

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: _____

_____, Plaintiff

v.

JARED POLIS, et al., Defendants.

RESPONSE TO GOVERNOR POLIS' MOTION TO DISMISS

The Plaintiff, _____, pro-se herewith responds to Governor Polis' Motion to Dismiss, (hereafter, "Motion"), DOC # (Document No.) _____, filed on _____ (date) by Defendant Jared Polis, Governor of the State of Colorado and the State's Supreme executive, with ultimate authority over the executive agencies under his control, especially the Colorado Department of Corrections ("CDOC"). The Defendant Governor's Motion must be denied, and for cause the Plaintiff states as follows:

I. INTRODUCTION

The Plaintiff's operative complaint, _____ (e.g., Prisoner Complaint DOC 1, or Amended Prisoner Complaint DOC #____, etc.)(hereafter, "Complaint") brings claims for violations of his Constitutional rights. These are the Eighth Amendment proscription against denial of prescribed mental health care — medical care — to a prisoner, and the Fourteenth Amendment's proscription against denial of substantive and procedural due process that results from refusal of access to Sex Offender Treatment and Monitoring Program (SOTMP) services which is a statutory mandate under C.R.S. §16-11.7-101 et seq. and the Sex Offender Lifetime Supervision Act ("SOLSA").

The Plaintiff is a prisoner of the State of Colorado held by the CDOC. He was convicted of a sex offense and sentenced to a []determinate / []indeterminate number of years in prison. A psychosexual evaluator has seen the Plaintiff and diagnosed him with a sex specific mental health disorder and prescribed him SOTMP as treatment. Through policy and staffing decisions controlled by the Defendant Governor, the Plaintiff has been refused necessary care.

II. PROCEDURAL HISTORY AND FACTS OF THE CASE

The Plaintiff was convicted of: _____

_____ on _____ (date).
He was sentenced to ____ years to life — an **indeterminate** sentence — guilty of a sex offense under CRS §§18-1.3-1001 — 18-1.3-1012, or "SOLSA". The Plaintiff is statutorily required to undergo treatment to the extent appropriate based upon an evaluation and diagnosis conducted by a licensed mental health clinician at the CDOC, as is mandated by CRS §§18-1.3-1006(1)(a) and 18-1.3-1009(b), "...successfully progressed in treatment..." which has been construed to mean **completed** treatment for all intents and purposes by CDOC and by the named Defendants specifically.

The Plaintiff has been refused access to the prescribed mental health treatment, SOTMP, and he suffers with the symptoms of his disorder every day.

The Plaintiff's PED is/was: _____ (date).
This Plaintiff has no MRD on account of the "to life" SOLSA sentence. Without access to SOTMP, the Plaintiff is denied any meaningful parole eligibility; he will languish in prison indefinitely, in effect until his death.

On _____ (date), the instant Complaint was filed by the Plaintiff. This Response is timely filed on or before 21 days following the filing of the Motion to Dismiss, or on or before any date set by the Court following a Motion to Expand Time to Respond filed by the Plaintiff: _____ (date Response due).
This Response is timely filed.

Other procedural events or relevant case facts include:

III. STANDARD OF REVIEW

In order to defeat a Motion to Dismiss, the Plaintiff's Complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A plausible claim is one that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court must accept as true all well-pleaded factual allegations, and those allegations must be construed in the light most favorable to the Plaintiff. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The Plaintiff's complaint "must include enough facts to nudge his claims across the line from conceivable to plausible." *Twombly*, supra.

The Plaintiff's Complaint is entitled to liberal construction so as to do substantial justice. *Erickson v. Pardus*, supra.

IV. OFFICIAL CAPACITY CLAIMS FOR DAMAGES

The Plaintiff acknowledges that the U.S. Constitution Eleventh Amendment does not permit a citizen to sue a state in federal court for damages absent a waiver. The Plaintiff Acknowledges that an Official Capacity claim against a state agent represents only another way of naming the state itself. *Monell v. Dept. of Social Services*, 436 U.S. 658, 689, n. 55 (1977). To the extent the Court may determine that the Plaintiff has asserted and has not voluntarily dismissed any **damages** claims against the State in a previous motion, any claim for damages via a Defendant's official capacity, he does not argue against the dismissal of that claim.

The Plaintiff continues to assert official capacity claims for injunctive and declarative relief, or any further available relief. He continues to assert all individual capacity claims that have been made in the Complaint.

V. EIGHTH AMENDMENT DELIBERATE INDIFFERENCE
TO A SERIOUS MENTAL HEALTH CARE NEED

Defendant Polis moves this Court to dismiss Claim Three -- Deliberate Indifference to Serious Mental Health Care Need under the Eighth Amendment on the grounds that: The Plaintiff has failed to plead a plausible claim; The Defendant is entitled to Eleventh Amendment immunity; The Defendant has not personally participated in the denial of care to the Plaintiff; the claim is barred by the Prison Litigation Reform Act ("PLRA"); and a grasscatcher any-other-grounds-for-dismissal-raised-by-any-other-defendant defense. Each of these arguments must fail.

a. Notice of Related Cases

The Defendant Governor has keenly noticed that a number of very similar complaints have been filed in this District by many other prisoners held by the CDOC. See Notice of Related Claims. This should be no surprise to the State's Governor. There has been a constant stream of litigation from prisoners demanding access to SOTMP beginning with its inception. The CDOC has reported that it imprisons 3522 "S5" prisoners who require sex offender treatment as a component of their sentences, or to whom the CDOC refers to the program. (Colorado Division of Criminal Justice Department of Public Safety. (2023). Sex Offender Management Board (SOMB) / Department of Corrections (DOC) Treatment Solutions Work Group Report, p. 17) An "S5" is any prisoner with any conviction of a sex offense as defined by C.R.S. §16-11.7-102. (AR 700-19(IV)(B)) This number can only have grown in the intervening years because the CDOC does not provide SOTMP as quickly as the state's prosecutors churn-out convictions against defendants for sex crimes in Colorado courts.

The Motion also argues a "grasscatcher" grounds for dismissal in which the Defendant Governor "...hereby joins and adopts by reference all generally applicable arguments from any Defendant's motion to dismiss..." Following suit, this Plaintiff hereby joins and adopts by reference all generally applicable arguments from any Plaintiff's responses to corresponding motions to dismiss,

b. The Plaintiff's claim is plausibly pled.

The Plaintiff has pled sufficient facts for this Court to infer that he has suffered an injury as a result of the denial of sex offender treatment that is a result of policy and staffing decisions made by the Defendant Governor. Plaintiff incorporates by reference as is set forth in full here the FACTUAL BACKGROUND section, pages 8 and 9, of the Complaint.

The Plaintiff has indicated that he was diagnosed with a sex-specific mental health need and that sex offender treatment (SOTMP) was prescribed as treatment. This averment of fact is well-pled and sufficient to fulfill the requirement that he show "he suffers from a serious mental disorder." *Riddle v. Mondragon*, 83 F.3d 1197, 1204 (10th Cir. 1996).

The Plaintiff indicates that his mental health needs result in symptoms that are "actual pain and distress" and are "a form of torture if untreated." (Complaint, ¶38) The Plaintiff describes at length the physical symptoms — considerably painful and harmful symptoms — suffered by untreated sex offenders. The Plaintiff is an untreated sex offender.

The Defendant Governor fails to see the import of these facts. His Motion alleges that the Complaint says that the Plaintiff is mentally ill by dint of his conviction. The Plaintiff never claims that he is mentally ill because a jury (or plea agreement) found him guilty of a sex crime. Neither a jury nor judge is afforded diagnostic authorities, nor may either prescribe treatment. The Plaintiff alleges that a "psychosexual evaluator" with a credential through the Department of Regulatory Agencies (DORA) has diagnosed him and prescribed sex offender treatment, SOTMP. (Complaint, ¶¶4, 15) The Motion alleges that the Plaintiff claims only emotional harm or psychological distress. The Plaintiff never claims that he suffers only emotional harm or mere psychological distress. The Plaintiff alleges physical symptoms and pain. He offers the Court an affidavit UNDER SEAL outlining his specific symptoms, asserting HIPAA privacy rights. (Id. @ ¶40) Plaintiff has no obligation to prove his symptoms at the Motion to Dismiss stage of litigation, his well-pled averments

are accepted as true.

The Defendant Governor's misplaced attack is most concerning because the upshot of his Motion is that the Plaintiff is not ***REALLY*** mentally ill. This is shocking because if the Plaintiff is not mentally ill and has not been diagnosed with a mental illness, what purpose does sex offender treatment serve? It is unethical to prescribe treatment to a patient who has not been duly diagnosed. (See: American Psychological Ass'n (APA) (2017) Ethical Principles of Psychologists and Code of Conduct, Standards 1.01, 1.02, 9.01, and 10.01). This clumsy assertion by the Defendant Governor is a confession that the State's Statutes may be unconstitutional.

The bottom line is a simple either-or proposition: The Plaintiff is a duly diagnosed and untreated sex offender mental health patient; or the State's sex offender laws — especially SOLSA — are totally unconstitutional.

Involuntary confinement and treatment of sex offenders as based on a determination of a "mental abnormality", "mental illness", or "personality disorder", was found to be constitutional in *Kansas v. Hendricks*, 521 U.S. 346 (1997). Colorado's sex offender statutes are couched in the language of mental health diagnosis and treatment. (Complaint, ¶¶10-14) The holding in *Hendricks*, supra, was used to uphold the constitutionality of Colorado's statutes and the sex offender treatment model for Colorado criminal defendants convicted of sex offenses. *People v. Dash*, 104 P.3d 286, 291 (Colo. App. 2004) The Plaintiff has presented sufficient fact to evince he has been diagnosed with a serious medical — mental health — condition which requires treatment.

To state a plausible 8th Amendment claim, the Plaintiff must meet both objective and subjective prongs of a Sealock analysis. "The objective component is met if the deprivation is 'sufficiently serious'... (one that has been diagnosed by a physician as needing mandatory treatment...)." "The subjective component is met if a prison official 'knows of and disregards an excessive risk to inmate health or safety.'"

To be sure, Defendant Polis is not a prison guard, a prison

psychotherapist, or even the warden. He is the state's governor. As the governor, the "CDOC is an executive agency directly within the Governor's control." *Raven v. Polis*, 2021 CO 8, *P18; *Eaves v. Polis*, 167 F.4th 1304, 1314 (10th Cir. 2026) (collecting cases). The Defendant Governor's direct control of CDOC policy which has created the Global Referral List that is a knowing disregard of a need for treatment by those prisoners placed onto the GRL; the policy (its creation, promulgation, implementation, ratification, and continuing operation thereof) is an act of denial of treatment to sex offenders — especially the Plaintiff. The policy, AR 700-19 is evidence of a violation of the Eighth Amendment.

The Defendant Governor's Motion seeks to cloak himself behind layers of bureaucracy as his means to deny responsibility for the denial of treatment to sex offenders, SOTMP. The Motion points to other parties; the SOMB, the CDOC, the Parole Board, the district attorneys, etc. The Motion recognizes that the Plaintiff averred clearly that the Defendant Governor signed Senate Bill 23-164 into law; it then mischaracterizes the import of this averment. The Defendant Governor has not been sued for signing SB 23-164. His signing of the act was offered as evidence that the Defendant Governor has knowledge of the denial of sex offender treatment in Colorado's prisons and has chosen to disregard the risk to inmate health and safety that the denial of mental health care represents. SB 23-164 is the smoking gun that evinces that the Plaintiff's claim has sufficiently pled the subjective component of Sealock.

- c. Defendant Governor personally participates in the denial of care to >3,500 sex offender prisoners in the prisons for which he has ultimate authority as the supreme executive.

The Plaintiff has averred that the Defendant Governor has personally participated in the denial of mental health care to prisoners in Colorado's prisons. The averred facts are that the Defendant Governor has played a role in the creation, promulgation, ratification, implementation and continued operation of Administrative Regulation 700-19 and its "sham" GRL. (Complaint, ¶¶21-23) In addition, the Defendant Governor has directly participated in

allowing inadequate staffing to persist in the CDOC for years. (Id. @ ¶¶24-25). The responsibility for prison staffing is inherent to the supreme executive of the state with ultimate authority over its prisons.

Demonstrative of his willingness to continue the operation of the GRL and the broken sex offender treatment system was his passage of SB 23-164 which specifically: prevented sunset of C.R.S. §16-11.7-103 for five additional years until September 1, 2028 (empowers the SOMB — the agency that fails to expand treatment options via its promulgated standards and guidelines, and denies prisoners treatment on parole via its policy "Appendix Q."); empowers the parole board which has failed to amend its Release Guidelines Instrument in a timely manner as it "shall" pursuant to statute; creates a subgroup to review CDOC policy and administrative regulations which result in an unnecessary backlog (policies and ARs which continue to operate in place unrevised); amid the many amendments made.

Drawing the inference from the well-pled facts in the Complaint that the Defendant Governor has personally participated only requires one read the averments. Governor Polis has willingly and directly personally participated in the denial of prescribed sex offender treatment to duly-diagnosed prisoners under his ultimate authority.

d. The Ex Parte Young exception must ;
apply to this Plaintiff's claim.

Denial of prescribed mental health care to a prisoner is a violation of clearly established Tenth Circuit law. *Ramos v. Lamm*, 639 F.2d 559, 574-5 (10th Cir. 1980) citing *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). (The right to be free from denial of prescribed medical and mental health care clearly established.) The Ex Parte Young exception to the Eleventh Amendment Immunity applies in precisely a case such as this instant case — the policies / administrative regulations / state statutes operate in violation of clearly established constitutional law. The Defendant Governor cannot escape liability for prospective relief by hiding underneath Eleventh Amendment Immunity. (The Plaintiff has previously addressed the damages claims against the Governor in a motion to dismiss voluntarily the

official capacity damages claim.)

The Defendant Governor tells the Court that the State has scarce resources and that a mandatory injunction from the Court ordering the Defendants to provide prescribed mental health treatment to its prisoners would require the State to reallocate its resources. This is of zero import to the Plaintiff, nor should it be to the Court. This is absolutely the remedy and relief the Plaintiff demands, and he is Constitutionally entitled to the relief. The Defendant Governor's argument is of no avail to him.

In the late 1970s, prisoners at Colorado State Prison — "Old Max" — brought suit against then-Governor Richard D. Lamm. The complaint sought redress for the inhumane conditions of confinement, and specifically a lack of mental health treatment. Among numerous other holdings, most saliently the Court found that "the lack of funding is no excuse for depriving inmates of their constitutional rights." *Ramos v. Lamm*, 639 F.2d 559, 573 n.19 (10th Cir. 1980). If the State cannot afford to treat the diagnosed and prescribed mental health needs of its prisoners, then it cannot afford to imprison them. Treatment is available on parole. By whatever means necessary, Governor Polis must make sex offender treatment available to his state prisoners held in his state's prisons.

e. This civil action is not barred by PLRA.

Defendant Polis argues that the Plaintiff has pled that he suffers from emotional harm and psychological distress and as such his claims are barred by §1997e(e). If the Governor's argument were true, he would be correct. A failure to plead a physical injury would be fatal to Plaintiff's claim. However, the Plaintiff invests an entire page of his Complaint explaining how he endures physical pain and injury as a result of his mental disorder being untreated. He supports his averments with citation to academic journals that discuss how, inter alia, chronic stress can lead to cortisol in the body which presents as physical, painful symptoms to include tachycardia, buildup of plaque in the arteries, body aches and pains, headaches, etc. (Complaint, ¶¶37-40 & p. 14 n. 1-8)

The Plaintiff has a right under HIPAA to privacy regarding his very specific psychosexual diagnosis, and the symptoms he suffers physically in his body as a result of his mental health disorder. The Court has every right to satisfy itself as to the plausibility of the Plaintiff's claim, and for that reason he offered to tender an affidavit UNDER SEAL for the Court's in camera review. (Id. @ 140) PLRA poses no bar to the Plaintiff's claim.

VI. FOURTEENTH AMENDMENT SUBSTANTIVE AND PROCEDURAL DUE PROCESS CLAIMS

For all of the foregoing reasons given in this Response above, Governor Polis is a party to this civil action, he is liable for the Plaintiff's claims, he has personally participated in the deprivation of the Plaintiff's due process equally as the deliberate indifference to his serious mental health needs for the same reasons: Governor Polis has continued the operation of AR 700-19 and its GRL, and the Governor has chosen to maintain insufficient staffing in the prisons over which he is the ultimate authority.

The Plaintiff incorporates by reference as if set forth in full here the foregoing portions of this Response, as well as every generally applicable argument from the Response to the State Agency (CDOC) Defendants' Motion to Dismiss, and any response made by other Plaintiffs who bring action for similar remedy.

a. Plaintiff has a liberty interest in receiving treatment

Defendant Polis argues that the Complaint asks the Court to create a liberty interest in access to sex offender treatment, SOTMP. This is inaccurate. The Complaint acknowledges that the liberty interest already exists, and the Defendant Governor must do the same.

The Plaintiff's **liberty interest** in accessing SOTMP is clearly established by the weight of on-point cases emanating from this court. See: Beebe v. Heil, 333 F.Supp.2d 1011, 1016-17 (D. Colo. 2004); Tillery v. Raemisch, 2018 U.S.Dist.LEXIS 170894 *7; Lerner v. Stanail¹, 2023 U.S.Dist.LEXIS 90078 *16-28; Lerner v. Williams, 2023 U.S.Dist.LEXIS 90818 *14; Lerner v. Retting, 2025 U.S.Dist.LEXIS 85445 *13-14. The Plaintiff acknowledges these cases are

¹Liting Manaois, 488 P.3d 1099, 1109 (Colo. 2021)

"unpublished", and no single case taken alone is precedential. Taken together in the aggregate as a whole, the weight of authority must find the law to be as the Plaintiff maintains — the law is clearly established.

b. Personal participation of the Governor

The Plaintiff has pled sufficient facts for this Court to infer a plausible claim that the Governor has personally participated in the denial of due process to the Plaintiff. In addition to the averments made in the Complaint, the Court may take judicial notice of this state's statutes. *Celebrities Bowling, Inc. v. Shattuck*, 160 Colo. 102 (Colo. 1966). Looking to C.R.S. §17-2-201(1)(a), the members of the parole board are appointed by the Governor. (Polis has appointed 7 of the current board members according to the "meet the board" webpage maintained by the Parole Board)² Further, the Governor may "remove a member for incompetency, neglect of duty, malfeasance in office, continued failure to use the risk assessment guidelines as required by §17-22.5-404..."

The Defendant Governor's custom of appointing board members who choose to not follow the release guidelines and to refuse to release otherwise-eligible prisoners who have been denied mental health treatment demonstrates his willingness to deny due process to sex offenders, especially the Plaintiff. The Governor does not remove parole board members who deny otherwise-eligible prisoners parole on the grounds that they have not "successfully progressed in treatment" through no fault of the prisoners' own. Colorado is full of sex offender treatment providers willing to treat parolees. The CDOC's fences keep these treatment providers out and refuse prisoners access. This is shocking to any person's conscience. Moreover, it is a deliberate form of conduct directly implicating the personal participation on the part of the Defendant Governor.

² paroleboard.colorado.gov/meet-board-members last accessed 9/17/25

VII. CONCLUSION

Governor Polis is not immune to suit in this case.

- The Plaintiff is a prisoner in CDOC, diagnosed with a mental health need, prescribed sex offender treatment, and is denied care.
- Governor Polis is the State's supreme executive with ultimate authority over the CDOC.
- Governor Polis has continued the operation of AR 700-19 and the GRL it created, a knowing means of denial of care.
- Governor Polis permits understaffing in CDOC for years.
- Governor Polis appoints the state functionaries that have the power to provide sex offender treatment to prisoners, or to clear the way for prisoners to obtain treatment.
- Governor Polis has actively continued the operation of the system that refuses access to care to prisoners. He signs the laws that prevent sunset of dysfunctional systems for sex offender treatment.
- The Plaintiff has sought prospective injunctive relief, he has demanded that he be provided with the care that has been prescribed to him in a reasonable time.

The Defendant Governor's Motion to Dismiss must be denied, and this case must be permitted to proceed to trial.

Respectfully submitted this 25th day of _____, 2026.

Printed name: _____

Signature: _____

The foregoing Response was compiled and prepared at the Plaintiff's specific direction with the assistance of lay-person Eric St. George pursuant to Johnson v. Avery, 393 US 483 (1969), and Bounds v. Smith, 430 US 817 (1977)

CERTIFICATE OF SERVICE: I attest that I did cause a true copy of the foregoing to be served upon the Defendants' counsel by means of electronic service, or by first-class mail with sufficient postage affixed at the address(es) below:
Office of the Atty. Gen. 1300 Broadway, 10th Fl., Denver CO 80203 service@coag.gov