IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Richmond Division

NATIONAL FEDERATION OF THE BLIND, et al.,

Plaintiffs,

v. Case No. 3:23cv127

VIRGINIA DEPARTMENT OF CORRECTIONS,

Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION IN LIMINE TO PERMIT THE INCARCERATED PLAINTIFFS AND WITNESSES TO WEAR CIVILIAN CLOTHES AT TRIAL

The Virginia Department of Corrections ("VDOC" or "Defendant"), by counsel, submits the following in response to Plaintiffs' Motion *In Limine* to Permit the Incarcerated Plaintiffs and Witnesses to Wear Civilian Clothes at Trial. (ECF Nos. 321, 322.)¹

ARGUMENT

VDOC contends that for security reasons, it is necessary for the incarcerated Plaintiffs and any incarcerated witnesses to be in prison attire and restraints during trial, and that these needs outweigh any potential prejudicial effect. "Prisoners do not have a constitutional right to wear particular clothing in civil trials." *Ramirez v. Delong*, No. 09-cv-314-bbc, 2010 U.S. Dist. LEXIS 78813, at *2 (W.D. Wisc. July 29, 2010). It is VDOC's policy that inmates who appear in court are to be in their prison clothing and restraints. It is a security risk for a convicted felon to be unrestrained while in the general population. Similarly, it is a security risk to allow an inmate to appear in civilian clothes, as an inmate must be easily viewable by courtroom deputies. Allowing

¹ Plaintiffs Nacarlo Antonio Courtney and Kevin Muhammad Shabazz are no longer incarcerated.

an inmate to appear in civilian clothes would not make him easily identifiable and increase an

opportunity for escape. A further consideration is the fact that this case involves multiple

Plaintiffs, not just one, which increases the burden on security personnel and the risks to courtroom

security.

While courts have recognized that prison clothing can have some prejudicial effect, any

such prejudice would be minimal here. Plaintiffs' claims arise from their incarceration, and their

status as prisoners will necessarily be made known to the jury by the facts of the case. See Tunoa

v. Perez, 700 F. App'x 741, 742 (9th Cir. Nov. 2, 2017) (citing Duckett v. Godinez, 67 F.3d 734,

747 (9th Cir. 1995)) ("[P]rison clothing is not inherently prejudicial when the clothing tells the

jury something it already knows."). Similarly, any prejudicial effect that may be caused by the

Plaintiff being restrained at trial can be reduced through measures such as obscuring the restraints

from view of the jury or providing a curative instruction. See Davidson v. Riley, 44 F.3d 1118,

1123–24 (2d Cir. 1995) ("[I]f the trial court has in fact evaluated the safety and security concerns,

has taken steps to minimize the restraints and their prejudicial effects, and has given a cautionary

instruction to the jury, there is likely no denial of due process."). The incarcerated Plaintiffs will

also have two additional Plaintiffs with them who are wearing street clothes. It is unlikely that the

jury would fail to decide fairly between incarcerated and non-incarcerated Plaintiffs in the same

case based on clothing and restraints.

In this instance, Defendants submit that security concerns require that incarcerated

Plaintiffs and witnesses attend trial in prison clothing and restraints.

Respectfully submitted,

VIRGINIA DEPARTMENT OF CORRECTIONS.

By: /s/ Timothy E. Davis

Timothy E. Davis, AAG, VSB #87448

2

Office of the Attorney General Criminal Justice & Public Safety Division 202 North 9th Street Richmond, Virginia 23219 (804) 225-4226 (804) 786-4239 (Fax)

Email: tdavis@oag.state.va.us

/s/ Ann-Marie White Rene

Ann-Marie Rene, AAG, VSB #91166 Office of the Attorney General Criminal Justice & Public Safety Division 202 North 9th Street Richmond, Virginia 23219 (804) 371-2084 (804) 786-4239 (Fax)

E-mail: arene@oag.state.va.us

/s/ Andrew R. Page

Andrew R. Page, VSB #80776 Assistant Attorney General Office of the Attorney General Criminal Justice & Public Safety Division 202 North Ninth Street Richmond, Virginia 23219

Phone: (804) 692-0618 Fax: (804) 786-4239

Email: arpage@oag.state.va.us

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record for the Plaintiff.

/s/ Timothy E. Davis

Timothy E. Davis, AAG, VSB#87448 Office of the Attorney General Criminal Justice & Public Safety Division 202 North 9th Street Richmond, Virginia 2321 (804) 225-4226 (804) 786-4239 (Fax)

Email: tdavis@oag.state.va.us