

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

(Alexandria Division)

2014 NOV 20 P 3 37

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

THOMAS PORTER)
)
 and)
)
 ANTHONY JUNIPER)
)
 and)
)
 IVAN TELEGUZ)
)
 and)
)
 MARK LAWLOR)
)
 and)
)
 RICKY GRAY)
)
 Plaintiffs,)
)
 v.)
)
 HAROLD C. CLARKE)
)
 and)
)
 KEITH W. DAVIS,)
)
 Defendants.)

C.A. #1:14-cv- 1588
LMB/IDD

COMPLAINT

Preliminary and Jurisdictional Statement

1. In this lawsuit for declaratory and injunctive relief, five Virginia Death Row prisoners seek relief from a mandatory regimen of spending almost 24 hours per day in their small cells, 365 days a year, and having almost no contact with other human beings. Their claims arise

under the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983. This court has jurisdiction under 28 U.S.C. §1331 and 28 U.S.C. §1343(a)(3) and (4).

Parties

2. Plaintiffs Thomas Porter, Anthony Juniper, Ivan Teleguz, Mark Lawlor, and Ricky Gray are residents of Virginia's Death Row located in Sussex I State Prison in Waverley, Virginia. Each awaits his execution in the event pending post-conviction initiatives do not succeed in avoiding that result. They have spent, respectively, the following time on Death Row: Thomas Porter: over seven years; Anthony Juniper: over nine years; Ivan Teleguz: over eight years; Mark Lawlor: over three years; and Ricky Gray: over eight years.

3. Defendant Harold C. Clarke is the Director of the Virginia Department of Corrections ("VDOC"). He provides final approval of rules applicable to Death Row inmates. He is sued in his official capacity for declaratory and injunctive relief.

4. Defendant Keith W. Davis is the warden of Sussex I State Prison in Waverley. He is in charge of implementing rules and procedures for Death Row unit. He is sued in his official capacity for declaratory and injunctive relief.

Claim for Relief

5. Death Row is composed of a 44-cell pod containing eight death row prisoners, including the plaintiffs, and 36 empty cells. None of the prisoners' cells is adjacent to that of another.

6. With the exception of one prisoner, Alfredo Prieto, all other Death Row prisoners are governed, by administrative fiat, by the protocol described by this court in *Prieto v. Clarke, et al.*, No. 1:12cv1199; 2013 WL 6019215 (E. D. Va. Nov. 12, 2013), a copy of which is appended to this complaint and the findings of which are incorporated here by reference. Some of those findings include:

- A. “On average, [plaintiffs] must remain in [their] single cell for all but one hour of the day” . . . the “cell measures 71 square feet and features only a narrow, mesh covered window for natural light. It is otherwise illuminated by a main light mounted on the wall. In the evening hours, when the main light is turned off, a nightlight remains on in plaintiffs['] cell[s], as do the pod lights immediately outside of it, ensuring that [their] cell is never completely dark.” *Id.* at 1.
- B. “[Each p]laintiff is allowed to leave his cell for just one hour of outdoor recreation approximately five days per week. During that time, however, he is limited to a similarly-sized outdoor cell with a concrete floor and no exercise equipment. [Each p]laintiff is not allowed to use the gymnasium or prison yard, nor is he given an opportunity for in-pod recreation. [Each p]laintiff may leave his cell for a ten-minute shower three days per week. [Each plaintiff] may also purchase a television set and compact disc player for use in his cell as well as request delivery of certain books from the law library.” *Id.*
- C. “Perhaps the most significant restrictions are those depriving plaintiff[s] of human contact. [Each plaintiff] must spend almost all of his time alone. Although death row houses [eight inmates], they are separated by at least two (and often many

more) empty cells within the 44-unit pod.” *Id.* “Solid doors with no openings apart from small slits substantially impede any communication among death row inmates. . . [each] plaintiff takes all three meals in his cell.” *Id.* “. . . [Each plaintiff is not allowed to join general population inmates for vocational, educational, or behavioral programming, nor is he allowed to attend group religious services.” *Id.*

- D. “Visitation opportunities are limited to non-contact visits from immediate family members on weekends in a room with a glass partition.” *Id.*
- E. “Capital offenders . . . receive no . . . initial security classification. Instead, based on sentence alone, they are automatically placed in restrictive conditions on death row. . .[and] their placement is permanent.” *Id.* at 2.

7. Mr. Porter is allowed out of his cell for approximately one hour each week to perform cleaning duties as a trustee. Mr. Gray is occasionally allowed out of his cell for very brief periods of time to cut the hair of other Death Row inmates. In all regards, their lives go along the same lines as those of the other plaintiffs, described by this court in *Prieto*.

8. In 2012, prisoner Alfredo Prieto then on Death Row since September 2010, filed suit in this court against the defendants in the instant suit, claiming that the above-described conditions of life on Death Row were unconstitutional. He prevailed on his due process claim, the court, per Brinkema, J., handing down the above referenced opinion in his favor.

9. Since prevailing in his case, and notwithstanding that the defendants have taken an appeal from this court’s decision in his case, Mr. Prieto has been granted new privileges, including exercise privileges in the gymnasium and contact visits with his immediate family.

10. Defendants have been asked to extend the relief provided to Mr. Prieto to the plaintiffs, but have refused to do so.

11. Defendants' refusal to extend to plaintiffs the relief granted Mr. Prieto is not based on any individualized consideration of their circumstances, but on the same administrative fiat as governed Mr. Prieto until this court intervened.

12. Defendants have appealed this court's grant of relief in *Prieto*, but have not obtained a stay of this court's declaratory and injunctive order.

13. Defendants' maintenance of plaintiffs in accordance with the unmitigated administrative segregation described above and in *Prieto* inflicts, and will continue to inflict, great mental suffering as well as physical distress upon the plaintiffs. It is unrelated to any legitimate penological goal, and constitutes a form of psychological torture that amounts to the gratuitous infliction of cruel and unusual punishment upon them.

Causes of Action

Count I: Denial of Due Process

14. Defendants continue to deny Death Row inmates other than Mr. Prieto, including the plaintiffs, due process of law in relation to their placement in segregated confinement, leading to the same due process offenses as were found unconstitutional in *Prieto*.

Count II: Denial of Equal Protection

15. Plaintiffs are similarly situated in all material regards to Alfredo Prieto. They differ from him only in the fact that he brought and won a lawsuit challenging the conditions imposed

upon all Death Row inmates. Nevertheless, defendants have chosen to apply this court's *Prieto* mandate solely to Mr. Prieto. This decision violates the plaintiffs' right to equal protection of the law, as Mr. Prieto's legal success, while requiring defendants to grant him relief over their own objections, did not otherwise change Mr. Prieto, or his relationship to the prison where he resides, its personnel and its other inmates.

Count III: Imposition of Cruel and Unusual Punishment

16. The permanent, unmitigated segregation of which plaintiffs complain here subjects them to an inhumane existence unrelated to any legitimate penological goal, amounting to the imposition of cruel and unusual punishment violating the Eighth Amendment.

Relief Sought

Wherefore, plaintiffs request an order of this court

- * Extending to plaintiffs the declaratory relief awarded Mr. Prieto,
- * Enjoining defendants from failing to extend to the plaintiffs the rights and privileges afforded Mr. Prieto as a result of this court's order in his case,
- * Awarding them reasonable attorney's fees and costs pursuant to 42 U.S.C. §1988; and,
- * Granting them such other relief as is just.

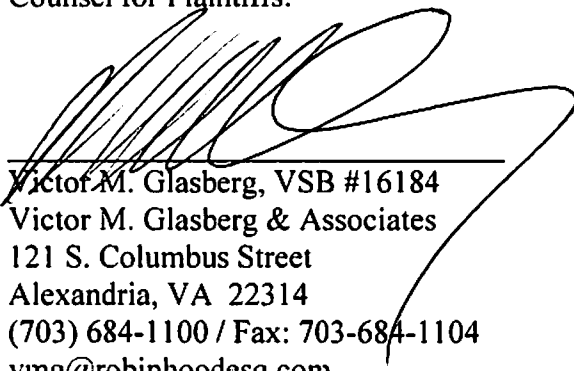
Respectfully submitted,

THOMAS PORTER, *et al.*,

By counsel

Dated: November 20, 2014

Counsel for Plaintiffs:



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JS 44 (Rev 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)

<p>I. (a) PLAINTIFFS Thomas Porter, Anthony Juniper, Ivan Teleguz, Mark Lawlor, Ricky Gray</p> <p>(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Victor M. Glasberg Victor M. Glasberg & Associates 121 S. Columbus Street, Alexandria, VA 22314 (703-684-1100)</p>	<p>DEFENDANTS Harold C. Clarke Keith W. Davis</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Label & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395m)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. §1983, Eighth Amendment

Brief description of cause:
 Mandatory regiment requiring inmates to spend almost 24 hours daily in small cells.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23. F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint.
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE Hon. Leonie M. Brinkema DOCKET NUMBER 1:12-cv-1199 EDVA (2013)

DATE 11/20/2014 SIGNATURE OF ATTORNEY OF RECORD Victor M. Glasberg

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Court Name: United States District Court
Division: 1
Receipt Number: 14683047796
Cashier ID: sbrown
Transaction Date: 11/20/2014
Payer Name: VICTOR H GLASBERG AND ASSOC

CIVIL FILING FEE

For: VICTOR H GLASBERG AND ASSOC
Amount: \$400.00

CHECK

Rebitter: VICTOR H GLASBERG AND ASSOC
Check/Money Order Num: 20603
Amt Tendered: \$400.00

Total Due: \$400.00
Total Tendered: \$400.00
Change Amt: \$0.00

FILING FEE
114CV1588