harm and, B, it might actually be a productive use of everybody’s time,” Dooley said.

“‘Tell us that we’re going to get everything we want and then we’ll come to the table,’ is not really a productive response,” Dooley told the attorneys for the incarcerated. “Whose definition of prolonged isolation are we talking about? I mean, I think what the DOC is saying is, ‘Yes, we want to talk about these things, but it’s a little more complicated than just saying, you know, we agree wholesale, so let’s get together to figure out how to do it.’”



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