

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

**THE NATIONAL FEDERATION
OF THE BLIND OF VIRGINIA, *et al.*,**

Plaintiffs,

Case No. 3:23-cv-127-HEH

v.

**VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,**

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION *IN LIMINE* TO PERMIT
THE INCARCERATED PLAINTIFFS AND WITNESSES TO WEAR CIVILIAN
CLOTHES AT TRIAL**

Plaintiffs submit this motion *in limine* in order to permit the incarcerated Plaintiffs and any incarcerated witnesses they call to wear civilian clothes at trial.

PRELIMINARY STATEMENT

In this action under the Americans with Disabilities Act and Rehabilitation Act, six individuals and one organization are alleging that the Virginia Department of Corrections (“VDOC”) is failing to provide legally-required accommodations for blind prisoners.

Four of the plaintiffs in this case are incarcerated in the custody of VDOC. Plaintiffs have arranged for civilian clothes to be available to them during trial; they request that the Court order that they be allowed to appear before the jury in civilian clothes and without visible shackles or restraints. Further, Plaintiffs may call one or more incarcerated witnesses; Plaintiffs move that these witnesses be permitted to appear in civilian clothes and without visible shackles or restraints.

ARGUMENT

Courts should allow incarcerated plaintiffs to appear in civilian clothes and without visible shackles because “prison attire serve[s] no safety policy and would serve only to undermine the [incarcerated party’s] right to a fair trial” *Sultaana v. Jerman*, No. 1:15-CV-382, 2019 WL 6343475, at *6 (N.D. Ohio Nov. 27, 2019). It is well-established that the Due Process Clause requires that states dress prisoners in civilian clothes and without visible shackles during criminal trials. *See Deck v. Missouri*, 544 U.S. 622, 632–33 (2005) (shackles); *Estelle v. Williams*, 425 U.S. 501, 503–13 (1978) (prison clothes). This is because “the constant reminder of the accused’s condition implicit in such distinctive, identifiable attire may affect a juror’s judgment” and is “so likely to be a continuing influence throughout the trial that . . . an unacceptable risk is presented of impermissible factors coming into play.” *Estelle v. Williams*, 425 U.S. at 504–05.

Forcing prisoners to appear in prison garb and shackles in civil trials presents the same problems, and “the prejudicial effect of visible shackling and prison clothing has been recognized in those cases too.” *Maus v. Baker*, 747 F.3d 926, 927 (7th Cir. 2014). Even when a jury is aware that a party is prisoner, “there is a distinction between the jury already being aware Plaintiff is a prisoner and the jury receiving a glaring reminder of this fact in the form of a distinctly colored or designed State-issued prison clothing and shackles.” *Ward v. Smith*, No. 10-3398-CV-S-ODS, 2015 WL 1499053, at *2–3 (W.D. Mo. Apr. 1, 2015) (granting motion *limine* seeking leave for plaintiff “to appear in court without shackles or other restraints and to wear civilian clothing at trial”). Shackles, like prison outfits, “exacerbate any pre-existing prejudice jurors may have toward Plaintiff because of his prisoner status and . . . may cause jurors to perceive him as a threat.” *Id.* at *3. “The sight of a shackled litigant is apt to make jurors think they’re dealing with a mad dog” *Maus v. Baker*, 747 at 927. Permitting the prisoners to wear civilian clothes and not be visibly shackled is necessary for Plaintiffs to have the fair trial guaranteed to them by the Due Process Clause.

Allowing the incarcerated plaintiffs to wear civilian clothing and non-visible restraints will not impact security. The Ninth Circuit has held that in civil cases “shackling may only be used when there is an ‘individualized security determination that takes account of the circumstances of the particular case.’” *Claiborne v. Blauser*, 934 F.3d 885, 900 (9th Cir. 2019) (quoting *Deck v. Missouri*, 544 U.S. 622, 632 (2007)) (cleaned up). “Ordinarily courtroom security can be assured by shackling the prisoner just at the ankles (skipping the handcuffs); and when that is done a curtain attached to the table at which he sits will hide the shackles from the jury’s sight.” *Maus v. Baker*, 747 at 927. “If the prisoner is to testify, then seating him in the witness box before the jury enters and removing him from the box after the jury leaves for a break or for the day will keep the jury

from seeing the shackles; the sides of the box will conceal them.” *Id.* These measures need not jeopardize security and Plaintiffs are open to working with Defendant, the Court, and the federal marshals to find the proper protocol for ensuring security while allowing Plaintiffs their rights at trial. *See Ward v. Smith*, at *3 (ordering plaintiff be permitted to appear in court in civilian clothes and without shackles, noting that “U.S. Marshals and Missouri Department of Corrections officers will be present at the trial and are more than able to handle all security related issues.”).

Any security rationale that could be argued for either prison garb or visible restraints is especially inadequate with regard to the incarcerated Plaintiffs, most of whom are still sight-impaired and face significant obstacles in merely navigating the courtroom. Accordingly, it should be easy for the parties to fashion a procedure that respects both Plaintiffs’ rights to a fair trial and security.

Plaintiffs have arranged for the clothes to be donated without the need for either the Court or Defendant to provide them. *See Sultaana v. Jerman*, at *6 (holding that incarcerated party may wear civilian clothes but that if he “wishes to wear civilian clothes, he will need to arrange the attire himself.”).

CONCLUSION

For the foregoing reasons, this Court should order that the incarcerated Plaintiffs may appear before the jury in civilian clothes and without visible restraints.

Dated: May 6, 2024

Respectfully submitted,

/s/ Samantha Westrum

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May 2024, I filed the foregoing electronically with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (“NEF”) to the following:

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I hereby certify that I will mail the foregoing document by U.S. Mail and electronic mail to the following non-filing user:

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/s/ Samantha Westrum
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