*** CIVIL DEATH SENTENCE CASE ***

No. _____

In The

Supreme Court of the United States

In Re: MERIDEN SCHIPKE FAMILY, i.e.,

MARY, AMARA, and KITT SCHIPKE

MARY ELIZABETH SCHIPKE, et al., *Petitioners*,

v.

STATE OF CONNECTICUT, et al., *Respondents*.

APPENDIX

A – I.

APPENDIX A.

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of February, two thousand and nineteen,

---

Mary Elizabeth Schipke, for herself and for her two children: son Kitt A. Schipke, and daughter Amara V. Schipke, and The Meriden Schipke Family,

Plaintiff - Appellant,

v.

State of Connecticut, City of Meriden, Meriden Police Department, Michael Fonda, Meriden Police Officer, Ethan Busa, Meriden Police Officer, Michael Pellegrini, Meriden Police Officers, Donna Zurstadt, Meriden Police Officers, Jeffry W Cossette, Meriden Chief of Police, Tom Luby, Suzanne Daigle, Connie Schipke, Brian Mahon, David Vega, YCI Niantic Women's Prison, United States of America,

Defendants - Appellees,

Our Lady of Mt. Carmel Church,

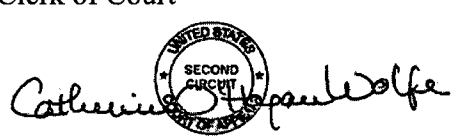
Defendant.

ORDER
Docket Number: 19-211

A notice of appeal was filed on January 17, 2019. Appellant's Form D-P was due January 31, 2019. The case is deemed in default.

IT IS HEREBY ORDERED that the appeal will be dismissed effective February 27, 2019 if the form is not filed by that date.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of February, two thousand and nineteen,

---

Mary Elizebeth Schipke, for herself and for her two children: son Kitt A. Schipke, and daughter Amara V. Schipke, and The Meriden Schipke Family,

Plaintiff - Appellant,

v.

State of Connecticut, City of Meriden, Meriden Police Department, Michael Fonda, Meriden Police Officer, Ethan Busa, Meriden Police Officer, Michael Pellegrini, Meriden Police Officers, Donna Zurstadt, Meriden Police Officers, Jeffry W Cossette, Meriden Chief of Police, Tom Luby, Suzanne Daigle, Connie Schipke, Brian Mahon, David Vega, YCI Niantic Women's Prison, United States of America,

Defendants - Appellees,

Our Lady of Mt. Carmel Church,

Defendant.

ORDER
Docket Number: 19-211

A notice of appeal was filed on January 18, 2019. The Appellant's Acknowledgment and Notice of Appearance Form due February 5, 2019 has not been filed. The case is deemed in default of FRAP 12(b), and LR 12.3.

IT IS HEREBY ORDERED that the appeal will be dismissed effective February 27, 2019 if the Acknowledgment and Notice of Appearance Form is not filed by that date.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARY ELIZABETH SCHIPKE,
Plaintiff,

v.

STATE OF CONNECTICUT, *et al.*,
Defendants.

No. 3:17-cv-02087 (JAM)

ORDER GRANTING MOTIONS TO DISMISS

Plaintiff Mary Elizabeth Schipke filed a *pro se* complaint against sixteen defendants, including the State of Connecticut; the City of Meriden, Connecticut; the Meriden Police Department; Meriden Police Officers Fonda, Busa, Pellegrini, and Zurstadt; Meriden Police Chief Jeffry Cossette; attorney Tom Luby; Suzanne Daigle, a Meriden Probate Court-appointed conservator over Mary Schipke's Aunt Rose; Connie Schipke, Mary Schipke's cousin; Meriden Probate Court Judge Brian Mahon; David Vega, who occupies the house that is the subject of this lawsuit; York Correctional Institution; the United States; and Our Lady of Mt. Carmel Church in Meriden.

On September 26, 2018, I granted the Church's motion to dismiss. *See* Doc. #92. I now turn to the remaining defendants' motions to do the same under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). While Schipke has alleged facts that, if true, speak to a number of tragedies surrounding her life and her family, none give rise to a plausible claim for relief at this time, and I will accordingly grant the remaining motions to dismiss.

BACKGROUND

Schipke has filed a discursive complaint that highlights a great deal of personal misfortune. As best I can tell, she has alleged a series of wrongs principally connected to what

Schipke claims to be her "Ancestral Family Property" on Goodwill Avenue in Meriden, Connecticut ("the Goodwill Avenue home"). *See, e.g.*, Doc. #1 at 2. I take the following allegations of fact as true for purposes of this ruling.

In 1905, Schipke's great-grandmother, Rosalie Schilke, purchased a home at 129 Goodwill Avenue in Meriden. Doc. #1 at 8; Doc. #1-1 at 1. In 1921, she deeded the property to Schipke's grandmother, Martha Schipke, and her heirs. Doc. #1 at 9; Doc. #1-1 at 2. Schipke's Aunt Rose lived at the property with her Uncle Andrew Schipke, Doc. #1 at 3, 9, from roughly 1923 to Andrew's death in 2014, and Rose's death in 2016, *id.* at 23 n.29. Schipke's mother, Marguerite, spent some of this time serving in the United States Navy. *See id.* at 11; Doc. #1-1 at 4. In 1945, Marguerite took part in naval chemical warfare training in Virginia, where she was exposed to multiple toxic substances. Doc. #1 at 11. She developed several medical symptoms from the exposure, and died in Tucson, Arizona, in 1968. *Ibid.* Following her death, Marguerite's name was misspelled as "Marquerite" on the Meriden Veterans Memorial Boulevard Wall of Honor. *Id.* at 28.

Schipke's life has come with difficulties of its own. For instance, the effects of chemical warfare training on her mother have been passed on to her in the form of numerous disabilities, *id.* at 12, her family disowned her after Marguerite's death, *id.* at 31–32, she suffered from cancer from a botched medical procedure at age 15, *id.* at 26, and she now experiences post-traumatic stress disorder, *id.* at 28. Schipke learned about her Uncle Andrew's death in 2014, *id.* at 19, and traveled to Meriden from Arizona to claim the Goodwill Avenue home and care for her Aunt Rose, *id.* at 2, 19–20. Schipke arrived in Meriden on Thanksgiving of that year. *Id.* at 19. Rose left Schipke waiting at the door to the house, and when Schipke called the Meriden

police and medics, they told Schipke to leave the property. *Id.* at 20. Schipke alleges that since that time, the Meriden police have harassed her. *Ibid.*

Although Schipke does not detail what took place between November 2014 and November 2016, she does allege that on November 23, 2016, she was forcefully evicted from the Goodwill Avenue home. Doc. #1 at 16. Meriden police entered the property and "brutalized" her on the same day, *id.* at 21, 33, presumably in connection with the eviction. *Id.* at 32–33. Because the police failed to listen to her request to accommodate her disabilities, Schipke suffered a broken back, fractured sternum, and other injuries. *Ibid.* She does not, however, name any particular officers in connection with the arrest.

Schipke remained in custody from November 23 to December 19, 2016. *Id.* at 24. During that time, York Correctional Institution ("York") also refused to accommodate her disabilities, *id.* at 32, and she suffered pain, sleep deprivation, hunger, and lack of medical care. *Id.* at 24–25. As a result of her time in custody, she now suffers from several back injuries and emotional distress. *Id.* at 25. After her release, the Meriden Police Department ignored the civilian complaint she filed later that month, *id.* at 21, and the FBI similarly failed to act on her complaints about the Meriden police, *id.* at 4, 21.

Schipke appears to claim that there are ongoing state court proceedings against her with a trial date set for 2020. *Id.* at 24. Apparently in connection with those proceedings, she alleges that Judge Moore, who she does not name as a defendant, created numerous difficulties for her in posting bond. *Id.* at 35. After her friend Kevin Long finally did so, York intimidated Long into revoking it. *Ibid.* Schipke also alleges that even since her release the State of Connecticut has further immiserated her, principally through allocating insufficient food stamp benefits under the law. *Id.* at 12.

Schipke further alleges that several defendants have engaged in ongoing malfeasance surrounding both Aunt Rose and the Goodwill Avenue home. Schipke claims that Meriden Probate Court Judge Brian Mahon and Suzanne Daigle, Rose's court-appointed conservator, took part in a long-running embezzlement scheme against Rose, Uncle Andrew, and Schipke's grandmother Martha. *Id.* at 9–10. Schipke also alleges that attorney Tom Luby exercised undue influence against Rose as part of an "Inheritance Hijacking Fraud Scheme" in concert with her cousin Connie Schipke, and that Luby sold the Goodwill Avenue home to David Vega, who now lives there. *Id.* at 14–16.

Schipke finally appears to assert a claim for a violation of the Fifth Amendment's Takings Clause, as applied to the States through the Fourteenth Amendment. *Id.* at 10. Schipke does not, however, name any particular defendant in connection with her Fifth and Fourteenth Amendment takings claims aside from generic allegations about "the government" and defendants "acting under color of state law." *Ibid.*

DISCUSSION

For purposes of a motion to dismiss for failure to state a claim, the Court must accept as true all factual matters alleged in a complaint, although a complaint may not survive unless the facts it recites are enough to state plausible grounds for relief. *See, e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Mastafa v. Chevron Corp.*, 770 F.3d 170, 177 (2d Cir. 2014). This "plausibility" requirement is "not akin to a probability requirement," but it "asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. Because the focus must be on what facts a complaint alleges, a court is "not bound to accept as true a legal conclusion couched as a factual allegation" or "to accept as true allegations that are wholly conclusory." *Krys v. Pigott*, 749 F.3d 117, 128 (2d Cir. 2014). Similarly, because federal courts

have limited jurisdiction, a complaint in federal court must also allege facts that give rise to plausible grounds for a court to conclude that it has federal jurisdiction. *See Lapaglia v. Transamerica Cas. Ins. Co.*, 155 F. Supp. 3d 153, 155 (D. Conn. 2016). The Court liberally construes the pleadings of a *pro se* party in a non-technical manner to raise the strongest arguments that they suggest. *See, e.g., McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 157 (2d Cir. 2017) (*per curiam*). Still, a *pro se* complaint may not survive dismissal if its factual allegations do not meet the basic plausibility standard. *See, e.g., Fowlkes v. Ironworkers Local 40*, 790 F.3d 378, 387 (2d Cir. 2015).

Claims against the United States

I will dismiss the claims against the United States. The United States is immune from lawsuits except when it consents to being sued, and the scope of that consent defines any court's jurisdiction over suits against the federal government. *See Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) (citing *United States v. Mitchell*, 445 U.S. 535, 538 (1980)).

Schipke's first set of allegations against the United States claim Marguerite's naval training caused her death—which interfered with Schipke's inheritance—and that Marguerite's chemical exposure also poisoned Schipke herself. Doc. #1 at 10–12. This appears to be a claim under the Federal Tort Claims Act (FTCA). Under the FTCA, the United States waives its immunity from many lawsuits for injuries resulting from its employees' careless or wrongful acts. 28 U.S.C. § 2674. But this waiver is limited, and the federal government is immune from liability for injuries to members of the military when those "injuries arise out of or are in the course of activity incident to service." *Feres v. United States*, 340 U.S. 135, 146 (1950). A court analyzes several factors when determining whether an injury occurred incident to service. These include the servicemember's military status, how the alleged tort relates to the servicemember's

membership, and the broad rationales underlying the *Feres* doctrine, including, *inter alia*, the need to preserve military decision-making from judicial interference. *See Wake v. United States*, 89 F.3d 53, 57–58 (2d Cir. 1996). As applied to Marguerite, this analysis is straightforward. Marguerite was a Lieutenant in the Navy, following military orders, aboard a naval ship, and taking part in a naval training exercise when the Navy allegedly exposed her to toxic chemicals. Doc. #1 at 11; Doc. #1-1 at 4–5. Marguerite's injuries were tightly related to that chemical exposure, and a suit arising from her injuries "would undoubtedly implicate military judgments concerning the training and supervision of military personnel." *Wake*, 89 F.3d at 62.

Of course, in this lawsuit, Schipke is the plaintiff, rather than Marguerite. But that doesn't matter here. Because of the need to protect the military's discretion as part of the executive branch, the *Feres* doctrine looks to the "cause of injury rather than to the character of a claimant." *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 201, 202 (2d Cir. 1987) (barring derivative claims and collecting cases). Accordingly, the *Feres* doctrine is just as much of a barrier to a family member's claim arising from a *Feres*-barred injury as it is a servicemember's. *See Matthew v. United States*, 311 F. App'x 409, 412–413 (2d Cir. 2009) (citing *Agent Orange*, 818 F.2d at 203) (holding claim of daughter for father's chemical exposure and claim of mother for daughter's medical expenses to be *Feres*-barred). To the extent Schipke's claims arise from her own injuries and financial losses resulting from her mother's chemical exposure in the Navy, they are plainly barred by the *Feres* doctrine and outside this Court's jurisdiction. I will therefore dismiss them.

None of Schipke's other allegations against the United States state a plausible claim for relief. Although she alleges that Marguerite's name was incorrectly spelled on the Wall of Honor, she appears to primarily attribute the misspelling to the City of Meriden and only alleges

the United States' involvement through failing to oversee the proper labeling of grave markers. Doc. #1 at 27–28 & n.34. However, as Schipke also pleads, Marguerite is buried in St. Boniface Cemetery in Meriden, *id.* at 9, and consequently the Wall of Honor is not a grave site that the United States allegedly must supervise. No tort action can lie against a defendant based on events for which that defendant bears no responsibility. Similarly, to the extent that Schipke means to allege that the FBI violated her rights through not acting against the Meriden Police Department, *see id.* at 4, 21, she has no standing to do so. *See Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."). Accordingly, I will dismiss all claims against the United States in this case.

Claims against Connecticut state defendants

Schipke makes numerous allegations against the State of Connecticut and York throughout the complaint. I will dismiss all the § 1983 claims against both defendants, because neither of them are persons subject to suit under § 1983. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

Schipke also appears to claim that Connecticut and York have violated her rights under the Americans with Disabilities Act (ADA). *See* Doc. #1 at 13, 24–25, 32. A plaintiff may sometimes bring a Title II ADA claim against a State in its official capacity for monetary damages. *See Garcia v. S.U.N.Y. Health Scis. Ctr. of Brooklyn*, 280 F.3d 98, 112 (2d Cir. 2001). But while someone with a disability may base a discrimination claim on the government's failure to make a reasonable accommodation, *see Fulton v. Goord*, 591 F.3d 37, 43 (2d Cir. 2009), "[t]o prevail on a reasonable accommodation claim, [the plaintiff] must first provide the governmental entity an opportunity to accommodate them through the entity's established procedures used to

adjust the neutral policy in question." *Tsombanidis v. W. Haven Fire Dep't.*, 352 F.3d 565, 578 (2d Cir. 2003), *superseded by regulation on other grounds*, *Mhany Mgt., Inc. v. Cty. of Nassau*, 819 F.3d 581 (2d Cir. 2016). Schipke makes a vague claim that Connecticut must house her, Doc. #1 at 13, and that York denied her right to reasonable accommodations and injured her by choosing to "deny, force-drug, and brutalize" her instead. *Id.* at 24–25, 32. She does not allege that at any point she provided Connecticut or York with an opportunity to accommodate her, and as such, does not state sufficient facts to support a plausible claim for relief under the ADA. Consequently, I will dismiss those claims against Connecticut and York as well.

In addition to the claims against the Connecticut state entities, I will also dismiss the claims against Meriden Probate Court Judge Brian Mahon. Schipke's claims against Judge Mahon amount to a vague allegation of embezzlement and the probate court's participation in an "inheritance-hijacking" scheme, Doc. #1 at 9, 20–21. Schipike's only concrete factual allegation is that Judge Mahon told Schipke that her claim fell outside his court's jurisdiction. *Id.* at 21, 29. Schipke's claims are meritless. "It is well settled that judges generally have absolute immunity from suits for money damages for their judicial actions," *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009), such as the actions that Schipke alleges Judge Mahon undertook here. This doctrine even applies to a plaintiff's allegations that a judge acted maliciously or in bad faith. *Ibid.* Furthermore, any claim for injunctive relief against Judge Mahon is also barred, because § 1983 limits injunctive relief against judges in their judicial capacity only to cases where a declaratory decree was violated or declaratory relief was unavailable. *Ibid.* Schipke makes no such allegation, so I will dismiss her claims against Judge Mahon.

To the extent that Schipke means to assert other claims against the Connecticut state defendants, including, possibly, a taking of the Goodwill Avenue home, *see* Doc. #1 at 10, the

complaint is sufficiently vague and ambiguous as to disguise the nature of Schipke's claims, and thus does not give the defendants fair notice of the allegations against them. *See Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Accordingly, I will dismiss such claims without prejudice to Schipke's ability to file an amended complaint consistent with the instructions at the Conclusion of this order.

Federal claims against Meriden defendants

Schipke alleges that she suffered from multiple acts of wrongdoing at the hands of various people and entities associated with the City of Meriden, including the city itself, the Meriden Police Department, Chief Cossette, and Officers Fonda, Busa, Pellegrini, and Zurstadt ("the Meriden defendants"). She has sued all these defendants under 42 U.S.C. § 1983, and as a preliminary matter, I will dismiss all claims against the Meriden Police Department because it is not a "person" who can be sued within the meaning of the statute. *See Conquistador v. Hartford Police Dep't*, 2017 WL 969264, at *2 (D. Conn. 2017).

As best I can tell, Schipke means to assert a false arrest claim based on her interactions with the police on November 23, 2016, *id.* at 24, 34–35; a claim, construed liberally, against the police for malicious prosecution, *id.* at 30; numerous claims against the city, police department, and individual officers for "inheritance hijacking" and property theft that she labels Fifth Amendment violations, *id.* at 30–31; a claim that police officers violated her rights under the ADA, *id.* at 32–33; and a claim that police officers trespassed on the property at Goodwill Avenue and exercised excessive force against her, *id.* at 33–34. Her allegations do not support a plausible claim for relief on any of these grounds.

First, any claim in Connecticut for malicious prosecution or false arrest requires that the charges stemming from the alleged malicious prosecution or false arrest terminate in the

plaintiff's favor. *Spak v. Phillips*, 857 F.3d 458, 461 & n.1 (2d Cir. 2017) (malicious prosecution); *Miles v. City of Hartford*, 445 F. App'x 379, 383 (2d Cir. 2011) (false arrest). Instead of pleading that the charges against her from the arrest have terminated in her favor, Schipke has pleaded that those charges are still pending. Doc. #1 at 24. Consequently, she can state a claim for neither malicious prosecution nor false arrest, so I will dismiss both of those claims.

Next, I will construe Schipke's claims about "inheritance hijacking" and property as claims under the Fifth and Fourteenth Amendments either for violations of the Takings Clause, or as deprivations of property in violation of the Fourteenth Amendment's Due Process Clause. Regardless of what rights Schipke seeks to vindicate here, her allegations are entirely conclusory and allege no facts that, if true, could support a claim for relief. Accordingly, I will dismiss those claims as to all Meriden defendants.

Schipke then alleges that Meriden police officers violated her rights under the ADA when they failed to accommodate her disabilities while arresting her. I will dismiss the ADA claims against the officers, because Schipke has sued the officers in their individual capacities. *See* Doc. #1 at 17. Title II of the ADA, which governs public programs, does not provide for individual capacity suits against state officials. *Garcia*, 280 F.3d at 107. To the extent that Schipke also seeks to assert official capacity claims against Cossette and the City of Meriden, her claims are also barred, because she only alleges in no more than conclusory terms that Cossette failed to train the officers and the city delegated power to Cossette. *See* Doc. #1 at 18.

Schipke otherwise accuses the Meriden police officers of trespassing on her property and of exercising excessive force against her when they arrested her, presumably in violation of her Fourth Amendment right to be free of unreasonable searches and seizures. I will dismiss any

Fourth Amendment claim premised on trespass, because "[t]respass alone does not qualify" as a search or seizure under the Fourth Amendment. *United States v. Jones*, 565 U.S. 400, 408 n.5 (2012). To the extent that Schipke asserts a claim for trespass under Connecticut tort law, I consider such a claim alongside other state law claims *infra*.

The Fourth Amendment does, however, prohibit the use of excessive force by police officers in searching or arresting a suspect. *See Graham v. Connor*, 490 U.S. 386, 396–97 (1989); *Hemphill v. Schott*, 141 F.3d 412, 416–17 (2d Cir. 1998). To establish a Fourth Amendment excessive force claim, a plaintiff must show that the officer's use of force was "objectively unreasonable." *Graham*, 490 U.S. at 397. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable police officer on the scene, *id.* at 396, and this "requires consideration of the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight." *Hemphill*, 141 F.3d at 417. Schipke's allegations include a list of severe injuries she claims Meriden police officers caused her, such as a fractured sternum, spinal damage, and bloodied knees. *See* Doc. #1 at 4, 33. Schipke, however, only refers to "numerous police officers," *id.* at 33, and apart from generic statements about having been "brutalized" and the police disregarding her request for disability accommodations, *id.* at 4, 32–33, does not allege which officers injured her, how any officer did so, or any of the other circumstances surrounding the alleged use of force. While Schipke may file an amended complaint that cures these factual deficiencies, she has not stated a plausible claim for relief against the officers at this time.

Because Schipke fails to state a claim at this time for the use of excessive force, she similarly cannot state claims against Cossette or the city premised on supervisory or municipal

liability for the same conduct. *See* Doc. #1 at 18. By the same token, without an allegation of an unconstitutional action that he could observe and prevent, Zurstadt cannot be alleged to have failed to intervene and stop the use of excessive force. *See Figueroa v. Mazza*, 825 F.3d 89, 106 (2d Cir. 2016).

Finally, Schipke also appears to sue the City of Meriden for misspelling Marguerite's name on the Wall of Honor. Doc. #1 at 27–29. I construe her claim to be one that sounds in negligent or intentional infliction of emotional distress, which are Connecticut tort claims. As with the trespass claim, I consider these claims with the other state law claims in the complaint *infra*.

Like the claims against the Connecticut state defendants, the complaint is sufficiently vague as to any further claims against the Meriden defendants, including, possibly, a taking of the Goodwill Avenue home, *see* Doc. #1 at 10, such that the Meriden defendants do not have notice of the allegations against them. *See Salahuddin*, 861 F.2d at 42. I will therefore dismiss any such claims without prejudice.

State law claims

Having dismissed the claims sounding in federal law, I now turn to Schipke's state law claims. These include claims against Meriden police officers for trespass, as well as against the City of Meriden for misspelling Marguerite's name on the Wall of Honor. In addition, Schipke's claims against several other defendants sound only in state law. Schipke accuses attorney Luby of embezzlement, exercising undue influence over Aunt Rose, and illegally selling the Goodwill Avenue home.[1] Doc. #1 at 9–10, 14–15. She accuses Daigle of embezzlement and neglect, *id.* at

[1] Schipke also accuses Luby of conspiring to deprive her of her constitutional rights. Doc. #1 at 34. But because Luby is not alleged to be a state actor, he cannot be sued for any constitutional tort. *See Betts v. Shearman*, 751 F.3d 78, 84 (2d Cir. 2014).

9, 20–21, Connie Schipke of exercising undue influence, *id.* at 15, and Vega of trespassing on and illegally occupying the Goodwill Avenue home, *ibid.* All of these claims arise under state law. Federal courts of course may exercise diversity jurisdiction over state law claims involving an amount in controversy of more than $75,000 if no plaintiff and no defendant are citizens of the same state. *See* 28 U.S.C. § 1332; *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, 267 (1806) (Marshall, C.J.). Here, Schipke is a Connecticut citizen, *see* Doc. #1 at 12–13, as are several of the defendants. For instance, Schipke alleges that Vega lives at the Connecticut address she seeks to take possession over. *Id.* at 15. As such, there is no basis for diversity jurisdiction. And in light of my dismissal of all federal claims at the pleading stage, I decline to exercise supplemental jurisdiction over Schipke's state law claims. *See* 28 U.S.C. § 1367(c)(3); *see, e.g.*, *Lundy v. Catholic Health Sys. of Long Island Inc.*, 711 F.3d 106, 117–18 (2d Cir. 2013). I will therefore dismiss any remaining state law claims as to any defendants.

CONCLUSION

For the reasons set forth above, all remaining defendants' motions to dismiss (Doc. # 32; Doc. #41; Doc. #43; Doc. #56; Doc. #58; Doc. #65; Doc. #70; Doc. #88) are GRANTED. Schipke's motion for a declaratory judgment (Doc. #71) is DENIED AS MOOT. This order of dismissal is without prejudice to Schipke's ability to file a motion to reopen along with an amended complaint within 30 days, by **February 6, 2019**, that cures the factual deficiencies identified in this order. Any amended complaint shall comply with Federal Rules of Civil Procedure 8(a) and 10(b), shall use numbered paragraphs to set out a short and plain description of Schipke's claims to relief, and to promote clarity, shall separate each cause of action or claim to relief into a separate count. Any amended complaint should recount facts in chronological order and be free from scandalous or irrelevant information. The Clerk of Court shall close the

case pending any motion to reopen.

It is so ordered.

Dated at New Haven this 7th day of January 2019.

/s/*Jeffrey Alker Meyer*
Jeffrey Alker Meyer
United States District Judge

APPENDIX C.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARY ELIZABETH SCHIPKE,
Plaintiff,

v.

STATE OF CONNECTICUT, *et al.*,
Defendants.

No. 3:17-cv-02087 (JAM)

ORDER GRANTING MOTION TO DISMISS OF DEFENDANT OUR LADY OF MT. CARMEL CHURCH

Plaintiff Mary Elizabeth Schipke has filed a *pro se* complaint against sixteen defendants, including Our Lady of Mt. Carmel Church. The Church has now moved to dismiss, and I will grant this motion.

For purposes of a motion to dismiss for failure to state a claim, the Court must accept as true all factual matters alleged in a complaint, although a complaint may not survive unless the facts it recites are enough to state plausible grounds for relief. *See, e.g.*, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Mastafa v. Chevron Corp.*, 770 F.3d 170, 177 (2d Cir. 2014). This "plausibility" requirement is "not akin to a probability requirement," but it "asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. Because the focus must be on what facts a complaint alleges, a court is "not bound to accept as true a legal conclusion couched as a factual allegation" or "to accept as true allegations that are wholly conclusory." *Krys v. Pigott*, 749 F.3d 117, 128 (2d Cir. 2014).

Plaintiff alleges that she is a citizen of Connecticut and that the Church is located in Connecticut. Accordingly, because the parties are not citizens of different States, this Court only

has jurisdiction over plaintiff's action if plaintiff alleges a claim for relief that arises under federal law. *See, e.g.*, *Abubakari v. Jianchao Xu*, 2018 WL 2971099, at *1 (D. Conn. 2018).

All of Schipke's claims arise from her belief that she has ancestral property rights to a certain home that is next door to the Church on Goodwill Avenue in Meriden, Connecticut. The property—referred to by plaintiff as her "Ancestral Family Home"—was owned by Schipke's family members for many years, and the complaint chronicles how plaintiff's "Aunt Rose" lived there in 2014 when Schipke traveled across country to return to her ancestral home but only to find that she was not welcome there. Doc. #1 at 19–20.

The complaint alleges that the Church violated Schipke's rights in two ways. First, Schipke claims that on some unspecified date "the resident priest called in the original call to 9-1-1 claiming Head Plaintiff **MARY ELIZABETH SCHIPKE** – was criminally trespassing and burglarizing her own property – and attempted to falsely claim legal ownership of said property, stating: 'the home would be bulldozed and turned into a parking lot for the church.'" Doc. #1 at 15. These facts do not give rise to any conceivable claim for relief under federal law. To the extent that these facts might be construed to allege a claim for false arrest or malicious prosecution, the complaint does not allege any consequent arrest or other seizure of Schipke as would be required for a Fourth Amendment claim of false arrest or malicious prosecution. *See Spak v. Phillips*, 138 F. Supp. 3d 159, 161 (D. Conn. 2015), *aff'd*, 857 F.3d 458 (2d Cir. 2017).

Second, the complaint alleges that plaintiff learned that "[o]ver one million dollars ($1,000,000.00) [that] Aunt Rose won in the lottery is missing, and is believed to have been embezzled" by various defendants including the Church. Doc. #1 at 20–21. This stray allegation is not accompanied by any additional facts and therefore is inadequate on its face to give rise to plausible grounds for relief. Moreover, there are no facts to suggest that Schipke would have

standing to complain about any monies that the Church took from her aunt. In addition, even assuming such facts to be true, they do not give rise to a violation of any right under federal law, especially considering that the Church is not a governmental actor. *See Betts v. Shearman*, 751 F.3d 78, 84 (2d Cir. 2014).

CONCLUSION

For the reasons set forth above, the motion to dismiss (Doc. #21) is GRANTED without prejudice. The Clerk of Court shall terminate Our Lady of Mt. Carmel Church as a defendant in this action.

It is so ordered.

Dated at New Haven this 26th day of September 2018.

/s/*Jeffrey Alker Meyer*
Jeffrey Alker Meyer
United States District Judge

APPENDIX D.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARY ELIZABETH SCHIPKE,	:	
Petitioner,	:	CIVIL ACTION NO.
	:	3:16-cv-2096 (JCH)
v.	:	
	:	JANUARY 18, 2017
STEVE FAUCHER,	:	
Respondent.	:	

RULING RE: PETITION FOR WRIT OF HABEAS CORPUS (DOC. NO. 1) AND PENDING MOTIONS (DOC. NOS. 3, 4, 5, 6, 11, 14)

I. INTRODUCTION

Petitioner Mary Elizabeth Schipke ("Schipke") was confined at York Correctional Institution ("York") when she filed this habeas petition. She challenges her detention in state prison pursuant to her arrest by Meriden police officers and seeks numerous other forms of relief.[1] For the reasons set forth below, the Petition (Doc. No. 1) is **TERMINATED AS MOOT**, and each of the pending Motions (Doc Nos. 3, 4, 5, 6, 11, 14) is **DISMISSED** and/or **TERMINATED AS MOOT**.

II. BACKGROUND

Schipke claims that she inherited the house and piece of property located at 129 Goodwill Avenue in Meriden, Connecticut. See Writ of Habeas Corpus Pet. to Challenge Illegal Detention ("Petition") (Doc. No. 1) at 1.[2] On November 25, 2016, she

---

[1] In ruling on the Petition and Motions, the court remains mindful of its obligation to construe pro se filings "liberally, applying less stringent standards than when a plaintiff is represented by counsel." Robles v. Coughlin, 725 F.2d 12, 15 (2d Cir. 1983) (per curiam). It is also aware that such filings "must be . . . interpreted 'to raise the strongest arguments that they suggest.'" Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (per curiam) (quoting Pabon v. Wright, 459 F.3d 241, 248 (2d Cir. 2006)).

[2] The facts set forth in this Ruling are drawn from Schipke's filings, unless otherwise specified.

arrived at the house and unpacked her things. Id. At some point the next day, three Meriden police officers walked up to the front porch and demanded to know why Schipke was there. See id. The officers placed Schipke under arrest for trespassing and burglary, handcuffed her, dragged her to a police car, and threw her in the back seat. See id. at 1–2. While moving Schipke from the porch to the police car, the police officers severely injured Schipke's chest. See id. Despite her injury, the police officers brought Schipke to the Meriden jail, where she was photographed, fingerprinted, and placed in a freezing and filthy cell. See id. at 2.

The officers denied Schipke the ability to bail herself out of jail and to make an uninterrupted telephone call. See id. Schipke remained at the police station for two days. See id. The officers denied her a medical diet and refused to provide her with a blanket, a mattress, or a jacket. See id. On November 28, 2016, a Superior Court judge arraigned Schipke and set bond at $500.00. See id. Because Schipke could not make bond, police officials transported her to York. See id. at 3.

Prison officials at York denied Schipke a medical diet, purified water, and her reading glasses. See id. Schipke seeks to be released from prison, the immediate return of her truck, trailer, and possessions by the police, an order prohibiting the sale or destruction of her family home in Meriden, an order that she be provided with her medical diet and purified water, and an order requiring that the prison afford her law library access. See id. at 4.

The court limits its recitation of any facts to those necessary to adjudicate the pending Petition and Motions; it expresses no view as to the veracity of the allegations.

In addition to filing a habeas petition, Schipke has filed six motions seeking injunctive relief. See generally Mot. for Immediate Ct. Order for Special Medical Diet Foods & Bottled Water for Def. under ADA/ADAAA & Other Orders ("Food Mot.") (Doc. No. 3); Emergency Mot. to Stay All State Ct. Proceedings & Sale of Schipke House ("Property Mot.") (Doc. No. 4); Mot. for Emergency Restraining Order Against YCI Mental Health Dep't ("Medication Mot.") (Doc. No. 5); Mot. for Ct. Order for Relief from Pain of Hunger & Physical Pain ("Private Att'y Gen. Mot.") (Doc. No. 6); Mot. for Immediate Ct. Hr'g under Writ of Habeas Corpus ("Hearing Mot.") (Doc. No. 11); Mot. for Immediate Ct. Protection from Escalating Civil Rights Violations ("Escalating Violations Mot.") (Doc. No. 14). The relief sought in the Motions is substantially identical to the relief sought in the petition for a writ of habeas corpus, with the additional requests that the court enjoin York employees from forcing her to take certain medications, see Medication Mot. at 1–2, and provide injunctive relief related to alleged Eighth Amendment violations at York,[3] see Private Att'y Gen. Mot. at 1–2.

III. DISCUSSION

As a preliminary matter, the court has become aware that Schipke is no longer confined at York or any other Connecticut prison facility. Offender Information Search, Conn. Dep't of Corr., http://www.ctinmateinfo.state.ct.us/ (last visited January 13, 2017) (generating no results after entering Schipke's inmate number—418087—and clicking

[3] At various points in her filings, Schipke refers to a "standing recent federal court order directing the YCI prison 'to feed 3000 calories per day per inmate.'" See, e.g., Escalating Violations Mot. at 5. Though this issue is not essential to its ruling, the court is unaware of any such order.

"Search All Inmates"); Escalating Violations Mot. at 7 (referring to release). Accordingly, the relief sought by Schipke with regard to her release from York and the conditions of confinement at that facility is now moot.[4]

The relief sought by Schipke with regard to the sale of her family home and the return of her possessions and vehicles that were confiscated by the police are not the types of relief that are cognizable in a habeas petition. See Price v. Johnson, 334 U.S. 266, 291 (1948) ("The primary purpose of a habeas corpus proceeding is to make certain that a [person] is not unjustly imprisoned."), abrogation on other grounds recognized by McCleskey v. Zant, 499 U.S. 467, 482 (1991). With regard to Schipke's seized possessions and vehicles, the appropriate course of action would be to file a motion for return of seized property in state court. See Conn. Gen. Stat. § 54-36a.[5]

Schipke mentions that her aunt, who lived in the home located at 129 Goodwill Avenue in Meriden, Connecticut, passed away on August 31, 2016. See Petition at 1. Schipke contends that she is the sole heir to the property and believes that someone is attempting to sell the house and the property to a church that is located next door to the property. See id. at 3. To the extent that the estate of Schipke's aunt is in probate, this

---

[4] Even if claims related to the conditions of her confinement were cognizable in an action seeking a writ of habeas corpus, Schipke no longer has standing to seek injunctive relief related to the allegedly unconstitutional prison conditions at York. See, e.g., Private Att'y Gen. Mot. at 1 ("The Petitioner . . . now addresses this Court in the legal capacity of Private Attorney General . . . ."). She has not alleged any likelihood that she will be incarcerated in the future that might give rise to a future injury warranting prospective, injunctive relief. See Deshawn E. by Charlotte E. v. Safir, 156 F.3d 340, 344 (2d Cir. 1998) ("A plaintiff seeking injunctive . . . relief cannot rely on past injury to satisfy the injury requirement but must show a likelihood that he . . . will be injured in the future." (citing City of Los Angeles v. Lyons, 461 U.S. 95, 105–06 (1983)).

[5] Additionally, if this situation persists after the pending state charges against her are resolved,

court has no subject matter jurisdiction to entertain an action that would interfere with a probate court's control over property that is in the probate court's custody. See Marshall v. Marshall, 547 U.S. 293, 311–12 (2006). The probate exception bars a federal court from doing anything to administer a will or to "disturb or affect the possession of property in the custody of a state court." Id. at 310 (quoting Markham v. Allen, 326 U.S. 490, 494 (1946)).

IV. CONCLUSION

For the reasons set forth above, the Petition (Doc. No. 1) is **TERMINATED AS MOOT**. The Motions (Doc. Nos. 3, 4, 5, 6, 11, 14) seeking various forms of injunctive relief are **TERMINATED AS MOOT**, to the extent they seek relief related to allegedly unlawful prison conditions, and **DISMISSED** without prejudice, to the extent they seek injunctive relief that is not cognizable in conjunction with a habeas petition or raise claims over which this court does not have subject matter jurisdiction.

The court concludes that jurists of reason would not find it debatable that the relief sought in the Petition is moot or that the court lacks subject matter jurisdiction over at least one of the claims. Thus, a certificate of appealability will not issue. See Slack v. McDaniel, 529 U.S. 473, 484 (2000). The Clerk is directed to enter judgment and close this case.

Schipke might consider filing a claim pursuant to section 1983 of title 42 of the United States Code.

SO ORDERED.

Dated at New Haven, Connecticut this 18th day of January, 2017.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge