

MAR 17 2016

JULIA C. DUNN, CLERK
BY: 
DEPUTY CLERK

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

ABDUL-HAMZA WALI MUHAMMAD,)	CASE NO. 7:14CV00529
)	
Plaintiff,)	
)	
v.)	ORDER
)	
COMMONWEALTH OF VIRGINIA,)	
<u>ET AL.</u> ,)	By: Glen E. Conrad
)	Chief United States District Judge
Defendants.)	

In accordance with the accompanying memorandum opinion of the court, and the report and recommendation of the magistrate judge, it is hereby

ADJUDGED AND ORDERED

as follows:

1. After the court's de novo review of the pertinent portions of the report and the record, plaintiff's objections to the report are **SUSTAINED IN PART**, and the report and recommendation (ECF No. 157) is **REJECTED IN PART**, as to the findings and recommended disposition regarding Claim 5 against Defendant Bishop; but as to Claim 5 against other defendants and as to all other claims, plaintiff's objections are **OVERRULED** and the report and recommendation of the magistrate judge is **ADOPTED**;
2. Plaintiff's pending motion for preliminary injunction (ECF No. 152) is **DENIED** without prejudice, and the clerk is **DIRECTED** to file a copy of this motion as both a new and separate civil action under 42 U.S.C. § 1983 and a motion for preliminary injunction, against "UNNAMED DEFENDANTS";
4. Plaintiff's other pending motions (ECF Nos. 146, 147, 159, and 166) are **DENIED**;
5. Defendants' motion to dismiss, or in the alternative, motion for summary judgment (ECF No. 101), is **GRANTED IN PART AND DENIED IN PART**, as follows:
 - a. Summary judgment is **GRANTED** as to all claims against all defendants, except (i) the allegation in Claim 1 that Defendants Day, Kegley, and Mathena deprived Muhammad of a protected liberty interest without procedural due process; and (ii) the allegation in Claim 5 that Defendants

Coyle and Bishop failed to intervene to stop another inmate's attack on Muhammad on January 5, 2013;

- b. Defendants' motion is **DENIED** under Rule 12(b)(6) as to the procedural due process allegation in Claim 1 against Defendants Day, Kegley, and Mathena, and these defendants are **DIRECTED** to submit, within 30 days from entry of this order, any supplemental motion for summary judgment as to this claim;
 - c. Summary judgment is also **DENIED** as to the allegation in Claim 5 that Defendants Coyle and Bishop failed to intervene to protect Muhammad on January 5, 2013; and
 - d. The clerk **SHALL** terminate the following individuals as parties to this lawsuit: Commonwealth of Virginia, Harold W. Clarke, A. David Robinson, Brian Keith Dawkins, Helen Scott Richeson, Gerald K. Washington, Adina L. Pogue, Mark E. Engelke, P. Scarberry, John F. Walrath, Sherri Shortridge, Jeffrey C. Artrip, Geraldine G. Baker, A. J. Gallihar, Dewayne A. Turner, CMC Jackson, S. Fletcher, Lieutenant C. Stanley, Sergeant Eric Anthony Miller, Sergeant Clinton Deel, Sergeant John Messer, A. J. Vaughan, Lieutenant Steven B. Franklin, Lieutenant James Lyall, Lieutenant Justin Kiser, George Hinkle, Larry W. Jarvis, John McQueen, Sergeant C. Dixon, Unit Manager Tori M. Raiford, Missy L. Counts, Captain D. Still, A. Murphy, B. Akers, D. Williams, Larry I. Mullins, N. H. Cookie Scott, Debra D. Gardner, Paul Mocerri, Rena Mullins, and the members of the "dual treatment team";
6. The clerk is **DIRECTED** to change the style of the case to "Muhammad v. Mathena"; and
7. The action is hereby is **REFERRED** to United States Magistrate Judge Joel C. Hoppe, pursuant to 28 U.S.C. § 636(b)(1)(B), for conduct of appropriate proceedings, and for the submission of a report setting forth findings of fact, conclusions of law, and a recommended disposition of plaintiff's spoliation allegation related to Claim 5 and any supplemental motion for summary judgment on Claim 1; and for all nondispositive motions that may arise, including pretrial discovery matters.

ENTER: This 17th day of March, 2016.



Chief United States District Judge