

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE  
DISTRICT OF PENNSYLVANIA**

<b>MUMIA ABU-JAMAL, BRET</b>	:	
<b>GROTE, AND ROBERT BOYLE</b>	:	
	:	<b>Case No.</b>
<b>Plaintiffs,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>JOHN KERESTES, Superintendent</b>	:	<b>ELECTRONICALLY FILED</b>
<b>State Correctional Institution Mahanoy</b>	:	
	:	
<b>GEISINGER MEDICAL CENTER</b>	:	
	:	
<b>Defendants.</b>	:	

**MEMORANDUM OF LAW IN SUPPORT  
OF MOTION FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER**

**PRELIMINARY STATEMENT**

This memorandum is respectfully submitted in support of the plaintiffs’ motion pursuant to Fed.R.Civ. P. 65 for a preliminary injunction and temporary restraining order (“TRO”) requiring that the defendants Department of Corrections and Geisinger Medical Center permit plaintiff Mumia Abu Jamal to have an attorney client visit with his attorneys, plaintiffs Bret Grote and Robert J. Boyle and that such visits not be restricted in future hospitalizations. It is further requested that plaintiff Abu-Jamal be permitted a visit with his wife at Geisinger and at any future hospitalizations.

The facts in support of this application are set forth in the accompanying Verified Complaint filed herewith and the Declarations filed in support of the motion for injunctive relief

## **ARGUMENT**

### **POINT I**

#### **A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION SHOULD ISSUE REQUIRING THE DEFENDANTS TO PERMIT PLAINTIFF JAMAL TO MEET WITH HIS ATTORNEYS AND WIFE**

Pursuant to Fed. R.Civ.P. 65 a preliminary injunction should issue where the plaintiffs establish that 1) they are likely to succeed on the merits, 2) denial of the injunction would result in irreparable harm to the plaintiffs, 3) granting the injunction would not result in irreparable harm to the defendants and 4) granting the injunction would be in the public interest. *Nutra-Sweet Co. v. Vit Mar Enterprises, Inc.* 176 F.3d 151, 153 (3<sup>rd</sup> Cir. 1999). *See also Winter v. National Resources Defense Council*, 555 U.S. 7, 21 (2008). In the prison context, a court must also consider how an injunction might affect the “legitimate interests of penal administration.” *Abu-Jamal v. Price*, 154 F.3d 128, 136 (3d Cir. 1998). The foregoing are “factors to be balanced, not prerequisites to be met.” *Six Clinics Holding Corp. v. Cafcomp Systems*, 119 F.3d 393 (6<sup>th</sup> Cir. 1997) Application of them overwhelmingly establishes the necessity for the requested injunctive relief.

## Likelihood Of Success on the Merits

### a. Plaintiff Mumia Abu-Jamal<sup>1</sup>

It is well settled that a prisoner has the right to petition a court for redress of grievances, including for violations of his or her constitutional rights. *Bounds v. Smith*, 430 U.S. 817, 817-818 (1977). A necessarily corollary of that right is that prison administrators are required to assist inmates in the preparation and filing of legal papers. *Id.* This includes, but is not limited to, permitting the inmate to visit and consult with an attorney and/or the attorney's duly authorized representative. *Procunier v. Martinez*, 416 U.S. 396, 420 (1974). Inmates must be afforded "a reasonable opportunity to seek and receive the assistance of attorneys". *Id.* at 419. *See also Abu-Jamal v. Price, supra.* (recognizing that regulations that restrict an inmate's access to paralegals may infringe on the right of access to the Courts).

---

<sup>1</sup> Plaintiff attorneys Grote and Boyle have standing to bring this claim on Mr. Abu-Jamal's behalf. The typical rule where one cannot assert the rights of a third party "should not be applied where its inherent justifications are absent." *Singleton v. Wulff*, 406 U.S. 106, 114 (1976). In making this determination two factual elements are considered. The first is the relationship between the litigant and the party and whether the claims of both are "inextricably bound". *Id.* The second element is whether the litigant and party's relationship is such that for former is as effective a proponent of the rights at issue as the latter. Both factors exist here as plaintiff attorney Grote has a documented attorney-client relationship with Mr. Abu-Jamal that includes, but is not limited to advocating for adequate medical care. Boyle became co-counsel on at the request of Mr. Abu-Jamal. The claims are therefore "inextricably bound". *Keket v. Procunier*, 398 F.Supp. 756 (D.C. Cal. 1975)(holding that attorneys had standing to bring claims on behalf of inmates who were denied attorney-client visits). Indeed, the only reason Mr. Abu-Jamal himself cannot verify the instant complaint is that he is being held incommunicado by the defendants.

That right has been denied here. As of May 12, 2015 the defendants have instituted a policy of total prohibition. Mr. Abu-Jamal cannot meet with plaintiff attorneys Grote and Boyle. Nor can he even speak with them over the telephone.<sup>2</sup> This restriction will apparently be in place so long as Mr. Abu-Jamal remains in Geisinger Medical Center, in other words, indefinitely. This wholesale prohibition on contact with attorneys is a clear violation of *Bounds* and *Procunier*. Accordingly, plaintiff Abu-Jamal is likely to succeed on his access to courts claim.

Mr. Abu-Jamal's inability to communicate with his wife, who has been recognized by the DOC as the person, in addition to his attorneys who is authorized to obtain medical information raises similar issues. He has, at a minimum, a right to some form of personal visitation. *Cf Overton v. Bazzyeta* 529 U.S. 126 (2003)(upholding restrictions on contact visitation but only after applying test adopted in *Turner v. Safley* 482 U.S. 78 (1987) and finding that they served a legitimate penological interests). That right, too, has been totally denied.

### **Plaintiffs Grote and Boyle**

Plaintiff attorneys Grote and Boyle have independent constitutional claims. The Fourteenth Amendment guarantees an individual the right to engage in any of the common occupations. That right is both a "liberty" and "property" right and is, accordingly, protected from undue interference by the state. *Meyer v. Nebraska*, 262

---

<sup>2</sup> We do not imply that telephone consultation is a sufficient for an in-person attorney-client visit.

U.S. 390 (1923); *Greene v. McElroy*, 360 U.S. 474 (1959). Thus, an attorney has the right to practice his or her profession free from unreasonable intrusion by the state.

*Keket v. Proconier*, 398 F.Supp. 756 (D.C. Cal. 1975).

The modern attorney must at times be lawyer, counselor and advocate. Just as the physician is entrusted by society with the enhancement and preservation of life and health, the attorney is charged with advancement and protection of property, of liberty, and occasionally, life.

*Id* at 760. The Eighth Circuit had held that “a lawyer has standing to challenge any act which interferes with his professional obligation to his client and thereby, through the lawyer, invades the client’s constitutional right to counsel.” *Wounded Knee Legal Defense/Offense Committee v.* 507 F.2d 1281, 1285 (8<sup>th</sup> Cir. 1984).

By prohibiting plaintiff attorneys Grote and Boyle from visiting with their client, plaintiff Abu-Jamal, the defendants have materially interfered with the attorney client relationship. The restriction has also adversely affected plaintiff attorneys Grote and Boyle from performing necessary professional tasks. Communication with the client is essential if the attorneys are to be effective advocates on potential constitutional claims, including, in this case, access to the courts and denial of medical care. Given the foregoing plaintiffs Grote and Boyle have demonstrated likelihood of success on the merits.

### **Irreparable Harm**

The loss of a constitutional right, even for a minimal period of time, constitutes the type of “irreparable harm” necessary for a TRO and/or a preliminary injunction.

*Comm. Distribution Co., v. Reno*, 154 F.3d 281, 288 (6<sup>th</sup> Cir. 1998); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996); *Covino v. Patrissi*, 967 F.3d 73, 77 (2d Cir. 1992); *Hobe v. Casey*, 868 F.2d 69, 73 (3<sup>rd</sup> Cir. 1989); *McDaniel v. Hunter*, 746 F.2d 785, 787 (8<sup>th</sup> Cir. 1984). In the access to courts context irreparable harm is shown when the state action has hindered efforts to pursue a non-frivolous legal claim, including claims under 42 U.S.C. 1983. *Lewis v. Casey*, 518 U.S. 343, 351-352 (1996).

Plaintiffs have suffered and continue to suffer irreparable harm due to the complete prohibition of communication between Mr. Abu-Jamal and his attorneys. The plaintiff attorneys have been unable to consult with Mr. Abu-Jamal as to the next course of legal action. Mr. Abu-Jamal has been unable to inform his attorneys of his current conditions and his desires, if any, for legal redress. The defendants' actions have undoubtedly both hindered Mr. Abu-Jamal's efforts to seek legal redress in court and prevented plaintiff attorneys Grote and Boyle from carrying out their professional responsibilities.

### **Harm To The Defendants**

No harm would inure to the defendants if an injunction were issued permitting Mr. Abu Jamal to have a legal visit with his attorneys. Nor would they suffer any harm if he were able to have a visit with his wife. Such visits occur everyday and could be conducted under reasonable security procedures.

## **The Injunction Is In The Public Interest**

It is in the public interest for inmates to have access to the courts. The public interest is served when constitutional violations are vindicated whether through the filing of a formal complaint in court or through informal negotiations. Such resolution can only occur if inmates are able to consult with their attorneys. It is also in the public interest for attorneys to be able to meet with their clients so that their responsibilities can be carried out in a professional and ethical manner.

The public also has an interest in assuring that inmates maintain family ties that are consistent with orderly prison administration.

## **Barring All Visitation Is Not Related To A Legitimate Penological Objective**

When a prison regulation impinges on an inmate's constitutional rights, the regulation is valid if it is reasonable related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89 (1987). That is not the case here. The *de facto* regulation before the court here is a total prohibition of contact between plaintiff Abu-Jamal and his attorneys, plaintiff's Grote and Boyle. Mr. Abu-Jamal has also been denied all contact with his family, including but not limited to his wife. The instant prohibition will apparently remain in effect for as long as Mr. Abu-Jamal remains at Geisinger Medical Center or, in other words, indefinitely.

The defendants have not articulated a legitimate objective for this prohibition. Assuming *arguendo*, that they will argue that it is justified by security concerns, such concerns cannot justify a total prohibition of contact. Mr. Abu Jamal remains in

Department of Corrections' custody. There are no doubt correction officers guarding his room. He is likely handcuffed or shackled to his bed. Under such conditions, the threat to security is de minimis. Yet Mr. Abu Jamal is being totally denied his constitutional right of access to the courts and association and the plaintiff attorneys are being denied their right to effectively represent him.

There is no alternative to the injunctive relief requested. The defendants have imposed a total prohibition on all contact with Mr. Abu-Jamal. He is being held incommunicado. Only judicial intervention will insure that his rights are vindicated.

Finally, permitting an attorney visit and a visit with Mr. Abu Jamal's wife will not involve an unreasonable expenditure of resources. As stated *supra.*, plaintiff Abu Jamal is already guarded by corrections' officers and is likely restrained. A visit by counsel or Mr. Abu Jamal's wife would be no more intrusive than the presence of the medical personnel attending him. Surely, if those professionals are permitted to do their jobs, there is no reason why Mr. Abu-Jamal's attorneys who are officers of the Court, should be denied the right to do theirs.

## **CONCLUSION**

WHEREFORE for all the foregoing reasons this Court should grant the injunction and TRO requested in the moving papers and grant such other and further relief as this Court deems just and proper

Dated: May 18, 2015

Respectfully submitted,

/s/ Bret D. Grote

Bret D. Grote  
PA I.D. No. 317273  
Abolitionist Law Center  
P.O. Box 8654  
Pittsburgh, PA 15221  
Telephone: (412) 654-9070  
[bretgrote@abolitionistlawcenter.org](mailto:bretgrote@abolitionistlawcenter.org)

/s/ Robert J. Boyle

Robert J. Boyle  
277 Broadway  
Suite 1501  
New York, N.Y. 10007  
(212) 431-0229  
[Rjboyle55@gmail.com](mailto:Rjboyle55@gmail.com)  
NYS ID# 1772094  
Application for *pro hac vice*  
Admission pending

*Counsel for Plaintiffs*