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July 15, 2020

Via ECF Filing

The Honorable John A. Woodcock, Jr.
United States District Court
for the District of Maine
Edward T. Gignoux U.S. Courthouse
156 Federal Street
Portland, ME 04101

Re: *Denbow v. Maine Department of Corrections*
Docket No. 1:20-cv-00175-JAW

Dear Judge Woodcock:

I represent Respondents Maine Department of Corrections and Randall Liberty in the above action. I write with regard to Respondents' pending motion to dismiss this action (ECF No. 31).

In order to avoid delay in resolution of the motion, Respondents do not intend to seek leave to file a reply. *See* Order on Joint Proposed Scheduling Order at 2 (ECF No. 29). Respondents do wish, however, to apprise the Court of new factual and legal developments that have occurred since the motion was filed on June 22, 2020:

First, on July 14, 2020, the Superior Court in *Denbow v. State of Maine*, Docket No. CR-20-226, dismissed Petitioner Denbow's petition for post-conviction review for failure to exhaust administrative remedies. A copy of that decision is attached as **Exhibit A**.

Second, on June 25, 2020, the same court issued a decision denying Petitioner Denbow's motion for bail. A copy of that decision is attached as **Exhibit B**.

Third, since Respondents filed their motion, a number of federal district courts have dismissed or recommended dismissal of COVID-19 related federal habeas petitions for failure to exhaust. *See, e.g., Sisco v. Stanislaus County Sheriff's Dep't*, No. 1-20-CV-00947, 2020 WL 3893396, at *2 (E.D. Cal. July 10, 2020) (recommending

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dismissal of COVID-19 related petition under §2254(b) where petitioner did not file a state-court appeal or present his claims to the California Supreme Court); *Harrison v. Wolcott*, No. 20-CV-6270, 2020 WL 3871345, at *1 (W.D.N.Y. July 9, 2020) (dismissing COVID-19 related petition under §2254(b) because petitioner did not pursue state-court remedies and state courts remained open to hear emergency petitions); *Valenzuela v. Keyser*, No. 19-CV-3696, 2020 WL 3839697, at *4 (S.D.N.Y. July 8, 2020) (dismissing COVID-19 related petition under §2254(b) in part because state courts had considered and resolved other COVID-19 related petitions); *Fahr v. Arizona*, No. CV-20-08114, 2020 WL 3791535, at *2 (D. Ariz. July 7, 2020) (dismissing COVID-19 related petition under §2254(b) because petitioner did not pursue state-court remedies and did not show that exhaustion should be waived); *Sosby v. Brown*, No. 2:20-CV-80, 2020 WL 3786177, at *3 (W.D. Mich. July 7, 2020) (holding petitioner failed to exhaust under §2254 where state-court remedies were available for his COVID-19 related claims and petitioner failed to demonstrate those remedies were ineffective); *Most v. Watson*, No. 20-CV-493-NJR, 2020 WL 3544985, at *2 (S.D. Ill. June 30, 2020) (dismissing COVID-19 related petition under §2254(b) because petitioner had available state-court remedies and the record did not allow a conclusion that they would be ineffective); *Day v. Gonzalez*, No. CV 4:20-1301, 2020 WL 3504467, at *2 (S.D. Tex. June 29, 2020) (dismissing COVID-19 related petition under §2241's non-statutory exhaustion requirement where pre-trial detainee petitioner had pending state-court motion for bond reduction and had not alleged facts supporting a finding that state courts were unavailable); *Stewart v. Dep't of Corr.*, No. 20-CV-2136, 2020 WL 3415768, at *3 (E.D.N.Y. June 22, 2020) (dismissing COVID-19 related petition under §2254(b) in part because, despite a pandemic-related delay of several weeks, the state action was now moving forward).

We appreciate the Court's consideration of the above matters.

Sincerely,

/s/ Jonathan R. Bolton

Jonathan R. Bolton
Assistant Attorney General

cc: All counsel of record (via ECF)