

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

| | | |
|----------------------------------|---|---------------------------|
| CRISTINA NICHOLE IGLESIAS (A.K.A |) | |
| CRISTIAN NOEL IGLESIAS), |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Civil No. 19-cv-00415-JPG |
| |) | |
| IAN CONNORS AND DR. KATHLEEN |) | |
| HAWK SAWYER, DIRECTOR OF THE |) | |
| FEDERAL BUREAU OF PRISONS, |) | |
| |) | |
| Defendants. |) | |

RESPONSE OF DEFENDANT DR. KATHLEEN HAWK SAWYER, DIRECTOR OF THE FEDERAL BUREAU OF PRISONS, TO PLAINTIFF’S “MOTION TO AMEND COMPLAINT/PRELIMINARY INJUNCTION FILED BY PLAINTIFF”

Defendant, Dr. Kathleen Hawk Sawyer, in her official capacity as Director of the Federal Bureau of Prisons, by her attorneys, Steven D. Weinhoef, United States Attorney for the Southern District of Illinois, and Laura J. Jones, Assistant United States Attorney, responds to the “Motion to Amend Complaint/Preliminary Injunction Filed By Plaintiff” and states as follows:

1. On September 25, 2019, Director Hawk Sawyer filed a motion to dismiss on the grounds that plaintiff failed to exhaust her administrative remedies as to the Rehabilitation Act. (Doc. 22). She attached, *inter alia*, a declaration stating that plaintiff failed to exhaust. Plaintiff’s new motion fails to show otherwise and also fails to attach any exhibits showing that she exhausted.

2. Plaintiff previously asked this Court to dismiss Count 5 of her complaint without prejudice so that she can exhaust her administrative remedies. *See* Doc. 25, p. 4 (“Plaintiff will move this Court to Dismiss Count (5) of her complaint only, as she did not file the Administrative Remedy on the Rehabilitation Act Without Prejudice and enter Summary of Judgement [sic] to

Defendant Dr. Kathleen Hawk Sawyer only”).

3. On October 16, 2019, Director Hawk Sawyer filed a response to the “Motion by Plaintiff to Dismiss Count 5 of Her Complaint Without Prejudice and Enter a Summary of Judgement [sic] in Favor of Defendant Dr. Kathleen Hawk Sawyer as to Count 5 Only.” (Doc. 30). In that response, Director Hawk Sawyer stated that she had no objection to a dismissal of Count 5 without prejudice. (Doc. 30 ¶ 3). The Court has not ruled on that motion.

4. Plaintiff now seeks to keep Director Hawk Sawyer in the case in her individual capacity without citing any authority. This Court previously held that the Rehabilitation Act does not permit suits against defendants in their individual capacities. (Doc. 14, p. 9).

5. Plaintiff previously named the Director of the Bureau of Prisons as a defendant in her individual capacity, and this Court held that plaintiff had failed to state a claim. (Doc. 14, pp. 10, 11).

6. Plaintiff seeks to add the Bureau of Prisons as a defendant, but she has still failed to exhaust her administrative remedies under the Rehabilitation Act or otherwise show how this Court has jurisdiction over the Bureau of Prisons.

7. An amendment would be futile. “[A]n amendment is futile when it merely restates the same facts using different language, or asserts a claim previously determined” [or] “when it fails to state a valid theory of liability . . . or could not withstand a motion to dismiss.” *Bower v. Jones*, 978 F.3d 1004, 1008 (7th Cir. 1992) (quotation marks and citations omitted); *see also McCoy v. Iberdrola Renewables, Inc.*, 760 F.3d 674, 685 (7th Cir. 2014) (“District courts may refuse to entertain a proposed amendment on futility grounds when the new pleading would not survive a motion to dismiss”) (quotation marks and citations omitted).

8. Plaintiff was transferred from USP-Marion on November 4, 2019, and is currently

at the Federal Transfer Center in Oklahoma City, Oklahoma. The undersigned has been advised to send plaintiff's mail to Oklahoma at this time, and government counsel will send her another copy of this response when plaintiff arrives at her institution. The undersigned inquired from her Bureau of Prisons's legal contact about how long plaintiff would be in Oklahoma and was advised that he did not know how long plaintiff would be in Oklahoma. Plaintiff's transfer would moot injunctive relief requested from USP-Marion staff.

For these reasons, defendant Dr. Kathleen Hawk Sawyer, in her official capacity as Director of the Federal Bureau of Prisons, requests that the Court deny the "Motion to Amend Complaint/Preliminary Injunction Filed by Plaintiff."

DR. KATHLEEN HAWK SAWYER
DIRECTOR OF THE FEDERAL BUREAU
OF PRISONS

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and I hereby certify that I mailed by United States Postal Service, the document to the following non-registered participant:

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