

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

RAFIQ SABIR,
Plaintiff,

v.

D.K. WILLIAMS, WARDEN FCI
DANBURY, et al.,
Defendants.

NO. 3:17-cv-749 (VAB)

JULY 12, 2019

**SECOND MOTION TO SUPPLEMENT MOTION TO DISMISS
TO ADD MOOTNESS AS A NEW GROUNDS FOR DISMISSING
PLAINTIFF SABIR'S CLAIMS FOR EQUITABLE RELIEF**

Defendants D.K. Williams, former Warden, FCI Danbury, Herman Quay, former Warden, FCI Danbury,¹ and Hugh J. Hurwitz, acting director of the Bureau of Prisons, move pursuant to Fed. R. Civ. P. 15(d) to amend their pending motion to dismiss (doc. #54) to add a new grounds for the dismissal of moot claims by plaintiff Rafiq Sabir (“Sabir”). The basis for this motion is new factual circumstances that bear directly on Sabir’s ability to bring claims for equitable relief against the named defendants for the conduct alleged in the Second Amended Complaint (doc. #41). Defendants have raised this motion at the first practicable opportunity. Defendants filed an essentially identical motion with respect to plaintiff Conyers on June 21, 2019 (doc. #72).

Federal Rule of Civil Procedure 15(d) permits, “[o]n motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.”

Defendants move to supplement their motion to dismiss because Sabir was transferred from FCI Danbury, where the conduct alleged in the Second Amended Complaint occurred, to

¹ The current Warden of FCI Danbury is M. Licon-Vitale.

another federal correctional facility, this week. As described in the attached Declaration, Sabir is currently designated to MDC Brooklyn, a Bureau of Prisons facility located in Brooklyn, New York. Ex. 1, C. Magnusson Decl. ¶ 3 (July 12, 2019) (citing Exhibit A). “Sabir is being housed at MDC Brooklyn in a ‘holdover for institution to institution transfer’ status, as he has been redesignated to another BOP facility.” *Id.* As Ms. Magnusson’s declaration explains, “[o]n or about March 21, 2019, a request to transfer inmate SABIR under terms of a Code 323 ‘Close Supervision’ transfer was initiated as a result of his participation in a food strike in February, 2019.” *Id.* ¶ 4 (citing Exhibit B). The “Code 323 ‘Close Supervision’ transfer was ordered by the Warden of FCI Danbury on July 9, 2019.” *Id.* ¶ 5 (citing Exhibit C). “In accordance with this order, SABIR left FCI Danbury aboard BOP transportation on July 10, 2019 and arrived at MDC Brooklyn that same day. Due to security concerns SABIR’s final destination cannot be disclosed until he reaches his assigned institution; accordingly, this information has been redacted from” Exhibit C. *Id.*

“In this circuit, an inmate’s transfer from a prison facility generally moots claims for declaratory and injunctive relief against officials of that facility.” *Salahuddin v. Goord*, 467 F.3d 263, 272 (2d Cir. 2006); *Prins v. Coughlin*, 76 F.3d 504, 506 (2d Cir. 1996) (“It is settled in this Circuit that a transfer from a prison facility moots an action for injunctive relief against the transferring facility.”); *Young v. Coughlin*, 866 F.2d 567, 568 n.1 (2d Cir. 1989)); *see also McIntosh v. United States*, No. 15-cv-2442 (KMK), 2018 WL 1275119, at *8 (S.D.N.Y. Mar. 7, 2018) (dismissing claims for injunctive relief as moot due to plaintiff’s transfer and release from custody); *Johnson v. Killian*, No. 07 CIV 6641 NRB, 2013 WL 103166, at *3 (S.D.N.Y. Jan. 9, 2013) (dismissing claims for declaratory and injunctive relief as moot due to prisoner’s transfer).

As defendants addressed at oral argument on the pending motion to dismiss (doc. #73), Plaintiffs' Second Amended Complaint (doc. #36) ("Complaint" or "Compl.") against the official capacity defendants challenges FCI Danbury's Institution Supplement under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, *et seq.*, and the First Amendment's protection of the free exercise of religion. Compl. ¶ 3 (citing FCI Danbury Institution Supplement), ¶ 30 (quoting FCI Danbury Institution Supplement), ¶¶ 30-54 (describing alleged violations caused by application of the FCI Danbury Institution Supplement).

Because plaintiffs are no longer incarcerated at FCI Danbury, and the prison's Institution Supplement no longer applies to them, there is no longer any "case or controversy" with respect to their challenge to FCI Danbury's policy. Therefore, plaintiffs' claims for injunctive and declaratory relief against the policy are moot.

Accordingly, defendants move to supplement their motion to dismiss to raise the new grounds that Sabir's claims for declaratory and injunctive relief against defendants in their official capacities are moot.²

Respectfully submitted,

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² Plaintiff Sabir's ability to bring damages claim against the individual capacity defendants is not affected by his transfer; however, those claims are subject to other challenges previously briefed.