

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

KEVIN JOHNSON,

Plaintiff,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, DIRECTOR CHADWICK
S. DOTSON, in his official capacity; CHIEF
OF CORRECTIONS OPERATIONS A.
DAVID ROBINSON, in his official and
individual capacities; BETH CABELL, in her
official and individual capacities; WARDEN
KEMSY BOWLES, in his official capacities;
WARDEN KEVIN MCCOY, in his individual
capacity; SGT. MATTHEW BLAHA, in his
individual capacity; SGT. BROOKS
WALLACE, in his individual capacity;
OFFICER SMITH, in his individual capacity;
WARDEN RICK WHITE, in his official and
individual capacity; HEALTH SERVICES
ADMINISTRATOR D. TRENT, in his official
and individual capacity; SENIOR MENTAL
HEALTH CLINICIAN E. CREECH, in his
official and individual capacity; MENTAL
HEALTH CLINICIAN J. MONIHAN, in his
official and individual capacity; and CHIEF
OF SECURITY MAJOR JOHNNY HALL, in
his official and individual capacity,

Defendants.

Civ. Case No. 3:24-cv-00080
The Honorable Henry E. Hudson

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Kevin Johnson, who has suffered life-threatening retaliation in the custody of the Virginia Department of Corrections (VADOC), respectfully moves for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65. In support of this motion and in addition to the

attached memorandum, he states as follows:

1. Mr. Johnson suffers from prostate cancer and chronic conditions indicative of heart issues, including edema, cough, fatigue, and weight gain from fluid retention.

2. Mr. Johnson has a practice of speaking out against abuses in the prison system and has been subject to several rounds of serious retaliation by VADOC officials as a result. Most recently, he was subject to a raid of his cell in the middle of the night, a transfer to solitary confinement based on planted evidence “discovered” in that raid, a retaliatory transfer from Sussex I State Prison outside Richmond to Red Onion State Prison (a supermax facility) across the state, and truly inhumane living conditions while engaging in a hunger strike to protest the use of solitary confinement at Red Onion. Those conditions included a lack of access to water, hygiene items, clothing changes, full bedding, showers, appropriate room temperatures, recreation time, writing materials, telephone calls, messages via a kiosk or tablets, and in-person visitation.

3. In late January, Defendants themselves decided to move Mr. Johnson back to a facility of their choosing in the Central Region of the state, where he currently remains.

4. Mr. Johnson is likely to succeed on his First Amendment retaliation claim because he can show that he engaged in First Amendment protected activity by speaking out about the prison system, VADOC took actions that adversely affected him by, among other things, transferring him to solitary confinement and to a supermax prison, these actions would have deterred a person of ordinary firmness from exercising his First Amendment Rights, VADOC took these actions because of Mr. Johnson’s exercise of his First Amendment rights, and VADOC’s actions were certainly more than an inconvenience—they fundamentally threatened Mr. Johnson’s life.

5. Mr. Johnson is incredibly ill and at risk of death because of Defendants’ retaliation and failure to provide the basic necessities of life.

6. The balance of equities is decisively in favor of Mr. Johnson, and preliminary injunction is in the public interest.

7. Specifically, Mr. Johnson has an interest in not being returned to Red Onion, where officials there have proven that they are unable to maintain him in conditions conducive to his health and safety, including access to drinking water, bearable temperatures in his cell, access to hygiene items and showers, and the ability to speak with his family and friends through in-person visitation and the prison's digital messaging. More fundamentally, he has an interest in exercising his First Amendment rights without fear of severe reprisal.

8. In contrast, the government defendants cannot have an interest in engaging in unconstitutional conduct, such as their recent treatment of Mr. Johnson.

9. The public interest is served by prisoners being able to exercise their free speech rights, however limited by the fact of incarceration, without threat of punishment. Members of the general public, the judiciary, policy makers, and VADOC officials themselves all rely on the ability of incarcerated people to exercise their constitutionally protected rights to speak, file grievances, and file lawsuits; indeed, this ability is necessary for the functioning of democratic accountability mechanisms.

10. Mr. Johnson does not want to die from this hunger strike. He simply wants VADOC officials to take seriously his concerns about returning to a prison that has a history of abusing him, including by forcing him to spend 14 years in solitary confinement and subjecting him to racialized assaults and violence. He also wants them to take seriously his need to be close to life-saving medical providers who are monitoring his cancer and heart-related issues.

11. Mr. Johnson is currently in dire condition, having been admitted to the Virginia Commonwealth University's hospital (VCU) over ten times in two months for severe dehydration,

chest pains, and an inability to keep down even water anymore.

12. Mr. Johnson remains at harm even when he decides to begin eating again. After a hunger strike of his length, should he choose to begin eating outside of medical supervision, he faces a very real risk of dying because his body is not able to process the food he eats.

13. Mr. Johnson now seeks the following relief in the form of a preliminary injunction to maintain the status quo as his case proceeds (a Proposed Order is attached as Exhibit A):

- a. An order requiring that VADOC continue to detain Mr. Johnson in a prison in the Central or Eastern region of the Commonwealth throughout the pendency of this lawsuit;
- a. An order directing VADOC to provide Mr. Johnson with access to a tablet and/or kiosk for communication, as well as weekly or twice-a-week personal calls, unrestricted legal calls, and access to writing materials throughout the pendency of this case, including while Mr. Johnson is in the hospital; and
- b. Any and all other relief this Court deems appropriate.

REQUEST FOR RELIEF FROM REQUIREMENT TO POST BOND

Mr. Johnson requests an exemption from Rule 65(c). The Court “retains the discretion to set the [Rule 65(c)] bond amount as it sees fit or waive the security requirement.” *Pashby v. Delia*, 709 F.3d 307, 332 (4th Cir. 2013). Waiving the bond requirement is particularly appropriate in public interest litigation and where other factors support such a waiver, including when the party seeking the injunction has minimal funds to support such a bond. *See, e.g., Coreas v. Bounds*, 458 F. Supp. 3d. 352, 362 (D. Md. 2020).

Dated: February 23, 2024

Respectfully submitted,

/s/ Danny Zemel

Mark J. Krudys (VSB# 30718)

Danny Zemel (VSB# 95073)

THE KRUDYS LAW FIRM, PLC

Truist Place, 919 E. Main Street, Suite 2020

Richmond, VA 23219

Phone: (804) 774-7950

Fax: (804) 381-4458

mkrudys@krudys.com

dzemel@krudys.com

/s/ Miriam R. Nemeth

Miriam R. Nemeth*

Samuel Weiss*

RIGHTS BEHIND BARS

416 Florida Avenue, NW #26152

Washington, D.C. 20001

miriam@rightsbehindbars.org

sam@rightsbehindbars.org

Attorneys for the Plaintiffs

**Admitted pro hac vice*

Certificate of Service

I hereby certify that on this 23rd day of February 2024, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send notification of such filing (NEF) to all counsel of record.

By: /s/ Danny Zemel
Counsel

Danny Zemel (VSB# 95073)
THE KRUDYS LAW FIRM, PLC
Truist Place, 919 E. Main Street, Suite 2020
Richmond, VA 23219
Phone: (804) 774-7950
Fax: (804) 381-4458
dzemel@krudys.com
Counsel for Plaintiff