UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ATHENA REMLINGER, Plaintiff, v. LEBANON COUNTY, et al., Defendants.	CIVIL ACTION NO. 1:18-cv-00984 (WILSON, J.) (SAPORITO, M.J.)

REPORT AND RECOMMENDATION

This is a prisoner civil rights action brought under 42 U.S.C. § 1983 for violation of the plaintiff's substantive due process rights under the Fourteenth Amendment of the United States Constitution. The plaintiff, Athena Remlinger, is represented by counsel. Remlinger was an inmate at Lebanon County Correctional Facility ("LCCF") from April 6, 2017, until January 24, 2018. This action arises out of allegations concerning Remlinger's high-risk pregnancy while incarcerated at LCCF. First, the plaintiff alleges that the defendants endangered the health of Remlinger and her son by inducing labor approximately two weeks before her due date for non-medical reasons. Second, she alleges that the defendants placed her in shackles during her pregnancy, during labor, and during her post-partum recovery. Third, she alleges that the defendants placed

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her in solitary confinement for extended periods while pregnant. In addition, the plaintiff has asserted a state-law claims of intentional infliction of emotional distress. For relief, the plaintiff seeks an award of compensatory and punitive damages from the defendants.

Four of the defendants—correctional officers Cheyenne Gettle, Amber Schwartz, Crystal Herr, and Michelle Williams (together, the "Answering Corrections Defendants")—have answered the amended complaint. (Doc. 39; Doc. 40; Doc. 41; Doc. 42.) Defendants Lebanon County and warden Robert J. Karnes (together, the "County Defendants") have moved for partial dismissal of the claims against them. (Doc. 27). The remaining defendants—deputy warden Tony Haus, corporal Stephen Davis, sergeant Scott Hocker, correctional officers Kyle Fink and Edward Van Duzen, and licensed practical nurses Arlene McHale and Trudy Seyfert (together, the "Moving Corrections Defendants")—have moved for dismissal of all claims against them. (Doc. 44.) Both motions to dismiss are ripe for disposition.

I. STATEMENT OF FACTS

For purposes of resolution of both motions to dismiss, the facts are taken from Remlinger's amended complaint which was filed on April 18,

2019. (Doc. 24). Remlinger was incarcerated at LCCF from April 6, 2017, through January 24, 2018. She learned that she was pregnant shortly after she was incarcerated at LCCF. Her pregnancy was deemed "high risk" for several reasons, including a prior gastric bypass and a history of heroin addiction necessitating the use of methadone.

Upon her incarceration, Remlinger was placed in the prison's Segregated Housing Unit ("SHU") because she was detoxing from heroin. This placement was allegedly pursuant to a policy or practice by the County Defendants that all inmates who are detoxing be housed in the SHU, without consideration of whether they are pregnant. Inmates placed in the SHU are housed in conditions of solitary confinement, including confinement to a cell for 22 to 24 hours per day, isolation from social interaction with others, and other severe restrictions. Remlinger's placement in the SHU continued even after prison officials learned she was pregnant. After thirty days in the SHU, Remlinger was moved to general population.

On or about June 1, 2017, Remlinger was placed in a medical isolation cell on orders from defendant Stephen Davis, purportedly in response to a report by a non-party correctional officer that Remlinger

had not eaten all of her evening snack bag.[1] Remlinger was housed in this medical isolation cell for more than six weeks—from June 1, 2017, through July 15, 2017. While housed in the medical isolation cell, Remlinger spent 23 hours per day in solitary confinement, with one hour of out-of-cell time for a shower and telephone calls. Remlinger was not seen by medical staff for the first two weeks she was in the medical isolation cell. She did not see any medical personnel at all until she was sent outside the prison for an appointment with her obstetrician, approximately two weeks after her transfer to the medical isolation cell. While housed in the medical isolation cell, Remlinger was not under constant or frequent observation—there were no video cameras in the cell or other means of observation, except for a small flap on the metal cell door, which remained closed most of the time. Medical staff did not come to the medical isolation cell to check on her.

Although Remlinger wrote multiple request slips to defendant nurses Arlene McHale and Trudy Seyfert, who had ordered Remlinger's continued confinement in the medical isolation cell, asking why she was

[1] As a result of her gastric bypass surgery, Remlinger can only eat small amounts of food at once, and she was not in any medical danger at this time.

in isolation and requesting that she be returned to general population, these requests were ignored or denied until her release from medical isolation on July 15, 2017. She was visited at her medical isolation cell by defendant deputy warden Tony Haus on multiple occasions, and she repeatedly asked him to remove her from isolation, but he refused to alter her housing placement.

Other pregnant women, who were not subject to solitary confinement for disciplinary reasons, were also placed in medical isolation by the defendants. At least one of these other pregnant women was housed in the SHU throughout the duration of her pregnancy and while she was recovering post-partum.

The amended complaint alleges that the placement of pregnant women in solitary confinement is against community medical standards. In support, the plaintiff refers to a position statement by the National Commission on Correctional Health Care ("NCCHC"), an accrediting agency for prison health care services, which states that "pregnant women should be excluded from solitary confinement of any duration." The NCCHC position statement, as quoted in the amended complaint, in turn refers to international standards established by the United Nations

Rule for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, which provide that "pregnant women should never be placed in solitary confinement as they are especially susceptible to its harmful psychological effects."

Remlinger was routinely transported outside the prison without shackles to an outside clinic to receive her daily methadone treatment, and to an outside hospital for ultrasound imaging every other week. On these many occasions, Remlinger never attempted to escape, nor did she otherwise endanger the safety of herself or the correctional officers escorting her on these trips outside the prison.

On April 26, 2017, Remlinger experienced severe bleeding. Given her high-risk pregnancy, paramedics were called to the prison to take Remlinger to an outside hospital for emergency medical care. Despite her pregnancy and her need for emergency medical care, defendant Edward Van Duzen refused to let Remlinger leave LCCF with paramedics unless she was shackled.

On October 16, 2017, Remlinger was informed by her public defender that her criminal hearing scheduled for October 17, 2017, had been cancelled because the prison had scheduled her to be induced that

day, apparently at the order of defendant warden Robert J. Karnes. The possibility of inducing labor had never been mentioned to Remlinger by any of the defendants, she had never discussed it with any medical staff at LCCF or the outside hospital where she received obstetric care, and no defendant or other medical personnel had advised her that such procedure was medically necessary. Remlinger did not consent to being induced prior to her due date.

On October 17, 2017, at approximately 7:00 a.m., defendant correctional officers Cheyenne Gettle and Amber Schwartz transported Remlinger to an outside hospital. Gettle informed Remlinger that she was being induced because of concerns at the prison that there would be insufficient staffing at the time labor would naturally occur.

Upon her admission to the hospital, Remlinger's left leg was shackled to the guardrail of her hospital bed with a leg iron, in accordance with the official policy or practice of Lebanon County and its prison. After she began receiving drugs to induce labor, Remlinger was permitted to sit in a rocking chair for an hour and a half instead of being shackled to the bed; however, she was shackled by one leg iron to the chair. When Remlinger was returned to her bed, Gettle re-shackled her with the chain

attaching her left leg to the bed's guardrail, where she remained shackled throughout four and a half hours of labor. At some point during Remlinger's labor, defendant Scott Hocker ordered Schwarz to return to LCCF, and he ordered that Remlinger remain shackled to the hospital bed guardrail during labor. Gettle remained in the delivery room throughout Remlinger's labor.

The shackles were only removed at the request of medical staff when they began having difficulties finding the baby's heartbeat. They decided that her water needed to be broken, and the shackles were preventing delivery. Remlinger began to bleed excessively which required an emergency C-section. Her son was unresponsive at birth, and he was only revived a few minutes later.

When Remlinger awoke after the C-section, she had been re-shackled to the bed by her left ankle. She remained shackled around the clock for the full five days she spent in the hospital post-partum, notwithstanding the lack of any correctional justification and the need for medical care including attention to an injury to her bladder that occurred during childbirth.

Throughout her hospital stay, defendant correctional officers Gettle

and Schwarz shackled her on the first shift of each day, defendant correctional officer Victoria Herr shackled her on the second shift of each day, and defendant correctional officers Michelle Williams and Kyle Fink shackled her on the third shift of each day. Defendants corporal Stephen Davis and sergeant Scott Hocker allegedly ordered that Remlinger remain shackled throughout her hospital stay. Defendants Davis, Hocker, Haus, and Karnes allegedly knew that Remlinger was shackled throughout her hospital stay, purportedly in violation of her federal constitutional and state statutory rights, as they allegedly received regular reports from the correctional officers present with Remlinger during her hospital stay. Lebanon County and warden Karnes allegedly maintained a practice or policy of shackling pregnant women during transport, labor and delivery, and post-partum recovery without an individualized assessment of whether the pregnant inmate presented a substantial flight risk or extraordinary threat to the safety of staff or other inmates. Remlinger is aware of at least one other woman who was shackled throughout labor while incarcerated at LCCF.

In 2010, the Pennsylvania legislature passed the Healthy Birth for Incarcerated Women Act, 61 Pa. Cons. Stat. Ann. § 5905, which restricts

the use of restraints on pregnant women. This Act provides that, except for limited circumstances,[2] "a correctional institution shall not apply restraints to a prisoner or detainee known to be pregnant during any stage of labor, any pregnancy-related medical distress, any period of delivery, any period post-partum . . . or [during] transport to a medical facility as a result of any of the preceding conditions or transport to a medical facility after the beginning of the second trimester of pregnancy." 61 Pa. Cons. Stat. Ann. § 5905(b)(1). Under this law, restraints can only be used after "an individualized determination that the prisoner or detainee presents a substantial risk of imminent flight or some other extraordinary medical or security circumstance dictates that the prisoner or detainee be restrained to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees or the public." *Id.* § 5905(b)(2). The plaintiff alleges that this state statute reflects community medical standards and

[2] Reasonable restraints may be used upon a pregnant prisoner or detainee who presents a substantial risk of imminent flight or some other extraordinary medical or security circumstance, provided, however, that the prisoner may not be left unattended by correctional staff with the ability to release the restraints if it becomes medically necessary. 61 Pa. Cons. Stat. Ann. § 5905(b)(2), (3).

is consistent with positions taken by the American College of Obstetricians and Gynecologists, the National Task Force on the Use of Restraints with Pregnant Women Under Correctional Custody, the American Public Health Association, and the American Medical Association.

II. LEGAL STANDARDS

Rule 12(b)(6) of the Federal Rules of Civil Procedure authorizes a defendant to move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "Under Rule 12(b)(6), a motion to dismiss may be granted only if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds the plaintiff's claims lack facial plausibility." *Warren Gen. Hosp. v. Amgen Inc.*, 643 F.3d 77, 84 (3d Cir. 2011) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555–56 (2007)). In deciding the motion, the Court may consider the facts alleged on the face of the complaint, as well as "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Although the Court must accept the fact allegations in the

complaint as true, it is not compelled to accept "unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation." *Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013) (quoting *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007)). Nor is it required to credit factual allegations contradicted by indisputably authentic documents on which the complaint relies or matters of public record of which we may take judicial notice. *In re Washington Mut. Inc.*, 741 Fed. App'x 88, 91 n.3 (3d Cir. 2018); *Sourovelis v. City of Philadelphia*, 246 F. Supp. 3d 1058, 1075 (E.D. Pa. 2017); *Banks v. Cty. of Allegheny*, 568 F. Supp. 2d 579, 588–89 (W.D. Pa. 2008).

III. DISCUSSION

Remlinger has brought this federal civil rights action under 42 U.S.C. § 1983. Section 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

42 U.S.C. § 1983. Section 1983 does not create substantive rights, but

instead provides remedies for rights established elsewhere. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985). To establish a § 1983 claim, a plaintiff must establish that the defendants, acting under color of state law, deprived the plaintiff of a right secured by the United States Constitution. *Mark v. Borough of Hatboro*, 51 F.3d 1137, 1141 (3d Cir. 1995). To avoid dismissal for failure to state a claim, a civil rights complaint must state the conduct, time, place, and persons responsible for the alleged civil rights violations. *Evancho v. Fisher*, 423 F.3d 347, 353 (3d Cir. 2005).

Here, the amended complaint sets out four separate counts. In Count I, the plaintiff asserts that the decision to induce labor two weeks before Remlinger's due date, and without her consent, was an act of deliberate indifference to her serious medical needs, in violation of her Fourteenth Amendment substantive due process rights; this count is brought against defendants Lebanon County and Karnes only. In Count II, the plaintiff asserts that placing her in shackles while pregnant during transport to and from the hospital, while in labor, and during post-partum recovery, without a specific and individualized assessment that she posed a substantial flight risk or an extraordinary threat to the

safety of herself or others, was objectively unreasonable, deliberately indifferent, and posed a substantial risk of serious harm to her safety or health, in violation of her Fourteenth Amendment substantive due process rights; this count is brought against defendants Lebanon County, Karnes, Davis, Hocker, Gettle, Schwartz, Herr, Williams, Van Duzen, and Fink only. In Count III, the plaintiff asserts that imposing conditions of solitary confinement on Remlinger while pregnant was objectively unreasonable and posed a substantial risk of serious harm to her safety or health, in violation of her Fourteenth Amendment substantive due process rights; this count is brought against defendants Lebanon County, Karnes, Haus, McHale, and Seyfert only. In Count IV, the plaintiff asserts state-law intentional infliction of emotional distress claims against all individual defendants in their personal capacities based on her placement in solitary confinement while pregnant and her shackling during transport to and from the hospital, while in labor, and during her post-partum recovery. For relief, the plaintiff seeks an award of compensatory and punitive damages against all defendants, plus reasonable attorney fees and costs.

The County Defendants—Lebanon County and Warden Karnes—

have moved for dismissal of Counts III and IV on the merits; they do not seek dismissal of Counts I or II at this time. The Moving Corrections Defendants—Haus, Davis, Hocker, Fink, Van Duzen, McHale, and Seyfert—have moved for dismissal of all claims against them—Counts II, III, and IV—on the merits or, alternatively, on the basis of qualified immunity.

A. Official Capacity Defendants

In the amended complaint, each of the twelve individual defendants[3] is named as a defendant in both his or her personal capacity and his or her official capacity. But "[o]fficial capacity actions are redundant where the entity for which the individuals worked is named." *Highhouse v. Wayne Highlands Sch. Dist.*, 205 F. Supp. 3d 639, 646 (M.D. Pa. 2016) (dismissing official capacity claims against municipal officials as redundant when municipality was also named as a defendant). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985). Here, the twelve individual defendants all work for

[3] Excluding Lebanon County only.

Lebanon County, which is named as a defendant, and which has appeared through counsel to defend this action.

Accordingly, it is recommended that the plaintiff's claims against all individual defendants in their official capacities be dismissed with prejudice as redundant because their employer, Lebanon County, is also named in the amended complaint, pursuant to the Court's inherent authority to control its docket and avoid duplicative claims. *See Comsys, Inc. v. City of Kenosha*, 223 F. Supp. 3d 792, 802 (E.D. Wis. 2016); *Giannone v. Ayne Inst.*, 290 F. Supp. 2d 553, 566 (E.D. Pa. 2003).

B. Punitive Damages

The original complaint asserted a broad § 1983 claim for punitive damages against all defendants, including Lebanon County and all individual defendants in their official capacities. On March 5, 2019, the plaintiff's § 1983 punitive damages claim against Lebanon County and the individual defendants in their official capacities was dismissed *with prejudice*. (Doc. 21; *see also* Doc. 18.)

The amended complaint once again asserts a broad § 1983 punitive damages claim against all defendants, including Lebanon County. To the extent the amended complaint reasserts a claim for punitive damages

against the County that was previously dismissed with prejudice, that claim is subject once again to dismissal with prejudice under the law of the case doctrine. *See Warden v. Woods Servs.*, No. 19-CV-5493, 2020 WL 1289194, at *2 (E.D. Pa. Mar. 17, 2020).

Accordingly, it is recommended that the plaintiff's § 1983 claim for punitive damages against Lebanon County be dismissed with prejudice for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and the law of the case doctrine.

C. Shackling Claims

In Count II, the plaintiff asserts that placing her in shackles while pregnant during transport to and from the hospital, while in labor, and during post-partum recovery, without a specific and individualized assessment that she posed a substantial flight risk or an extraordinary threat to the safety of herself or others, was objectively unreasonable, deliberately indifferent, and posed a substantial risk of serious harm to her safety or health, in violation of her Fourteenth Amendment substantive due process rights. The Moving Corrections Defendants seek dismissal of these claims on the merits or, in the alternative, on qualified

immunity grounds.

The Supreme Court has set forth standards for violations of the Eighth Amendment based on both medical and nonmedical conditions of confinement. *See Wilson v. Seiter*, 501 U.S. 294, 298, 303–04 (1991) (nonmedical); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (medical). This same standard applies to pretrial detainees through the Due Process Clause. *See Kost v. Kozakiewicz*, 1 F.3d 176, 188 (3d Cir. 1993) (nonmedical); *Brown v. Borough of Chambersburg*, 903 F.2d 274, 278 (3d Cir. 1990) (medical); *see also City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983) (pretrial detainee's due process rights are at least as great as a convicted prisoner's Eighth Amendment rights); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979) (pretrial detainees have an additional due process right to freedom from punishment).

To state a substantive due process claim based on conditions of confinement, a pretrial detainee must allege "that prison officials acted with deliberate indifference and that he or she suffered a deprivation of 'the minimal civilized measures of life's necessities,'" such as adequate food, clothing, shelter, sanitation, medical care, and personal safety. *Kost*, 1 F.3d at 188 (quoting *Wilson*, 501 U.S. at 298, 303–04). To satisfy

the former, subjective component of a conditions-of-confinement claim, a plaintiff must allege that the state actor acted with "deliberate indifference," a state of mind equivalent to gross negligence or reckless disregard of a known risk of harm. *See Farmer v. Brennan*, 511 U.S. 825, 836 & n.4 (1994). To satisfy the latter, objective component, a plaintiff must allege conditions that, either alone or in combination, deprive him or her of "the minimal civilized measure of life's necessities," such as adequate food, clothing, shelter, sanitation, medical care, or personal safety. *See Rhodes v. Chapman*, 452 U.S. 337, 347–48 (1981); *Young v. Quinlan*, 960 F.2d 351, 364 (3d Cir. 1992). This includes conditions of confinement posing a "substantial risk of serious harm" to the inmate. *See Farmer*, 511 U.S. at 834, 847.

To state a substantive due process claim for improper medical care, "a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). "This standard is two-pronged. It requires deliberate indifference on the part of prison officials and it requires the prisoner's medical needs to be serious." *West v. Keve*, 571 F.2d 158, 161 (3d Cir. 1978). A serious medical need exists if failure to treat such condition

would constitute a "denial of the minimal civilized measure of life's necessities." *Farmer*, 511 U.S. at 834.

> [T]he concept of a serious medical need . . . has two components, one relating to the consequences of a failure to treat and one relating to the obviousness of those consequences. The detainee's condition must be such that a failure to treat can be expected to lead to substantial and unnecessary suffering, injury, or death. Moreover, the condition must be "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention."

Colburn v. Upper Darby Twp., 946 F.2d 1017, 1023 (3d Cir. 1991) (quoting *Monmouth County Corr. Institutional Inmates v. Lanzaro*, 834 F.2d 326, 347 (3d Cir. 1987)).

In their reply brief, the Moving Corrections Defendants suggest that the plaintiff's claims must be evaluated exclusively with reference to whether the defendants were deliberately indifferent to *serious medical needs*, and not in a broader "conditions of confinement" context. But as the Supreme Court has recognized, there is "no significant distinction between claims alleging inadequate medical care and those alleging inadequate 'conditions of confinement.'" *Wilson*, 501 U.S. at 303. Whether one characterizes the treatment received by Remlinger as "inhumane conditions of confinement, failure to attend to [her] medical

needs, or a combination of both," the same deliberate indifference standard ultimately applies. *See id.* (quoting *LaFaut v. Smith*, 834 F.2d 389, 391–92 (4th Cir. 1987) (Powell, J.)).

In any event, by its nature, a claim regarding the shackling of a pregnant inmate does not fit neatly within the compass of serious medical needs jurisprudence. *See Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563, 569 (6th Cir. 2013). "A shackling claim does not necessarily involve the denial of or interference with medical treatment; rather, it may be premised on the notion that the shackles increase [the pregnant inmate's] risk of medical complications." *Id.* at 570. For this reason, the earliest federal court to address such a claim considered it simply as a conditions-of-confinement claim. *See Women Prisoners of D.C. Dep't of Corrs. v. Dist. of Columbia*, 877 F. Supp. 634, 668–69 (D.D.C. 1994) ("[S]hackl[ing] pregnant women prisoners in the third trimester of pregnancy and immediately after delivery poses a risk so serious that it violates contemporary standards of decency."), *modified in part on other grounds*, 899 F. Supp. 659 (D.D.C. 1995), *vacated in part and remanded on other grounds*, 93 F.3d 910 (D.C. Cir. 1996). Yet these shackling claims also routinely involve medical proof not typically addressed in the conditions

of confinement context. *See Villegas*, 709 F.3d at 570.

Thus, more recent decisions addressing the shackling of pregnant inmates have universally applied a hybrid standard: "(1) whether [the plaintiff] had a serious medical need or whether a substantial risk to her health or safety existed, and (2) whether [the defendant] had knowledge of such serious medical need or substantial risk to [the plaintiff's] health or safety but nevertheless disregarded it." *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 529 (8th Cir. 2009) (en banc) (convicted prisoner); *see also Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1248 (9th Cir. 2016) (pretrial detainee); *Villegas*, 709 F.3d at 571 (immigration detainee in a municipal jail) (quoting *Nelson*, 583 F.3d at 529); *Brawley v. Washington*, 712 F. Supp. 2d 1208, 1219 (W.D. Wash. 2010) (convicted prisoner). Echoing the seminal *Women Prisoners* decision, these later decisions have recognized that "shackling female prisoners while they are in labor creates a substantial risk of serious harm and violates contemporary standards of decency." *Mendiola-Martinez*, 836 F.3d at 1252.

> [T]he shackling of pregnant detainees while in labor offends contemporary standards of human decency such that the practice . . . poses a substantial risk of serious harm. The universal consensus from the courts to have addressed this issue as well as the chorus of prominent organizations condemning the practice demonstrates

> that, without any extenuating circumstances, shackling women during labor runs afoul of the protections of the Eighth [and Fourteenth] Amendment[s].

Villegas, 709 F.3d at 574 (citation omitted); *see also Nelson*, 583 F.3d at 529 (denying summary judgment based on expert testimony that shackling was inherently dangerous to both mother and unborn fetus); *Brawley*, 712 F. Supp. 2d at 1219–20 (finding pregnant inmate "was exposed to a sufficiently serious risk of harm and had a serious medical need—being in labor—when she was shackled" to a hospital bed).

Courts are also in agreement, however, that a pregnant inmate's right to be free from shackling is not unqualified. Under some circumstances—e.g., when the inmate is a substantial flight risk or an extraordinary threat to herself or others—the shackling of a pregnant inmate may be tolerated by society. *See Villegas*, 709 F.3d at 574. The Moving Corrections Defendants argue that the plaintiff has failed to acknowledge that shackling of pregnant detainees may serve legitimate penological interests—security and safety. But the amended complaint has expressly alleged that Remlinger was a non-violent offender with no misconduct history whatsoever. She was routinely transported outside the prison for methadone treatment and pregnancy-related ultrasound

imaging without restraints. During these trips, Remlinger never attempted escape or endangered the safety of herself or the correctional officers escorting her. While the facts adduced through discovery or at trial might be more variegated, there is nothing on the face of the amended complaint to suggest that Remlinger was dangerous to herself or others or that she posed a flight risk.

The Moving Corrections Defendants argue that the amended complaint has failed to allege that they each knew that shackling would create a risk of serious harm or cause a delay in medical treatment. But in light of Pennsylvania's enactment of the Healthy Birth for Incarcerated Women Act seven years prior to Remlinger's incarceration, and the broad condemnation of the practice by prominent organizations in the medical and correctional fields, a factfinder could reasonably conclude that the defendants were aware of the substantial risk of harm caused by shackling an inmate during transport to the hospital, while in labor, and during post-partum recovery, and that they were deliberately indifferent to that risk by shackling her under these conditions. *See Mendiola-Martinez*, 836 F.3d at 1256 (characterizing the risk of harm as

"obvious");[4] *see also Nelson*, 583 F.3d at 534 (same); *Women Prisoners*, 877 F. Supp. at 669 (same). *See generally Hope v. Pelzer*, 536 U.S. 730, 738 (2002) ("We may infer the existence of this subjective state of mind [(deliberate indifference)] from the fact that the risk of harm is obvious.").

The Moving Corrections Defendants contend that defendants Davis and Hocker were not personally involved in the shackling of the plaintiff. It is well-established that "[c]ivil rights claims cannot be premised on a theory of *respondeat superior*. Rather, each named defendant must be shown . . . to have been personally involved in the events or occurrences which underlie a claim." *Millbrook v. United States*, 8 F. Supp. 3d 601, 613 (M.D. Pa. 2014) (citation omitted). As previously explained by the Third Circuit:

> A defendant in a civil rights action must have personal involvement in the alleged wrongs . . . . [P]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity.

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[4] We note that the *Mendiola-Martinez* court found summary judgment proper with respect to that plaintiff's post-partum placement in restraints, but the six-to-eight foot "leg tether" used post-partum in *Mendiola-Martinez* does not resemble the shackles alleged to have been used in this case. *See Mendiola-Martinez*, 836 F.3d at 1256.

Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Here, the amended complaint has expressly alleged that these defendants personally directed their subordinate correctional officers that Remlinger remain shackled throughout her hospital stay.

The Moving Corrections Defendants have also interposed a defense of qualified immunity. As the Third Circuit has cautioned, "it is generally unwise to venture into a qualified immunity analysis at the pleading stage as it is necessary to develop the factual record in the vast majority of cases." *Newland v. Reehorst*, 328 Fed. App'x 788, 791 n.3 (3d Cir. 2009) (per curiam). This is one those cases. Taking the allegations of the amended complaint as true, viewing them in the light most favorable to the plaintiff, the amended complaint alleges that these defendants shackled a pregnant inmate during transport to and from the hospital, while in labor, and during post-partum recovery, in the absence of any substantial flight risk or extraordinary threat of danger to herself or others. Under these circumstances, dismissal on qualified immunity grounds at this time is inappropriate. *See Nelson*, 583 F.3d at 528–34 (affirming denial of summary judgment on qualified immunity grounds); *Brawley*, 712 F. Supp. 2d at 1217–21 (same); *cf. E.D. v. Sharkey*, 928 F.3d

299, 308 (3d Cir. 2019) ("That [the defendant's] conduct was illegal renders [the plaintiff's] right to be free from [that conduct] so 'obvious' that it could be deemed clearly established even without materially similar cases.") (internal quotation marks omitted). The defendants are free to raise this qualified immunity defense again at summary judgment or at trial, if supported by the evidence.

Based on the facts pleaded in the amended complaint, we find that the plaintiff has plausibly alleged that defendants Davis, Hocker, Fink, and Van Duzen were aware of the substantial risk of harm caused by shackling Remlinger during transport to and from the hospital, while in labor, and during post-partum recovery, and that they were deliberately indifferent to that risk by shackling her under these circumstances. Accordingly, we recommend that the Moving Corrections Defendants' motion to dismiss be denied with respect to Count II of the amended complaint.

D. Solitary Confinement Claims

In Count III, the plaintiff asserts that imposing conditions of solitary confinement on Remlinger while pregnant was objectively unreasonable and posed a substantial risk of serious harm to her safety

or health, in violation of her Fourteenth Amendment substantive due process rights. The Moving Corrections Defendants seek dismissal of these claims on the merits or, in the alternative, on qualified immunity grounds. The County Defendants seek dismissal of these claims against Warden Karnes on the merits.[5]

The plaintiff alleges two separate periods of solitary confinement. She alleges that she was first placed in solitary confinement in the prison's SHU for a period of thirty days following her arrival at LCCF on April 6, 2017, because she was detoxing from heroin. This housing placement was pursuant to a policy or practice by the County Defendants—Lebanon County and Warden Karnes—that all inmates who are detoxing be housed in the SHU, without consideration of whether they are pregnant. Remlinger first learned that she was pregnant shortly after her arrival at LCCF, but her placement in the SHU continued even after prison officials learned she was pregnant.[6] At the end of the thirty-day period, Remlinger was transferred to the prison's general population. The amended complaint does not allege any personal involvement by

[5] They do not seek dismissal with respect to Lebanon County.

[6] The amended complaint does not specify when either Remlinger or prison officials learned that she was pregnant.

defendants Haus, McHale, or Seyfert in this period of solitary confinement.

Remlinger alleges a second period of solitary confinement in a medical isolation cell. She alleges that, on or about June 1, 2017, she was placed in the medical isolation cell on orders by defendant Davis, purportedly in response to a report by a non-party correctional officer that Remlinger had not eaten all of her evening snack bag. Remlinger was housed in this medical isolation cell under solitary confinement conditions for approximately 45 days—from June 1, 2017, through July 15, 2017. Remlinger was not seen by medical staff during the first two weeks in solitary confinement, nor was she under constant or frequent observation while isolated—there were no cameras or other means of observing her in the cell, except for a small flap on the metal cell door, which remained closed most of the time. Medical staff did not come to the medical isolation cell to check on her. The amended complaint alleges that Davis initially ordered that Remlinger be placed in the medical isolation cell, that McHale and Seyfert ordered her continued confinement in the medical isolation cell, and Haus visited her there on multiple occasions but refused to alter her placement. The amended

complaint does not allege any personal involvement by defendant Karnes in this period of solitary confinement.

The Moving Corrections Defendants have interposed a qualified immunity defense. Unlike the plaintiff's shackling claim, there is no need to develop the factual record with respect to this claim because the right at issue—the right of pregnant inmates to be free from the conditions of solitary confinement—is not clearly established.

The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (internal quotation marks omitted). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." *Id.* Qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986). "Thus, so long as an official reasonably believes that his conduct complies

with the law, qualified immunity will shield that official from liability." *Sharp v. Johnson*, 669 F.3d 144, 159 (3d Cir. 2012) (citing *Pearson*, 555 U.S. at 244). Although qualified immunity is generally a question of law that should be considered at the earliest possible stage of proceedings, a genuine dispute of material fact may preclude summary judgment on qualified immunity. *Giles v. Kearney*, 571 F.3d 318, 325–26 (3d Cir. 2009).

A qualified immunity determination involves a two-pronged inquiry: (1) whether a constitutional or federal right has been violated; and (2) whether that right was "clearly established." *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in part by Pearson*, 555 U.S. at 236 (permitting federal courts to exercise discretion in deciding which of the two *Saucier* prongs should be addressed first). "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier*, 533 U.S. at 202. "In determining whether a right has been clearly established, the court must define the right allegedly violated at the appropriate level of specificity." *Sharp*, 669 F.3d at 159. "When reviewing a qualified immunity defense, courts

should examine their own *and* other relevant precedents." *Williams v. Bitner*, 285 F. Supp. 2d 593, 604 n.15 (M.D. Pa. 2003) (citing *Elder v. Holloway*, 510 U.S. 510, 516 (1994)).

Here, the claimed violations of Remlinger's constitutional rights alleged in connection with Count III occurred between April and July 2017. Neither the Supreme Court of the United States nor the Third Circuit has addressed whether housing a pregnant prisoner or detainee in conditions of solitary confinement violates any provision of the Constitution, nor have any district courts within the Third Circuit. Looking beyond this circuit, we find no prior federal court decisions addressing this particular issue, and the parties cite none in their briefs. The plaintiff cites international standards promulgated by the United Nations, a policy recommendation by the United States Department of Justice, and a position statement by an accrediting agency for prison health services. We note that a handful of states[7] have recently enacted or considered legislation or administrative measures prohibiting or limiting the use of solitary confinement for pregnant prisoners. *See* 1 Michael B. Mushlin, *Rights of Prisoners* § 3:1.30 & nn. 15–17 (5th ed.

[7] Pennsylvania is not among them.

2019) (California (considered), Florida (considered), Georgia (enacted), Maryland (enacted), New Jersey (considered), New Mexico (enacted), New York (legislation considered and administrative changes adopted), Tennessee (considered), Texas (considered)). But while contemporary standards of decency may be evolving in that direction, the right asserted by the plaintiff was not clearly established at the time of the events underlying this action, and thus these defendants are entitled to qualified immunity.

Accordingly, it is recommended that the Moving Corrections Defendants' motion to dismiss be granted with respect to Count III of the amended complaint and these claims be dismissed on qualified immunity grounds. In addition, although the County Defendants have not moved to dismiss this claim against Warden Karnes on qualified immunity grounds, a district court may *sua sponte* dismiss claims against non-moving defendants where the claims suffer from the same defects as claims subject to a motion to dismiss, provided the plaintiff had adequate notice and opportunity to respond to the motion. *See Copeland v. U.S. Dep't of Justice*, 675 Fed. App'x 166, 171 (3d Cir. 2017) (per curiam); *Coulter v. Unknown Probation Officer*, 562 Fed. App'x 87, 89 n.2 (3d Cir.

2014) (per curiam); *Silverstein v. Percudani*, 422 F. Supp. 2d 468, 473 (M.D. Pa. 2006). Thus, we further recommend that Count III be dismissed *sua sponte* against defendant Karnes on qualified immunity grounds.

E. State-Law Emotional Distress Claims

In Count IV, the plaintiff asserts state-law intentional infliction of emotional distress ("IIED") claims against all individual defendants in their personal capacities based on her placement in solitary confinement while pregnant and her shackling during transport to and from the hospital, while in labor, and during her post-partum recovery. The Moving Corrections Defendants seek dismissal of these claims on the ground that they are immune from liability for IIED under the Pennsylvania Political Subdivision Tort Claims Act ("PPSTCA"), 42 Cons. Stat. Ann. § 8541 *et seq*. Alternatively, the Moving Corrections Defendants seek dismissal of these claims on the merits. The County Defendants also seek dismissal of these claims against Warden Karnes on the merits.

1. PPSTCA Immunity

The Moving Corrections Defendants contend that the plaintiff's

IIED claims are barred by the PPSTCA.

Under the PPSTCA, municipal officials generally share the same immunity as the municipality for which they work. *See* 42 Pa. Cons. Stat. Ann. § 8545; *Heckensweiler v. McLaughlin*, 517 F. Supp. 2d 707, 719 (E.D. Pa. 2007). The PPSTCA provides an exception from this official immunity, however, for "willful misconduct," which Pennsylvania courts have held to be synonymous with the term "intentional tort." *See* 42 Pa. Cons. Stat. Ann. § 8550; *Heckensweiler*, 517 F. Supp. 2d 719 & n.72. Thus, under the PPSTCA, a municipal official may be personally immune from liability for *negligent* infliction of emotional distress claims, but not IIED claims. *See Heckensweiler*, 517 F. Supp. 2d at 719–20.

2. IIED on the Merits

Under Pennsylvania law, an IIED claim requires the plaintiff to allege the following elements: "(1) the conduct must be extreme and dangerous; (2) it must be intentional or reckless; (3) it must cause emotional distress; [and] (4) that distress must be severe." *Clark v. Conahan*, 737 F. Supp. 2d 239, 272 (M.D. Pa. 2010) (quoting *Hoy v. Angelone*, 691 A.2d 476, 482 (Pa. Super. Ct. 1997)). Extreme and outrageous conduct is conduct which is

> so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

Corbett v. Morgenstern, 934 F. Supp. 680, 684 (E.D. Pa. 1996) (quoting *Johnson v. Caparelli*, 625 A.2d 668, 672 (Pa. Super. Ct. 1993)). Moreover, "in order to state a claim under which relief can be granted for the tort of intentional infliction of emotional distress, the plaintiffs must allege physical injury." *Clark*, 737 F. Supp. 2d at 272 (quoting *Hart v. O'Malley*, 647 A.2d 542, 554 (Pa. Super. Ct. 1994). Where some special relationship exists, the test for IIED has been relaxed. *See Bradshaw v. Gen. Motors Corp.*, 805 F.2d 110, 114 (3d Cir. 1986); *Bowersox v. P.H. Glatfelter Co.*, 677 F. Supp. 307, 310 (M.D. Pa. 1988). The jailer-inmate relationship is one such special relationship. *See Thompson v. United States*, No. 16-3287, 2017 WL 2972679, at *4 (E.D. Pa. July 12, 2017).

Here, the plaintiff bases her IIED claims on her shackling and her placement in solitary confinement.[8] Based on the facts alleged in the

[8] The amended complaint does not claim IIED based on her non-consensually induced labor.

amended complaint, viewed in the light most favorable to the plaintiff, we find that she has alleged sufficient facts to support a plausible claim of IIED based on her shackling while in labor and during post-partum recovery. Based on the state statute prohibiting such shackling under the circumstances alleged, the "chorus" of prominent national and international organizations condemning such practices, and a "universal consensus" of courts to have addressed this practice, we find the facts alleged sufficient to establish extreme and outrageous conduct. Based on this and the defendants' alleged conduct, we find the facts alleged sufficient to establish that the defendants' conduct was, at a minimum, reckless. The amended complaint plainly and plausibly alleges that Remlinger suffered severe emotional distress as a result. As for physical injury, the amended complaint alleges that the shackles "literally" prevented or delayed delivery, and it is reasonable to infer that this delay or interference with medical treatment contributed to Remlinger's excessive bleeding, the emergency caesarean procedure, and the unresponsiveness of Remlinger's infant son at birth.

With respect to Remlinger's shackling in April 2017 and her placement in solitary confinement, Remlinger has failed to allege any

physical injury. The amended complaint does allege that she suffered "severe emotional distress" as a result of these actions, but while "allegations of emotional distress can be sufficient to support a claim for infliction of emotional distress, [a plaintiff's] bare allegations on this matter are not sufficient to state a cause of action intentional infliction of emotional distress." *Clark*, 737 F. Supp. 2d at 273.

Accordingly, it is recommended that the defendants' motions to dismiss be granted in part and denied in part with respect to Count IV of the amended complaint. We recommend that the plaintiff's IIED claims with respect to her shackling in April 2017 and her placement in solitary confinement be dismissed for failure to state a claim upon which relief can be granted, but her IIED claims with respect to her shackling in October 2017 be permitted to proceed.

F. Leave to Amend

The Third Circuit has instructed that if a civil rights complaint is vulnerable to dismissal for failure to state a claim, the district court must permit a curative amendment, unless an amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002). This instruction applies equally to *pro se* plaintiffs and

those represented by counsel. *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). With respect to the § 1983 claims for which dismissal is recommended, it is clear that amendment would be futile. It is therefore recommended that these claims be dismissed *without* leave to amend.

IV. RECOMMENDATION

For the foregoing reasons, it is recommended that:

1. The County Defendants' motion to dismiss (Doc. 27) be **DENIED**;

2. The Moving Corrections Defendants' motion to dismiss (Doc. 44) be **GRANTED in part and DENIED in part**;

3. The plaintiff's claims against the individual defendants in their official capacities be **DISMISSED with prejudice** as redundant, pursuant to the Court's inherent authority to control its docket and avoid duplicative claims;

4. The plaintiff's claim for punitive damages against Lebanon County be **DISMISSED with prejudice** for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and the law of the case doctrine;

5. The plaintiff's solitary confinement claims (Count III) against

the individual defendants their personal capacities be **DISMISSED with prejudice** on qualified immunity grounds, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure;

6. The plaintiff's intentional infliction of emotional distress claims (Count IV) with respect to her shackling in April 2017 and her placement in solitary confinement be **DISMISSED** for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure;

7. The plaintiff's labor induction claims (Count I), shackling claims (Count II), solitary confinement claims (Count III) against Lebanon County, and intentional infliction of emotional distress claims (Count IV) against Karnes, Haus, Davis, Hocker, Gettle, Schwartz, Herr, Williams, Van Duzen, and Fink be permitted to proceed; and

8. The matter be remanded to the undersigned for further proceedings.

Dated: March 27, 2020

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ATHENA REMLINGER, Plaintiff, v. LEBANON COUNTY, et al., Defendants.	CIVIL ACTION NO. 1:18-cv-00984 (WILSON, J.) (SAPORITO, M.J.)

NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing Report and Recommendation dated March 27, 2020. Any party may obtain a review of the Report and Recommendation pursuant to Local Rule 72.3, which provides:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636(b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which

> objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Failure to file timely objections to the foregoing Report and Recommendation may constitute a waiver of any appellate rights.

Dated: March 27, 2020

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge