

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Charleston Division

KEVIN JOHNSON, Plaintiff,
v. Case No. 2:25-cv-12580-BHH-MGB
CHADWICK DOTSON, et al., Defendants.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY
INJUNCTION

Plaintiff pro se, an incarcerated activist in the custody of the South Carolina Department of Corrections (SCDC) respectfully submits the following argument in support of his Motion for Temporary Restraining Order (TRO) and Preliminary Injunction (PI), pursuant to F.R. Civ. P. 65.

FACTS

Plaintiff is a Virginia detainee confined under color of Interstate Corrections Compact (ICC) in SCDC custody. His sworn Complaint sets out facts supporting his claims. His written works have been published in outlets like The Guardian and PBS, and he has published books and his own website. Because of his writings and litigations about issues in the Virginia Department of Corrections (VDOC) and SCDC, he has faced a long history of retaliation from custodial officials. Complaint ¶¶ 1-5, 15, 16, 35, 64-70, 106.

Following his writings generating broad publicity of abuses in VDOC institutions, and media, legislative and public attention, he was transferred to SCDC on May 1, 2025, where retaliation continued and were both implicitly and explicitly committed to deter, prevent, chill and discourage his continuing to publicize abusive conditions in VDOC and SCDC through his writings. Id. ¶¶ 17-24.

His transfer to SCDC on May 1, 2025 from the VDOC was punctuated by a violent transportation ride from a S.C. airport to an SCDC facility, Kirkland Correctional Institution (KCI). As a result of this, he suffered injury to his left leg, for which he was denied and delayed treatment acknowledged by SCDC medical officials to be necessary. Id. ¶¶ 25-29, 54-56.

Upon arrival to PCI he had his hair forcibly cut in violation of the requirements of his Rastafarian religion. He has also been denied the ability to smoke tobacco as his religion requires, while other religious groups in SCDC are allowed to do so, such as Native Americans in their religious practices. He has also been denied an Ital diet consistent with his Rastafarian religion. Id. ¶¶ 30-34.

Upon his arrival in SCDC custody, plaintiff was thrown and left at length into openly abusive and inhumane solitary confinement (euphemistically called Restrictive Housing [RH]), for no valid reason except retaliation, and under conditions far worse than those which the Fourth Circuit Appeals Court found facially unconstitutional in Porter v. Clarke, 923 F.3d 348 (4th Cir. 2019). Plaintiff suffered as a result, extreme physical and mental distress driving him to self-starvation and which exacerbated pre-existing mental injuries caused by prior decades-long inhumane solitary confinement in Virginia. Defendants refused him mental health care for his conditions and suffering. Id. ¶¶ 36-53, 57-60, 71, 105.

Plaintiff was briefly released to general population (GP) at SCDC's Perry Correctional Institution (PCI), then returned to RH in response to an article he wrote publicizing his abusive transfer to and conditions in SCDC that he was held under. He was not only told by defendants that this RH placement was for this reason, but he had his communications lines cut off, and received a fabricated and demeaning disciplinary report (DR) to speciously justify this abusive solitary confinement, and he was denied exculpatory video camera footage and an impartial tribunal in the hearing of the DR. He received a punishment upon the guilty finding of, inter alia, a sentence of RH confinement. The lines of communication of his that were cut off were phone and messaging access, and mail, in response to his article and the public and media attention it generated. Id. ¶¶ 61-74.

At PCI plaintiff was delayed for months and for denied dental care for painful dental conditions including a broken tooth and lost filling, a molar with a cavity, and a potentially deadly abscessed tooth. He was also refused pain medications and antibiotics by the dentist, which she admitted to be needed and had previously prescribed him, in retaliation for his generating complaints about his denied dental care. Also in SCDC and PCI, defendants enforce a practice of refusing those in custody any dental treatment besides tooth

extractions in order to save money and cause those in their custody to suffer with untreated but treatable dental conditions until they deteriorate to emergencies and situations where extractions become necessary. Defendants also fail to provide adequately staffed dental departments. Id. ¶¶ 78-96.

Also, plaintiff has suffered a painful hand injury that impairs his ability to write, as a result of being compelled in SEC custody to hand-draft all copies of self-generated legal filings, which defendants refuse to provide him reasonable accommodations for. Id., ¶¶ 75-77.

Plaintiff has been obstructed and frustrated in his efforts to communicate with attorneys and has had the privacy of such communications violated by defendants. He's also had most of his incoming personal mail and much of his legal mail obstructed by defendants, all in retaliation for his First Amendment activities and to hold him incommunicado. Id. ¶¶ 97-104.

ARGUMENT

Plaintiff seeks a TRO and, after hearing, a P I to protect his life, safety and statutory and constitutional rights pursuant to F.R. Civ. P. 65(b). See, e.g., Stuart Circle Par. v. Bd. of Zoning Appeals, 946 F. Supp. 1225, 1228 (E.D. Va. 1996) (granting a TRO preventing the city of Richmond, Va from enforcing a law forbidding the feeding of the homeless to protect the religious liberty rights of Richmond churches who sought to do so). The Court applies the same four factors to determining whether a TRO or P I is warranted: (1) the likelihood of success on the merits, (2) whether the movant will face irreparable harm in the absence of preliminary relief, (3) whether the balance of equities favors ~~the~~ preliminary relief, (4) whether an injunction is in the public interest. See, Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Real Truth About Obama, Inc. v. Fed. Election Comm'n., 575 F.3d 342, 346 (4th Cir. 2009). A prohibitory TRO and P I, seeking to restore and maintain the status quo, is a less demanding standard than that for a mandatory TRO / P I, which seeks to change it. See, e.g., League of Women Voters v. North Carolina, 769 F.3d 224, 236 (4th Cir. 2014).

The TRO and P I "is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of the lawsuit." DiBiase v. SPX, 872 F.3d 224, 230 (4th Cir. 2017). "This court has defined the status quo as the last uncontested status between the parties which preceded the controversy." Parshby v. Delia, 709 F.3d 307, 320 (4th Cir.

2013). In plaintiff's case, a return to the status quo is to return him to Virginia custody at Keen Mountain Correctional Center or Greenville Correctional Center, with all of his personal property, with the ability to purchase, retain and smoke tobacco and grow out his hair, and receipt of photocopies of self-generated legal documents, to freely correspond and communicate with outside persons and the media, to private attorney communications, and to communicate with and submit his writings to publishers and editors, to single celled GP housing, etc.

I. Plaintiff is likely to succeed on the Merits¹

a) Plaintiff is likely to succeed on the merits of his First Amendment retaliation claim.

Plaintiff is likely to succeed on the merits of his First Amendment claim. To prove such a claim, he needs to show that (1) he "engaged in protected First Amendment activity," (2) VDOC and SCDC took actions that "adversely affected" him and would "likely deter a person of ordinary firmness from the exercise of First Amendment rights," (3) VDOC and SCDC took those actions because of plaintiff's First Amendment conduct, and (4) VDOC's and SCDC's actions will "generate more than a de minimis inconvenience." Snoeyenbos v. Curtis, 60 F. 4th 723, 729, 31 (4th Cir. 2023).

Plaintiff has long been a target of VDOC and now SCDC retaliation for his First Amendment activity. Complaint, ¶¶ 1-5; 15, 16, 35, 64-70. He was transferred to the abusive SCDC custody,

1. "Although courts use a bewildering variety of formulations for showing some likelihood of success on the merits, all courts agree that a plaintiff must present a prima facie case but need not show a certainty of winning." Willey v. Sweetwater, 680 F. Supp. 3d 1250, 1267 (D. Wyo. 2023) (citing, Coal v. Fed. Trans. Admin., 843 F. 3d 886, 901 (10th Cir. 2016)). Also, the Prison Litigation Reform Act requires that those imprisoned exhaust available remedies before filing suit, but remedies are not available when prison officials thwart the prisoner's ability to successfully exhaust their administrative remedies, as occurred here. See, Ross v. Blake, 578 U.S. 632, 643 (2016) Complaint ¶¶ 13, 14, 106.

directly into solitary confinement, stripped of all communication rights, denied medical, dental and mental health care for serious, even life-threatening conditions, and so on. See Id. in general, and ¶¶ 1-106. Plaintiff's publishing articles highlighting the poor conditions within VPOC and SCOC institutions and the treatment of prisoners and detainees in those systems constitute classic First Amendment activity, as does his use of the institutional grievance procedure and legal system to "petition for the redress of grievances." Booker v. S.C. Dept. of Corr., 855 F.3d 533, 544 (4th Cir. 2017).² Separately, there is a First Amendment right of the incarcerated "to communicate with others beyond prison walls." Meyer v. U.S. Bureau of Prisons, 849 F.3d 202, 213 (4th Cir. 2017).

Defendants have even explicitly stated that their actions have been in retaliation for his First Amendment activity. Id. ¶¶ 59, 63-67, 91-94. And to further accomplish their retaliatory scheme, defendants cut off plaintiff's ability to publish articles about institutional conditions and to communicate with those outside SCOC. Defendants clearly knew about and were responding to his First Amendment activities, when they transferred him to SCOC in the heat of his publishing articles that were generating broad attention and protest to VPOC conditions and administrators by the public, media and Virginia legislators, and defendants went in the media falsely denying plaintiff's reports, and were exposed by the same media as lying in their denials of the conditions plaintiff reported. Indeed, these administrators facilitated plaintiff's transfer, and the conditions under which he has been held, which under ICC the VPOC defendants have direct duty to monitor and control. See SC Code § 24-11-20, Article IV.

This all demonstrates the real purpose of these actions - to shut plaintiff up.

Those actions more than satisfy the second element. The Fourth Circuit has held that placement in "administrative segregation" could deter a person of ordinary firmness from exercising their First Amendment rights.³ Martin v. Duffy, 858 F.3d 239, 249 (4th Cir. 2017) (quoting, Herron v. Harrison, 203 F.3d 410, 416 (6th Cir. 2000)). Similarly,

2. This is not extinguished by imprisonment. Martin v. Duffy, 858 F.3d 239, 249 (4th Cir. 2017) (citing, Turner v. Safley, 482 U.S. 78, 89 (1987)).

while transfers between prisons or jails are not normally "adverse actions" upon which a retaliation claim may be based," a transfer "can be an adverse action if that transfer would result in foreseeable, negative consequences to the particular prisoner." Johnson - El v. Beck, No. 3:11-cv-115, 2011 U.S. Dist. LEXIS 37582 at *11 (W.D.N.C., March 25, 2011) (quoting, Hill v. Lapin, 630 F.3d 468, 475 (6th Cir. 2010)). Here, where plaintiff was transferred to another state, subjected to a brutal transportation ride, thrown into inhumane solitary confinement from his prior VPOC GP housing in a single cell, with attendant restrictions on liberty, denied needed medical, mental health and dental treatment and accommodations for serious - even life - threatening - conditions, etc. Separately, as noted below, his placement in solitary confinement is sepe constituted the most extreme and inhumane adverse ~~reaction~~ action.

The third element, the causal connection, is clear here. The causation element "asks whether the considerations which animated the defendants' conduct were permissible or impermissible." Martin v. Duffy, 977 F.3d 294, 300 (4th Cir. 2020). To carry his prima facie burden of causation, plaintiff must show "(1) that the defendants were aware of his engaging in protected activity" and (2) "some degree of temporal proximity to suggest a causal connection." Shaw v. Foreman, 59 F.4th 121, 130-31 (4th Cir. 2023).³

3. At the Summary Judgment stage, causation for detainee retaliation claims follows the traditional burden-shifting framework set out by the Supreme Court in Mount Healthy v. Doyle, 429 U.S. 274 (1977). See, Martin v. Duffy, 977 F.3d 294 (4th Cir. 2020). Under that framework, if a detainee or prisoner establishes a prima facie case of retaliation, the prison officials can defeat the claim by proving, by a preponderance of the evidence, that they "would have reached the same decision ... in the absence of the protected conduct." Id. at 299. (quoting, Mt Healthy, 429 U.S. at 283). However, this standard is not relevant at this early stage of litigation. Even if VPOC and sepe were to try to mount such a defense at this stage, the violations of their own procedures in transferring and housing plaintiff in solitary for no reason demonstrate that they would not have treated him this way in the absence of his First Amendment activities.

The motivations here were to stifle plaintiff's speech, a clearly impermissible motive because of public outcry and legislative and media attention and scrutiny to VPOC and SCOC administrators, they were aware of plaintiff's First Amendment activity. And the adverse actions taken by defendants came shortly after plaintiff exercised his First Amendment rights and they even expressly told him they were in response to his exercising these rights, such as Fergoli's remarks to and actions against plaintiff. In addition to the temporal connection, there are many facts that support the conclusion that defendants were motivated by improper motives.

As stated above, plaintiff's ability to publish articles and communicate with the outside world was virtually eliminated.

Lastly, it goes without saying that a transfer to facially illegal and inhumane solitary confinement in another state far away from his home, subjected to insidious transportation ride, being denied needed medical, dental and mental health care, holding him incommunicado, etc., caused plaintiff more than mere inconvenience. These treatments, with all the attendant deprivations, are also more than a mere inconvenience.

Plaintiff is likely to succeed on his claim that he was retaliated against by defendants for exercising his First Amendment rights to utilize the courts and institutional grievance system, and publish articles about his circumstances.

b) Plaintiff is likely to succeed on the Merits of His Eighth and/or Fourteenth Amendment Claims for His Solitary Confinement and for Deliberate Indifference to His Serious Medical, Dental and Mental Health Needs

In defendants' cases, conditions that amount to Eighth Amendment violations with respect to prisoners certainly amount to violations of the due process rights of detainees. Bell v. Wolfish, 441 U.S. 520 (1979); Patten v. Nichols, 274 F.3d 829 (4th Cir. 2001).

The Eighth Amendment protects against cruel and unusual punishment. Under it prison officials must "provide humane conditions of confinement and ensure that inmates receive adequate food, clothing, shelter and medical care." Farmer v. Brennan, 511 U.S. 825, 832 (1994). Whether conditions are cruel and unusual is measured by "the

evolving standards of decency that mark the progress of a maturing society." Estelle v. Gamble, 429 U.S. 97, 102 (1976). A claim under the conditions of confinement standard of the Eighth Amendment has both an objective component and a subjective component. See, Farmer at 834.

The objective component requires showing that the deprivation was "objectively sufficiently serious." Id. at 834. Which requires that the deprivation be 'extreme,' that is, that it poses a serious or significant physical or emotional injury resulting from the challenged conditions or a significant risk of serious harm resulting from the challenged conditions. Schinto v. Starberry, 841 F.3d 219, 255 (4th Cir. 2016).

The Fourth Circuit has found conditions of solitary confinement far less extreme than what plaintiff suffered in PHU to meet the objective component of an Eighth Amendment violation. See, Porter v. Clarke, 923 F.3d 348 (4th Cir. 2019). In Porter, unlike with plaintiff, those confined in solitary confinement enjoyed privileges and rights that he did not. They enjoyed an in-cell desk, windows that admitted natural light, outside exercise and fresh ~~hairs~~^{air} five days per week for an hour daily, personal televisions, disc players, and unlimited telephone access everyday from 8am through 9:30 pm.

In Porter, the Court stated, based upon now widely available and well-known empirical evidence (scholarly mental health studies of the effects of solitary confinement), of which this court should take judicial notice, "that solitary confinement poses an objective risk of serious physical and emotional harm to inmates, and therefore can violate the Eighth Amendment." The Court stated, "we agree. The challenged conditions of confinement [in this case], under which plaintiffs spent for years, between 23 and 24 hours a day, alone, in a small cell with no access to congregate religious, educational, or social programming - pose a substantial risk of serious psychological and emotional harm." Id. at 351. Plaintiff in this case lives and is threatened with these same conditions and far worse, in PHU solitary. Complaint ¶¶ 36-53, 57-60, 105.

As for the subjective component, the courts require a showing that defendants acted with "deliberate indifference," that is, they "knew of and disregarded an excessive risk to inmate health and safety." Id. at 361. This component is satisfied by "proving by circumstantial evidence that a risk was so obvious that it had to have been known. Put

differently, an obvious risk of harm justifies an inference that a prison official subjectively disregarded a substantial risk of serious harm to the inmate." Id. Plaintiff's verified complaint demonstrates not only obvious risk but that he informed defendants repeatedly and they observed the serious injuries he was suffering as a result of his solitary confinement - even starving himself each time he was put in solitary initially for weeks - and they did nothing, but left him to suffer, and such are known effects of continuous solitary confinement, even for only a few days. See, Porter at 356 ("there is not a single published study of solitary and solitary-like confinement in which nonvoluntary confinement lasted for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects".)

Indeed, as the court noted, "the extensive scholarly literature describing and quantifying the adverse mental health effects of prolonged solitary confinement that has emerged in recent years provides circumstantial evidence that the risk of such harm is so obvious that it had to have been known. Given [the] state Defendants' status as correctional professionals, it would defy logic to suggest that they ~~were~~ were unaware of the potential harm that the lack of human interaction [in this case] could cause." Id. at 361.

The Fourth Circuit found that both components of Eighth Amendment conditions claims had been satisfied, that prolonged solitary confinement far less extreme than what plaintiff in this case has suffered and is threatened with constitutes unconstitutional cruel and unusual punishment at worst or violation of due process at best. See, Bell v Wolfish, supra. This is compounded by the denial of outside exercise and denial of mental health care on top of being held incommunicado. Plaintiff's solitary confinement and threats thereof is egregious, especially where its conditions and imposition in SCPC is not based on any valid disciplinary acts and/or threats posed by him, but rather defendants' malicious abuses of solitary on a general basis in violation of their own regulations.

The courts have also found, independent of plaintiff's claim against solitary confinement, that prisoners enjoy independent Eighth Amendment rights to regular out of cell recreation and fresh air in solitary, which the empty cages used by defendants in SCPC, even did they allow plaintiff outside, do not satisfy. See, Porter. The fact of denial of

outside recreation for plaintiff in RHU constitutes independent conditions of confinement violations. Delaney v. DeTella, 256 F.3d 679 (7th Cir. 2001) (denial of outside exercise in solitary for just a few months is unconstitutional.). Consider also, that plaintiff is held in SCDC under ICC and has all the rights in SCDC as he had in VDOC custody. See, S.C. Code § 24-11-20, Article IV (e). And under Virginia law he has a liberty interest in RHU to a minimum of four (4) hours daily out of cell congregate activity. See, Va. Code § 53.1-39.2 (B)(5). This is a per se state created liberty interest subject to due process protection, the denial of which imposes an unconstitutional "significant and atypical hardship." See, Sandin v. Connor, 515 U.S. 472, 484 (1995).

Furthermore, the disregard of plaintiff's serious mental health needs upon solitary confinement was unconstitutional. DePaola v. Clarke, 884 F.3d 481 (4th Cir. 2018) (officials who disregard prisoner's complaints of mental suffering and demonstrated and obvious symptoms of mental health suffering in solitary violates constitution).

As to the conditions in SCDC's RHU, they facially violate due process against the Fourteenth Amendment, by imposing significant and atypical hardships in relation to the ordinary incidents of prison life. Sandin, supra. The Fourth Circuit has found an Eighth and Fourteenth Amendment due process violation in solitary confinement in another case similar to Porter, namely Thorpe v. Clarke, 37 F.4th 926 (4th Cir. 2022), which it found "more onerous than conditions the Supreme Court unanimously recognized gave rise to a liberty interest in 2005," in Wilkinson v. Austin, 545 U.S. 209, 219-15 (2005). Id. at 942. In plaintiff's case, the conditions of solitary he has endured in RHU and which exist in SCDC are far more onerous than in both Porter and Thorpe. Which also violates substantive due process of law. O.B. v. Cardall, 826 F.3d 721, 740 (4th Cir. 2016).

Separately, the objective and subjective prongs of establishing Eighth Amendment violations also apply to claims related to medical, dental and mental health needs. Plaintiff has distinct claims related to 1) his leg injury resulting from the May 1, 2025 transport ride; 2) his hand injury that impairs writing; 3) his three separate dental conditions, viz., a) his broken tooth and lost filling, b) his molar with a cavity, and c) his abscessed tooth (each condition causing him constant severe pain); and 4) his

Chronic depression and Post Traumatic Stress Disorder related to RHU/ solitary confinement and denied single cell status housing. A prison official's failure to respond to an inmate's known medical, mental health or dental needs raises an inference of deliberate indifference to those needs, all of which were "serious".

In each of plaintiff's medical, dental and mental health cases, defendants were clearly deliberately indifferent.

As to his leg injury, defendant Rodriguez and others acknowledged that he likely suffered serious tendon and/or ligament damage that required MRI and/or CAT scans to determine the extent and location of his injury and the necessary treatment, but that recommendations for this care would not be made or would be delayed because she believed plaintiff was trying to sue SDC officials. Complaint ¶¶ 25-28, 54-56.

The same is the case with his hand injury, where defendants Sanders and Enloe, have disregarded an increasingly painful and continuously deteriorating hand injury caused by him being forced to hand-draft all legal filings and necessary copies while he is willing and able to pay for photocopies. Complaint ¶¶ 75-77.

Likewise in the case of his dental conditions, where defendants knowingly left him for months without care for painful, even potentially fatal, dental conditions as a routine matter of refusing dental repairs in SDC and electing to perform extractions in order to save money. Also the denial of treatment to plaintiff admitted to be necessary, including pain medications and antibiotics in revenge for his complaints of denied dental care. In addition to the lack of an adequately staffed dental department at PCI, non-medical security staff interfering with his access to dental care, and so on. Complaint ¶¶ 78-96. For constitutional purposes, cavities, a broken tooth and missing filling, and abscessed tooth are serious dental conditions for which dental staff may not deny or delay care. Formica v. Aylor, 739 Fed. Appx. 745, 756 (4th Cir. 2018); ~~Three week delay in care for such conditions or choosing an easier and less efficacious treatment plan is unconstitutional.~~ Palakovic v. Wetzel, 854 F.3d 209, 228 (3d Cir. 1998). Dental policy of performing extractions only, when fillings can repair teeth, motivated by cost and financial incentives is unconstitutional. Chance v. Armstrong, 143 F.3d 693 (2d Cir.

1993); Heitman v. Gabriel, 524 F. Supp. 422, 427-28 (W.D. Mo. 1981) ("while it is by no means unprecedented for an old-fashioned prison regime to offer tooth extractions as 'the only dental care' no case has been found where such a limitation has been deemed judicially tolerable."); Hawkins v. Allen, 743 F. Supp. 3d 765 (E.P. Va. 2024).

Unconstitutional deliberate indifference to inmates' serious medical needs is established "by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976). This is what defendants Williams and Hawkins did to plaintiff. Complaint ¶¶ 84-96. Even jails, where detainees are held for brief periods, cannot restrict dental services to extractions. Miller v. Carson, 401 F. Supp. 835, 878 (M.D. Fla. 1975), *aff'd* in pertinent part, 563 F.2d 741 (5th Cir. 1977).

As to plaintiff's medical, dental and mental health issues, each met the overall standards governing Eighth Amendment claims, which establishes that, subjectively, officials may not be deliberately indifferent to, objectively, a prisoner's serious medical needs. Each of plaintiff's distinct issues meets this standard. ~~For purposes of the objective standard, a serious medical need is one that has been "diagnosed by a [medical professional] as mandating treatment or is so obvious that even a lay person could easily recognize the necessity for a doctor's attention."~~ Sciuto v. Stansbury, 891 F.3d 219, 225 (4th Cir. 2016). The subjective standard is met where officials "know of and disregard an excessive risk of to inmate health ~~and~~ or safety. Put differently, ... the official was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and drew the inference." Id. This standard can be met "through direct evidence of the official's actual knowledge or circumstantial evidence tending to establish such knowledge, including evidence that a prison official knew of a substantial risk from the very fact that the risk was obvious." Id. at 226. A *prima facie* case is made where "a substantial risk of serious harm was longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official had been exposed to information concerning the risk and thus must have known about it." Id.

For the foregoing reasons plaintiff is likely to succeed on his Eighth and/or Fourteenth Amendment claims related to his solitary confinement and threats thereof and medical, dental and mental health needs⁴ and that such abuses were retaliation for him exercising his First Amendment rights as set out in § I(a), supra.

c) plaintiff is likely to succeed on the merits of his claims related to attorney communications

Plaintiff is likely to succeed on the merits of his claim of being denied and obstructed in communicating with attorney Elizabeth Tang and to privacy in his phone calls with this attorney. Complaint ¶¶ 97-99. Intercepting and listening in on attorney phone calls, which are given expectation of privacy, even in prison, violates the First Amendment rights to free speech, association and ~~petition~~ petition, the Fourth Amendment right against unreasonable search and seizure, and the Wiretap Act 28 U.S.C. §§ 2510 et seq. Deniro v. Dunlap, 209 F.3d 944, 954 (7th Cir. 2000); Lonegan v. Mast, 436 F. Supp. 2d 419 (E.D.N.Y. 2006), and case cited.

Plaintiff is likely to succeed on the merits of his claims under the First and Fourth Amendments and 28 U.S.C. §§ 2510 related to his communication efforts with attorney Elizabeth Tang, and that such violations were committed as retaliation for him exercising his First Amendment rights as set out in § I(a), supra.

d) Plaintiff is likely to succeed on the merits of his disciplinary due process claim.

Plaintiff is likely to succeed on the merits of his Fourteenth Amendment claims related to the fabricated and

9. The same constitutional standard that governs medical care governs mental health care. Bowring v. Godwin, 551 F.2d 44, 47 (4th Cir. 1977). Plaintiff's mental health needs of Post Traumatic Stress Disorder and chronic depression and insomnia are objectively sufficiently serious, especially where caused and exacerbated by extreme solitary confinement and double-celling in GP to which he is not amenable, and defendants were certainly deliberately indifferent to these needs. See cited facts and arguments above related to solitary confinement and Complaint ¶¶ 56-60, 71, 105.

collusive disciplinary report (DR) that he received, to specifically justify his RTHV confinement, where he was denied exculpatory surveillance video footage as evidence and an impartial decisionmaker. Complaint, ¶¶ 64-74. His penalty upon the conviction of the DR and confinement otherwise in RTHV was substantially extreme and sufficiently excessive to constitute a "significant and atypical hardship in relation to the ordinary incidents of prison life" to ~~bring~~ create liberty interests that invoke Fourteenth Amendment due process protections. See, Sandin v. Connor. He was therefore entitled to basic due process procedural protection in the hearing on the DR. In which case there is a well-established due process right to present exculpatory surveillance camera footage in prison disciplinary proceedings. Lennar v. Wilson, 937 F.3d 257, 262 (4th Cir. 2019); Hawkins v. Coakley, 779 Fed. Appx. 183, 184 (4th Cir. 2019).

There is also a due process right to impartial disciplinary hearings officers. Segarra v. McPade, 706 F.2d 1301 (4th Cir. 1983); Golberg v. Kelly, 397 U.S. 254, 271 (1970) (an impartial decisionmaker is a minimum requirement of due process in administrative hearings).

Plaintiff is likely to succeed on the merits of his claim under the Fourteenth Amendment related to the fabricated DR and its abuse as committed as retaliation for him exercising his First Amendment rights as set out in § I(a), supra.

e) Plaintiff is likely to succeed on his Americans with Disabilities Act claims related to his hand injury and mental health needs

Plaintiff's mental health needs related to his PTSD and chronic depression and insomnia, and his hand injury resulting from his being forced to hand draft all self-generated legal documents and needed copies, which impairs his ability to write and communicate, while defendants UPOC and SCOC refuses to accommodate his need of available remedies, clearly violates the ADA. Toyota v. Williams, 534 U.S. 184 (2002); Bartlett v. NYS Bd. of Ex., 970 F. Supp. 109 (S.D. N.Y. 1997). "Major life activities" includes "performing manual tasks" and "communicating." 29 CFR § 1630.2(i)(1)(i).

To establish an ADA claim, plaintiff must show 1) he has a disability, 2) he is otherwise qualified to receive the benefits of a public service, program or activity, and 3) he was denied

the benefits of such service, program or activity, or otherwise discriminated against, on basis of the disability. Thorpe v. Virginia Dept. of Corr., 2021 WL 2435868 at *10 (W.D. Va. 2021). Discrimination under ADA "includes not making reasonable accommodations for the known physical and mental limitations of of an otherwise qualified individual with a disability." Thorpe v. Virginia Dept. of Corr., 2020 WL 10354128 at *34 (W.D. Va. 2020) Complaint ¶¶ 76, 77, 105.

For these reasons plaintiff is likely to succeed on the merits of his ADA claims related to his hand injury and his mental health conditions, and that his mistreatment against the ADA is in retaliation for and to deter his First Amendment activities as set out in § I (a), supra.

f) Plaintiff is likely to succeed on the merits of his Equal Protection and Religious Land Use and Institutionalized Persons Act claims

Plaintiff has been and continues to be denied the opportunity to possess and smoke tobacco as required by his Rastafarian religion, although other religious groups in SDC and VDOC custody are allowed to possess and smoke tobacco in their religious practice, like Native Americans. Complaint ¶¶ 31, 32. The Equal Protection clause of the Fourteenth Amendment requires the state to treat similarly situated people equally. See, City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1955). Moreover, the Equal Protection Clause entitles each prisoner to "a reasonable opportunity of pursuing his faith comparable to the opportunity afforded fellow prisoners..." Cruz v. Beto, 405 U.S. 319, 322 (1972).

Under RLUIPA, an incarcerated person is entitled to an Ital diet, to grow out his hair, and to possess and smoke tobacco according to his Rastafarian religion. Complaint, Id. Religious diets for the imprisoned are protected by RLUIPA. Pendleton v. Jividen, 96 F. 4th 652 (4th cir. 2024); the RLUIPA protects the right of the incarcerated to smoke tobacco according to their religious practice. Native American Council of Tribes v. Weber, 897 F. Supp. 2d 898 (D.S.D. 2012). The Fourth Circuit has consistently held that forcing prisoners to keep their hair cut short and forcibly cutting it, if they did not violates RLUIPA. Smith v. Ormint, 578 F. 3d 246, 251-52 (4th cir. 2024); Incunayag. Stirling, 791 F. 3d 517, 525 (4th cir. 2015) (forcing a prisoner to choose between growing his ~~hair~~ beard and

~~and~~ suffering disciplinary action violated religion and RLUIPA); Greenhill v. Clarke, 944 F.3d 243 (4th Cir. 2019) (grooming policy requiring prisoners to keep hair cut low in violation of religious practice under penalty if they refuse violates RLUIPA).

For these reasons plaintiff is likely to succeed on the merits of Fourteenth Amendment Equal Protection claims and his RLUIPA claims related to the practice of his Rastafarian religion.

II. Plaintiff Faces Irreparable Harm Without Injunction

Not only have defendants violated a myriad of plaintiff's constitutional and statutory rights in various separate particulars, but these violations were also in retaliation for him exercising his First Amendment rights in relation to publishing articles about prison and jail conditions and his litigations. See, § I supra.

Plaintiff need only demonstrate that irreparable harm "is likely in the absence of an injunction." Winter v. Nat'l Res. Def. Council, 555 U.S. at 22. A harm need not be inevitable or to have already happened for it to be irreparable, rather, imminent harm is also cognizable harm that merits an injunction. See, Helling v. Mc Kinney, 509 U.S. 25, 33 (1993).

The record demonstrates that plaintiff has been, continues to be and is threatened with a range of unlawful abuses and even life-threatening mistreatment. If defendants continue to retaliate against him he will very likely suffer continued pain and injury, mentally and physically, and death, the archetypal irreparable harm. Complaint ¶¶ 1 - ~~10~~ 106

Defendants' violations of plaintiff's constitutional rights also constitute irreparable harm aside from the specific physical and mental harms that they cause. See, Elrod v. Burns, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimum periods of time, unquestionably constitutes irreparable injury."); Leaders of a Beautiful Struggle, v. Baltimore Pol. Dept., 2 F. 4th 330, 346 (4th Cir. 2021) (extending the holding of Elrod to the violation of constitutional rights writ large).

III. The Balance of Equities Favors Plaintiff

The balance of equities is decisively in plaintiff's favor,

and a TRA and PI is in the public interest. When the defendants are governmental actors, these two factors merge and are properly considered together. Roe v. Dept. of Defense, 947 F.3d 207, 230 (4th cir. 2020) (citing, Nken v. Holder, 556 U.S. 418, 435 (2009)).

Plaintiff has an interest in staying alive. He also has an interest in being confined humanely, to not being subjected to physical and psychological abuse and torture, to practicing his Rastafarian religion, in being able to speak with his family and friends, and the media, and freely and privately with his chosen attorneys, to write and be published without censorship due to the content of his writings, in not being transferred to long term and torturous solitary confinement, and so on. More fundamentally, he has an interest in exercising his First Amendment rights without fear of reprisal. See, Elnad, 427 U.S. at 373 (explaining this principle when the reprisal was threatened firing from a public job).

By contrast, defendants have no interest in subjecting him to any of these abuses. Indeed, the Fourth Circuit has held that government defendants cannot have any interest in engaging in unconstitutional conduct. See, Centro Tepeyac v. Montgomery Cnty., 722 F.3d 184, 191 (4th cir. 2013); Giovani Carandola, Ltd. v. Basen, 303 F.3d 507, 521 (4th cir. 2002), where, as here, plaintiff shows an act that "likely violates the constitution" this will also "usually show that both the public interest and the balance of equities favors a preliminary injunction." Baird v. Bonta, 81 F.4th 1036, 1044 (9th cir. 2023). "[U]pholding constitutional rights serves the public interest." League v. N.C., 769 F.3d 229, 248 (4th cir. 2014); accord, Basen, 303 F.3d at 521.

The public interest is also served by the incarcerated being able to exercise their free speech and free press rights, however limited by the fact of incarceration, without threat of punishment. Members of the public, the judiciary, policy and lawmakers, and VPOC and SCOC officials all rely themselves on the ability of incarcerated people to exercise their constitutionally protected rights to speak, file grievances, speak ^{use} the media, and file lawsuits. See, Woodford v. Ngo, 548 U.S. 81, 102 (2006) ("Corrections officials concerned about maintaining order in their institutions have a reason for creating and retaining grievance systems that provide - and that are perceived by prisoners as providing - a meaningful opportunity for prisoners to raise meritorious grievances"). In fact, plaintiff's published

articles gained the attention of lawmakers to conditions in the VDOC that they found to need correcting. Complaint ¶¶ 20-22. Some courts have found prisoners' ability to communicate freely with the media to be as important and critical a form of seeking redress and public attention as the right to court access. See, Guajardo v. Estelle, 580 F. 2d 748, 759 (5th Cir. 1978); Taylor v. Sterrett, 532 F. 2d 462, 481-82 (5th Cir. 1976).

Information on what is occurring inside the VDOC and SCDC is necessary for democratic accountability mechanisms to function. Individual staffmembers retaliating against the incarcerated for constitutionally protected actions - threatening their wellbeing, health and even lives - undermines their ability to raise these critical concerns.

"The public interest is served by requiring entities to take steps to assure equality of opportunity for people with disabilities." Enyart v. Nat'l, 630 F. 3d 1153, 1167 (9th Cir. 2011).

CONCLUSION

Plaintiff has established clear violations of his constitutional and statutory rights and based upon the foregoing arguments his entitlement to a TRO and PI. Moreover, TRO and PI are appropriate to enforce AOA rights. Pashby v. Delia, 709 F. 3d 307 (4th Cir. 2013); Armstrong v. Newson, 475 F. Supp. 3d 1038 (N.D. Cal. 2020); Reaves v. DOC, 195 F. Supp. 3d 383 (A. Mass. 2016); Disability Rights of SC v. McMaster, 564 F. Supp. 2d 413 (DSC 2021). TRO and PI was also appropriate to protect detainees rights to religious practice under RLUIPA. Warsoldier v. Woodford, 418 F. 3d 989 (9th Cir. 2005).

Accordingly, TRO and PI should issue as prayed for in plaintiff's Motion for TRO and PI.

Respectfully submitted,


 Plaintiff pro se

Reply to: Kevin Johnson, No. 397279
 Perry Correctional Institution
 430 Oaklawn Rd.
 Pelzer, SC 29669