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CLERK'S OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

APR 13 2011

IN THE UNITED STATES DISTRICT COURT  
FOR THE Western DISTRICT OF VIRGINIA

JULIA C. DUDLEY, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

COMPLAINT UNDER CIVIL RIGHTS ACT 42 U.S.C. § 1983

Action Number 7:11-CV-00175  
(To be supplied by the Clerk, U.S. District Court)

Please fill out this complaint form completely. The court needs the information requested in order to assure that your complaint is processed as quickly as possible and that all your claims are addressed. Please print/write legibly or type.

I. PARTIES

A. Plaintiff:

1. a. Ophelia Azriel De'lonta b. 1014174  
(name) (inmate number)  
c. P.O.Box 430  
(address)  
Dillwyn, Va 23936

Plaintiff MUST keep the Clerk of Court notified of any change of address due to transfer or release. If plaintiff fails to keep the Clerk informed of such changes, this action may be dismissed.

B. Defendant(s): Gene Johnson et, al.

Plaintiff is advised that only persons acting under color of state law are proper defendants under section 1983. The Commonwealth of Virginia is immune under the Eleventh Amendment. Private parties such as attorneys and other inmates may not be sued under section 1983. In addition, liability under section 1983 requires personal action by the defendant that caused you harm. Normally, the Director of the Department of Corrections, wardens and sheriffs are not liable under section 1983 just because they supervise persons who may have violated your rights. These persons are liable only if they were personally involved in the alleged deprivation. In addition, prisons, jails, and departments within an institution are not persons under section 1983.

1. a. Gene Johnson b. Director/VADOC  
 (name) (title/job description)
- c. 6900 Atmore Drive  
 (address)
- Richmond Va
2. a. L. Edmonds b. Warden/ Buckingham Corr. Ctr.  
 (name) (title/job description)
- c. P.O. Box 430  
 (address)
- Dillwyn Va 23936
3. a. R.W. Booker b. Aisst. Warden/ Buckingham C.C.  
 (name) (title/job description)
- c. P.O. Box 430  
 (address)
- Dillwyn, Va 23936

If there are additional defendants, please list them on a separate sheet of paper. Provide all identifying information for each defendant named.

Plaintiff MUST provide an address for defendant(s) in order for the court to serve the complaint. If the plaintiff does not provide an address for a defendant, that person may be dismissed as a party to this action.

In addition, plaintiff MUST provide a copy of the completed complaint and any attachments for EACH defendant named.

## II. PREVIOUS LAWSUITS

A. Have you ever begun other lawsuits in any state or federal court relating to your imprisonment? Yes  No

B. If your answer to A is YES: You must describe any lawsuit, whether currently pending or closed, in the space below. [If there is more than one lawsuit, you must describe each lawsuit on another sheet of paper, using the same outline, and attach hereto.]

1. Parties to previous lawsuit:

Plaintiff(s) Ophelia De'lonta

Defendant(s) Gene Johnson, Ron Angelone, Eddie Pearson et.al.

2. Court [if federal court, name the district; if state court, name the county]: Western District, Western District

3. Date lawsuit filed: 1999, 2005, 2010,

4. Docket number: 1999 - cite 330 F.3d/630 / 1:07cv245 / 1:09cv1167

5. Name of Judge to whom case was assigned:

Judge Turk, Judge Ellis

6. Disposition [Was case dismissed? Appealed? Is it still pending? What relief was granted, if any?]: one in 2010 dismissed, other 2010 pending, other settlement

### III. GRIEVANCE PROCEDURE

A. At what institution did the events concerning your current complaint take place? \_\_\_\_\_

see attachment

B. Does the institution listed in A have a grievance procedure? Yes  No [ ]

C. If your answer to B is YES:

1. Did you file a grievance based on this complaint? Yes  No [ ]

2. If so, where and when: see attachment

3. What was the result? see attachment

4. Did you appeal? Yes  No [ ]

5. Result of appeal: see attachment

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D. If there was no prison grievance procedure in the institution, did you complain to the prison authorities? Yes [ ] No [ ]

If your answer is YES: What steps did you take?

see attachment

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E. If your answer is NO, explain why you did not submit your complaint to the prison authorities.

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#### IV. STATEMENT OF CLAIM:

[State here as briefly as possible the facts of your case. Describe how each defendant is involved and how you were harmed by their actions. Also include the names of any other persons involved, dates and places of events. You may cite constitutional amendments you allege were violated, but do not give any legal arguments or cite any cases or statutes.]

If you intend to allege several related claims, number and set forth each claim in a separate paragraph. (Attach additional sheets if necessary.)]

see attachment

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V. RELIEF

I understand that in a section 1983 action, the Court cannot change my sentence, release me from custody or restore good time. I understand I should file a petition for a writ of habeas corpus if I desire this type of relief. OD [please initial]

The plaintiff wants the Court to: [check the remedies you seek]

\_\_\_\_\_ award money damages in the amount of \$ see attachment

\_\_\_\_\_ grant injunctive relief by \_\_\_\_\_

\_\_\_\_\_ Other \_\_\_\_\_

VI. PLACES OF INCARCERATION

Please list the institutions at which you were incarcerated during the last six months. If you were transferred during this period, list the date(s) of transfer. Provide an address for each institution.

Buckingham Corr. Ctr.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

VII. CONSENT

CONSENT TO TRIAL BY A MAGISTRATE JUDGE: The parties are advised of their right, pursuant to 28 U.S.C. § 636(c), to have a U.S. Magistrate Judge preside over a trial, with appeal to the U.S. Court of Appeals for the Fourth Circuit.

Do you consent to proceed before a U.S. Magistrate Judge: Yes  No . You may consent at any time; however, an early consent is encouraged.

VIII. SIGNATURE

If there is more than one plaintiff, each plaintiff must sign for himself or herself.

Signed this 11 day of April, 192011

Plaintiff

Debra Roberts

IN FORMA PAUPERIS AFFIDAVIT

I hereby apply for leave to proceed with this complaint without prepayment of fees or costs or giving security therefore. In support of my application, I state under oath that the following facts are true:

1. I am the plaintiff in this complaint, and I believe that I am entitled to redress.
2. I am unable to prepay the costs of said action or give security therefore, because:

                                  
                                  
                                  
                                  
**plaintiff is indigent**  
                                  
                                

3. I have no assets or funds which could be used to prepay the loan or costs except:

                                  
                                  
                                  
                                  
**plaintiff is indigent**  
                                  
                                

                                  
                                  
**none**  
                                  
                                

(Write "none" above if you have nothing; otherwise, list your assets)

*[Handwritten Signature]*  
                                  
Signature of Plaintiff

"I declare under penalty of perjury that the foregoing is true and correct."

Executed on this 11 day of April, 19 2011

*[Handwritten Signature]*  
                                  
Signature of Plaintiff

IT IS NO LONGER NECESSARY TO HAVE YOUR PETITION NOTARIZED.

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ \_\_\_\_\_ on account  
too his credit at the penal institution where he is confined. I further certify that the petitioner,  
likewise has the following sureties to his credit according to the records of said penal institution.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

                                  
Authorized Officer of Penal  
Institution

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION

OPHELIA AZRIEL DE'LONTA

PLAINTIFF

V.

L.R. MONTALBANO, R.W. BOOKER,

LARRY EDMONDS, G.K. WASHINGTON,

UNKNOWN DEFENDANTS et. al.

DEFENDANTS

CASE# \_\_\_\_\_

NATURE OF COMPLAINT

This is a Civil Rights Action brought by Ophelia De'lonta, a state Prisoner, for damages and injunctive relief, pursuant to 42 U.S.C. §§ 1983 the Religious land use and Institutionalized Persons Act 42 U.S.C. §§ 2000 cc et seg. and the Free Exercise Clause of the First Amendment and denial of due process of the Fourteenth Amendment and Cruel and Unusual Punishment of the Eighth Amendment to the Constitution of the United States.

JURISDICTION

1. Plaintiff brings this lawsuit pursuant to 42 U.S.C. §§ 1983 this court has jurisdiction under 28 U.S.C. §§ 1331 & 1343 plaintiff also seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201.
2. This court has supplement jurisdiction over plaintiff's state law tort claims pursuant to 28 U.S.C. §§ 1367.

### VENUE

3. The Western District of Virginia is an appropriate venue under 28 U.S.C. §§ 1391 (b) (2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

### PARTIES

4. At all times relevant hereto, plaintiff Ophelia De'lonta was a prisoner in the custody of the virginia department of corrections confined at the Buckingham correctional center.

5. Defendant L.R. Montalbano was at all times relevant hereto, employee of the virginia department of corrections; chairman of the Faith Diet Review Committee, by statue the chairman is responsible for the accommodations of inmate religious dietary needs that cannot be met by the standard menue.

6. Defendant R.W. Booker was at all times relevant hereto, aisstant warden of buckingham corr. ctr. and was responsible for ensuring the well-being of plaintiff essential needs are met.

7. Defendant L. Edmonds was at all times relevant hereto, warden at the buckingham corr. ctr. and was acting under the the title of warden responsible for ensuring the safety and well-being of prisoners under his supervision, and final policy maker.

8. Defendant G.K. Washington was at all times relevant hereto, regional director for the central region for vadoc prisons. By statue the regional director is responsible for ensuring the safety and well-being of prisoners under his supervision, and final policy maker.

9. Each defendant, at all times relevant hereto, acted under the color of state law. alleged liable in this cause of action through the principles of supervisory liability, and is sued in their offical and individual capacities.



## FACTS

**10.** Plaintiff is a pre-operative transsexual, whom has received hormone therapy for Gender Identity Disorder. Plaintiff's treatment also consists of regular psychological counseling.

**11.** The Hormone treatment has resulted in various physical changes to plaintiff body. As a result of civil action (330 F3d 630, 1999) and settlement as a final resloution with VADOC.

**12.** De'lonta is a devout practicing member of Assemblies of Yahweh affication of Judism.

**13.** De'lonta converted to Judism in 2006 while housed at powhatan corr. ctr. where she received the commonfare diet. After a year De'lonta discovered she was not receiving the appropriate diet; which per dietary laws of the Assemblies of Yahweh she is to receive Kosher diet meals.

**14.** De'lonta was transfered on Apirl 6th 2010 per adminstration reasons, to Buckingham corr. ctr. where she was denied kosher meals.

**15.** De'lonta was taken infront of the institutional classification authority; on May 3rd 2010, counselor Toney and treatment supervisor Keith Fisher recommended that the diet be reinstated.

**16.** On May 12th 2010 disposition of the ICA hearing was ruled "no action" due to " this institution is not a commonfare facility, and will not provide new inmates kosher meals"

**17.** For 84 days De'lonta refused to eat the regular meal offered at BKCC; instead she was forced to purchase pre-packaged cheese crackers, brown rice, fish from the prison commissary. After 84 days of denial of kosher meals, or any meal to meet religious dietary requirements; defendants provided plaintiff with kosher meals on June 30th 2010.

**18.** On November 23rd 2010 De'lonta attempted to order a religious head scarf, her request was denied by major Davis, " stating scarf's are not authorized property in the virginia department of corrections."

19. On January 13th 2011 plaintiff sent a "kite" form to asst. warden Booker requesting " lighting of the candle" Jewish festival law custom. Asst. warden Booker denied plaintiff, due to request was personally and do not represent a group program request. However lighting of the candle has been on occassion approved per asst. warden Booker.
20. On March 8th 2011 plaintiff submitted appropriate form to purchase Passover cermonial food from Aleph Institute, which is has been a regular prcedure in the past participation in the program.
21. Asst. warden Booker denied means of providing access availibility to fullfil customarily passover practice. Aleph Institute this year provided means to purchase online; if that was impossible there was a means for the facility to call and place the order another way. Futhermore plaintiff provided asst. warden another opition by utlizing a aproved vendor already in place, again the request was denied.

#### EXHAUSTION OF ADMINSTRATIVE REMEDIES ----

22. De'lonta filed a informal complaint on Apirl 26th 2010 being denied kosher meals; she submitted her formal grievance on Apirl 30th 2010, she then appealed the wardens response on May 25th 2010, she received the regional response from G.K. Washington denying her kosher meals as well. This was the last level of appeal, thus exhausting all administrative remedies.
23. De'lonta filed a informal complaint on November 29th 2010 being denied to order religious scraf; she submitted her formal grievance on December 2nd 2010, she appealed the wardens response on December 27th 2010, However plaintiff appealed to the regional director G,K, Washington whom never responded alleging I filed to file on time and the appeal was returned without review, thus exhausting all my administrative remedies.
24. De'lonta filed a informal complaint on January 24th 2011, being denied

the right to fullfill religious ceremonious ritual practice" lighting of the candle." She submitted her formal grievance on January 31st 2011, she then appealed the wardens response on Febuary 17th 2011, she received thr regional response from G.K. Washington denying her the right to full-fill religious ceremonious ritual practice. This was the last level of appeal, thus exhausting all administrative remedies.

25.

**COUNT ONE**

**DENIAL OF RELIGIOUS LAND USE AND INSTITUTIONAL PERSONS**

**ACT, FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.**

25. Under both the Free Exercise Clause and the Religious Land use and Institutionalized Person Act 42 U.S.C. §§ 2000 et seq. in its most elemental form, a prisoner has a clearly established right to a diet consistent with her religious scruples; a prison official violates this clearly established right if he intentionally and without sufficient justification denies an inmate her religiously mandated diet.

26. There was no valid rational connection for the chairman to deny plaintiff her religious diet, when in fact chairman knew plaintiff was faithfully jewish two years previously before transferring to Buckingham Corr. Ctr. Prison regulations had no bearing on chairmans decesion; chairmans interest was so remote as to render the policy arbitrary or irrational.

27. Buckingham Corr. Ctr. substantially burdened plaintiff exercise of religion, by denying her religious head attire (scraf). As well as denying plaintiff kosher diet for 84 days without compelling penological interest.

28. By Buckingham Corr. Ctr. adminstration, defendants name herein denying

plaintiff her kosher meal, religious scraf, ceremonious ritual practice; plaintiff has no alternative means of exercising the right of her religious Faith.

29. Providing plaintiff her kosher diet when she arrived at Buckingham Corr. Ctr. Or allowing her to order religious scraf, practice ceremonious ritual practice; would not had any effect on security staff or the orderly operations of the prison, especially when other inmates are allowed the same at Buckingham Corr. Ctr.

## COUNT TWO

### DENIAL OF DUE PROCESS AND DELIBERATE INDIFFERENCE TO DENIAL OF EQUAL PROTECTION IN VIOLATION OF THE FOURTEENTH AND EIGHTH AMENDMENT

30. Buckingham Corr.Ctr. counslor Toney, stated that " we do not have Kosher diets for any new inmates at Buckungham Corr. Ctr." This policy brudens and restrictions cannot be justified by compelling consideration of security or good order.

31. There is no explanation why the defendants have a compelling basis for eliminating a prisoner's access to establish her mandated dietary and religious garments and ceremonial practices, needs by being a new inmate at Buckingham Corr. Ctr. When other inmates are granted and afforded the same access to established religious practices.

32. Defendants failure to suspend there policy baring new inmates religious mandated rights for religious garments, or dietary kosher meal, as religious practice, was a denial of plaintiff due process rights under the Fourteenth Amendment Constitued cruel and unusual punishment in violation of the eighth amendment because it caused plaintiff severe stomach pains, cramps,nasua, 27 pounds weight loss, interfered with plaintiff's gender identity disorder treatment causing adverse effects

of self-surgery.

33. There was no legitimate penological interest for defendants to abridge plaintiff constitutional rights but instead an exaggerated response to non prison concern.

34. Gene Johnson failed to train, supervise, and promulgate policies requiring his subordinates to comply with RFRA and RLUIPA.

### Prayer For Relief

WHEREFORE, Plaintiff requests that this Court:

- 1) Enter injunctive relief against the defendants enjoining them from interfering with the discretion of plaintiff's religious belief and practices as any other situated inmate.
- 2) Enter injunctive relief against the defendants to provide plaintiff the same kosher meal she is now receiving while she is assigned to the VADOC.
- 3) Award monetary damages against all defendants herein for compensatory purposes for denying plaintiff kosher meal for 84 days, required three meals a day at current price rate for kosher meal.
- 4) Award monetary damages for punitive damages in the amount of one hundred thousand dollars 100,000.00 each for each defendant name herein.

Award such other relief as shall be requested in the interest of justice.

### DECLARATION

Plaintiff hereby declares under penalty of perjury that the statements of the foregoing action are true and correct to the best of plaintiff's knowledge and belief.

Executed on : 7-11-11

  
Opheelia Azriel De Lonta

Ophelia Delonta #1014174

P.O. Box 430

Dillwyn, VA 23936



UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK

P.O. BOX 1234

ROANOKE, VIRGINIA

23006



RECEIVED