IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NIZAR ABDULAZIZ TRABELSI,
Petitioner–Plaintiff,
v.
JEFFREY CRAWFORD, *et al.*,
Respondents–Defendants.

Case No. 1:24-cv-01509-RDA-LRV

PLAINTIFF'S REPLY IN SUPPORT OF HIS MOTION FOR TIME TO CONDUCT DISCOVERY UNDER RULE 56(D)

Based on his Complaint, which Defendants now concede is well-pleaded, Mr. Trabelsi is entitled to discovery under the Federal Rules of Civil Procedure, just like any other civil litigant.[1] The Court should reject Defendants' attempt to evade discovery by filing a premature and one-sided motion for summary judgment at the outset of the litigation. The Fourth Circuit has made it crystal clear that when a defendant's motion for summary judgment precedes a plaintiff's opportunity to take necessary and relevant discovery, that motion should be denied, or at least held in abeyance. And plaintiffs may seek dismissal or deferral of such a premature motion through their own motions under Rule 56(d), as Plaintiff did here. Plaintiff's motion under Rule 56(d) is proper, and should be granted.

[1] Defendants now explicitly admit that Plaintiff's Complaint states claims for relief under Fifth Amendment, the First Amendment, and the Religious Freedom Restoration Act. ECF 51 at 4. Though Defendants profess not to know whether "Plaintiff is genuinely confused or being too clever by half," *id.* at 3, Defendants' Memorandum in Support of Their Motion to Dismiss and Motion for Summary Judgment was hardly clear about the mechanics of its arguments. As Plaintiff pointed out, *see* ECF 46 at 2, Defendants' pleading intertwined and confused—deliberately or not—the standards relevant to a motion to dismiss and a motion for summary judgment, and Plaintiff responded to the various implications of Defendants' words out of an excess of caution. *See, e.g.*, ECF 39 at 2 ("Plaintiff *cannot state a claim* under the Due Process Clause, the Free Exercise Clause, or RFRA in light of this record." (emphasis added)).

ARGUMENT

I. Plaintiff properly filed a motion for relief under Rule 56(d).

Defendants contend that, at least "arguably," ECF 52 at 4 n.1, Plaintiff's Rule 56(d) motion is procedurally improper, *id.* at 2. But as the Fourth Circuit has explained, Rule 56(d) "*motions* are 'broadly favored and should be liberally granted' in order to protect non-moving parties from premature summary judgment motions"—exactly the scenario before the Court.[2] *McCray v. Maryland Dep't of Transp., Maryland Transit Admin.*, 741 F.3d 480, 484 (4th Cir. 2014) (emphasis added) (quoting *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, 721 F.3d 264, 281 (4th Cir. 2013)); *see also, e.g.*, *James River Air Conditioning Co. v. Batten & Shaw, Inc.*, No. 15-cv-223, 2015 WL 5247746, at *2 (E.D. Va. Sept. 8, 2015) (granting "Rule 56(d) Motion"). In support of their position, Defendants cite three district court cases (only one of which is from a court within the Fourth Circuit) that predate the Fourth Circuit's more recent discussions of Rule 56(d). To be clear, contrary to Defendants' overheated and groundless accusation, ECF 52 at 4 n.1, Plaintiff did not file his Rule 56(d) motion to manufacture a right to reply; he did so because controlling case law indicates that a Rule 56(d) motion is the correct way for parties to seek time to conduct discovery before they litigate motions for summary judgment.

II. The Court should grant Plaintiff's motion because the Fourth Circuit has squarely held that granting summary judgment before necessary discovery, based on evidence extrinsic to a well-pleaded complaint, is improper.

According to the Fourth Circuit, "relief under Rule 56(d) is broadly favored and should be liberally granted in order to protect nonmoving parties from premature summary judgment motions, consistent with the general rule that summary judgment should only be granted after

[2] In fact, Defendants acknowledge that several of the cases cited in their opposition involved "motions" for relief under Rule 56(d) or its predecessor, Rule 56(f). ECF 52 at 5 n.2.

adequate time for discovery." *Pledger v. Lynch*, 5 F.4th 511, 526 (4th Cir. 2021) (cleaned up); *see also Boyle v. Azzari*, 107 F.4th 298, 301 (4th Cir. 2024) ("Summary judgment should only be granted 'after adequate time for discovery.'" (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986))). Moreover, "sufficient time for discovery is considered especially important when," among other things, "the relevant facts are exclusively in the control of the opposing party." *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 246–47 (4th Cir. 2002) (cleaned up).

Plaintiff's Rule 56(d) motion easily clears these standards. Plaintiff has had no opportunity, let alone an adequate one, to conduct discovery. *See* Declaration of Nicole Hallett ("Hallett Decl.") ¶ 3 (ECF 45-1). And Defendants exclusively control not only critical evidence, but Plaintiff's physical movement and ability to communicate, severely curtailing his ability to acquire evidence outside the judicially structured discovery process. *See, e.g.*, ECF 51 at 7 n.4 (acknowledging that Plaintiff "does not have personal knowledge of the bases for his administrative segregation and the limited restrictions on his religious worship, which are the dispositive facts resolving his conditions of confinement claims"). In these circumstances, relief under Rule 56(d) is necessary. *Pledger*, 5 F.4th at 526; *Gordon v. CIGNA Corp.*, 890 F.3d 463, 478 (4th Cir. 2018) (stating that a "district court did not abuse its discretion in denying a motion under Rule 56(d) when two conditions were met: (1) the plaintiff *had a reasonable opportunity to conduct discovery*, and (2) the plaintiff did not identify any specific information that would create a genuine dispute of material fact" (emphasis added and quotation marks omitted)).

To underscore the point, the rule against granting summary judgment before "adequate time for discovery" dovetails with the prohibition against considering extrinsic evidence in deciding

motions to dismiss.[3] *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 606 (4th Cir. 2015). As the Fourth Circuit has explained, considering extrinsic evidence attached to a motion to dismiss "improperly converts the motion to dismiss into a motion for summary judgment." *Id.* Such conversion is improper because summary judgment "is not appropriate when the parties have not had an opportunity to conduct reasonable discovery." *Id.* Even though Defendants' motion was styled as a motion for summary judgment from the beginning—and, thus, did not need to be converted into one—it does the very thing the Fourth Circuit has disallowed: it seeks summary judgment in response to Plaintiff's well-pled Complaint based on extrinsic evidence, before Plaintiff has had "an opportunity to conduct reasonable discovery." *Id.* The conclusion is inescapable: Defendants' motion for summary judgment is premature, and granting it now—rather than, at the very least, deferring adjudication—would be error.

There is no binding authority supporting Defendants' opposition; hence, by necessity, Defendants rely on easily distinguishable cases. Most prominent is *Dufau v. Price*, 703 F. App'x 164, 166 (4th Cir. 2017), an unpublished, per curiam opinion in which, according to Defendants, the Fourth Circuit "squarely *rejected*" Plaintiff's position. ECF 52 at 6 (emphasis in original). That is wrong. In *Dufau*, the Fourth Circuit affirmed a district court's denial of a plaintiff's Rule 56(d) motion after concluding that the plaintiff's allegations, if true, would not even have sustained her prima facie case. 703 F. App'x at 166 (plaintiff "did not establish a prima facie case of discrimination because she alleged no adverse employment action"); *id.* at 167 (plaintiff "did not allege that Defendant made vulgar or insensitive remarks based on her age or her protected

[3] There are narrow exceptions to this rule, but as Plaintiff has explained, none apply here. ECF 46 at 3–4.

complaints"). Here, by contrast, there is no question that Plaintiff's allegations make out prima facie claims for relief, and Defendants now concede it.

Defendants' other cases are more of the same: they involve denials of Rule 56(d) motions in situations unlike this one. In one case, the Fourth Circuit affirmed a Rule 56(d) denial when the parties had already engaged in extensive discovery. *Strag v. Bd. of Trustees, Craven Cmty. Coll.*, 55 F.3d 943, 953 (4th Cir. 1995). In another, the plaintiff *consented* to the defendants' filing of a motion for summary judgment in lieu of an answer. *Smith v. Del Toro*, No. 21-cv-1406, 2022 WL 4017611, at *4 (E.D. Va. Sept. 1, 2022). In yet another, the Fourth Circuit affirmed a district court's denial of a Rule 56(d) motion because the lower court had already resolved the relevant questions on legal grounds. *McClure v. Ports*, 914 F.3d 866, 875 (4th Cir. 2019). And in another, the Fourth Circuit affirmed a Rule 56(d) denial when the question before the court was "principally one of law," "there [was] a wealth of case law assessing similar challenges," and the district court had "allowed Plaintiffs time to file additional affidavits before the court ruled on the summary judgment motions, but Plaintiffs did not take advantage of that opportunity." *Pisano v. Strach*, 743 F.3d 927, 931 (4th Cir. 2014).[4]

Defendants also point to cases where an extensive administrative record that included evidence developed by both parties existed prior to summary judgment—but nothing of the sort exists here. *See McKinnon v. Blank*, No. 12-1265, 2013 WL 781617, at *4, *11 (D. Md. Feb. 28, 2013) (denying plaintiff's Rule 56(d) motion in employment suit against federal agency when record already contained results of administrative investigation conducted by agency's Office of Civil Rights, with the plaintiff's participation); *James v. Schafer*, No. DKC-07-cv-754, 2008 WL

[4] Here, Plaintiff explicitly requested leave to more fully respond to Defendants' motion for summary judgment if the Court were to deny his motion under Rule 56(d). ECF 46 at 13.

11509706, at *5 (D. Md. Feb. 29, 2008) (denying plaintiff's Rule 56(d) motion in employment discrimination suit against federal agency when the record contained a "wealth of material" from the agency's prior administrative investigation of the plaintiff's claims, during which the plaintiff had had the opportunity to enter evidence); *Krzywicki v. Del Toro*, No. 21-cv-1508, 2024 WL 4598338, at *10 (D.D.C. Oct. 29, 2024) (denying Rule 54(d) motion where a "well-developed administrative record [was] available"). Last, Defendants cite a district court's denial of a motion for additional discovery regarding a prisoner's Eighth Amendment claim for deliberate indifference to medical needs. *Mullins v. United States*, No. 06-cv-105, 2007 WL 2471117, at *6–7 (N.D.W. Va. Aug. 30, 2007). There, however, a magistrate judge had exhaustively described the prisoner's history of medical treatments in a report and recommendation; since the prisoner had not specifically objected to the report and recommendation, the district court adopted it, and its contents conclusively undermined the plaintiff's claims. *Id.* That is not remotely this case.

III. Plaintiff has satisfied the requirements of Rule 56(d).

Plaintiff has done everything Rule 56(d) requires: he has provided a declaration showing that, "for specified reasons, [he] cannot present facts essential to justify [his] opposition" to Defendants' motion for summary judgment. Fed. R. Civ. P. 56(d). As the Hallett Declaration points out, the fundamental (and dispositive) reason Plaintiff cannot present facts essential to justify his opposition to Defendants' motion for summary judgment is that Plaintiff has had no opportunity to conduct discovery. Hallett Decl. ¶ 3. Consequently, Plaintiff has been unable to obtain evidence central to his claims and Defendants' asserted defenses, including (1) evidence that Plaintiff's highly restrictive conditions of confinement are not reasonably related to a legitimate governmental objective, and were imposed for the purpose of punishment (material to Plaintiff's First and Fifth Amendment claims); and (2) evidence that the burdens placed on Plaintiff's religious exercise are not narrowly tailored to serve a compelling government interest (material to

Plaintiff's RFRA claim). Because this evidence is almost exclusively under Defendants' control, and because Defendants exercise dominion over Plaintiff's movements and communications, acquiring it without discovery is impossible.

Defendants object that the Hallett Declaration does not "identify the discovery requests that Plaintiff would presumably propound in discovery; identify what depositions Plaintiff believes he needs; or identify exactly how many discovery requests and of what kind Plaintiff would propound." ECF 52 at 4. But Rule 56(d) does not require the production of a comprehensive discovery plan—particularly when, as here, the parties have not exchanged even a single email related to discovery, much less held a discovery conference where the broad parameters for discovery are outlined.

Defendants suggest that permitting Plaintiff to seek discovery would amount to a "fishing expedition." ECF 52 at 2. But such an accusation is entirely baseless given that Plaintiff has not yet had the opportunity to ask for any discovery whatsoever. Moreover, Plaintiff's counsel does not have copious resources to waste on groundless and pointless discovery, and they have no intention of doing so. Even more to the point, the Court has ample tools to ensure that discovery does not devolve into the fishing expedition that Defendants profess to fear. After Plaintiff propounds his discovery requests, Defendants can seek relief under the Federal Rules if any request sweeps too broadly or is unduly burdensome. The general specter of a fishing expedition is no reason to deny Plaintiff the opportunity to conduct discovery *at all*.

Finally, Defendants devote a great deal of their opposition to arguing that none of the discovery Plaintiff seeks is material to his claims. But those arguments are wrong. Plaintiff seeks discovery of facts on his substantive due process claim that are not only essential to oppose a motion for summary judgment but are also in dispute by the parties. Specifically, Plaintiff requires

discovery on (1) the administrative and disciplinary measures imposed on him and (2) Defendants' supporting rationale for imposing these measures. Both are necessary to determine whether his conditions are "punitive, and thus unconstitutional." *Williamson v. Stirling*, 912 F.3d 154, 178 (4th Cir. 2018) ("[A]bsent an explicit intention to punish a [] detainee, we must evaluate the evidence and ascertain the relationship between the actions taken against the detainee and the custodian's supporting rationale.").

As a threshold matter, the parties dispute the conditions of Plaintiff's confinement, and the restrictions imposed on him. *Compare* ECF 39 ¶ 12 ("Plaintiff is to be subject to the same conditions as any other detainee in administrative segregation for security reasons, except for specific restrictions that had been previously imposed on Plaintiff when he was in the custody of the USMS"), *and* ECF 52 at 13-14 ("Federal Respondents-Defendants explained that Plaintiff's claims of materials being restricted were incorrect"), *with* ECF 45-1 ¶ 4 ("Defendants represent that the restrictions imposed on Plaintiff's current detention are the same as all other detainees in administrative segregation except for the specific restrictions outlined in the Special Administrative Measures . . . The SAM order, however, permitted him to have telephone calls with an approved list of contacts, receive and send mail that the facility reviewed, receive visits from an approved religious representative, have access to reading materials such as religious materials, newspapers, and books, and watch TV . . . Defendants have restricted him from all of these things."). Despite this obvious disagreement, Defendants characterize Plaintiff's need for discovery even on these facts as "immaterial." ECF 52 at 15. However, evidence of Plaintiff's conditions of confinement and the restrictions imposed on him—which, again, are largely in the exclusive control of Defendants—is material to his claim and exactly what he needs to respond to a motion for summary judgment. *See Stirling*, 912 F. 3d at 179 (considering evidence of length

and restrictions in solitary confinement, including "access to books, phones, or any human contact").

Likewise, evidence of the reasons underlying Defendants' decisions to impose the restrictions Plaintiff challenges—including his now 17-month-long administrative segregation, prohibition on communicating with non-attorneys, and restricted access to newspapers and books, except the Quran—is material to his claims and essential to justify his opposition to summary judgment. That is because Plaintiff may prevail on his claim by establishing that the restrictions imposed by Defendants are "excessive in relation to [a nonpunitive] purpose." *Short v. Hartman*, 87 F.4th 593, 609 (4th Cir. 2023); *see also Stirling*, 912 F. 3d at 185 (noting that a "rational and proportionate relationship [between a detainee's time in solitary confinement and a legitimate, nonpunitive governmental interest] does not exist if [a detainee's] conditions of confinement were 'arbitrary or purposeless'" (*quoting Bell*, 441 U.S. at 539)). Evidence of a "subjective intent" to punish is one—but not the only—type of evidence relevant to this showing. *Short*, 87 F.4th at 609. Thus, among other things, Plaintiff seeks discovery in order to prove that Defendants' decision to place him in administrative segregation predated, and was independent of, his alleged disciplinary infractions.

While Defendants characterize this evidence as a "quibble with the sufficiency of his administrative process," ECF 52 at 13, the Fourth Circuit in *Stirling* made clear that such evidence is necessary for determining whether "prolonged conditions of solitary confinement [are] reasonably related to some supporting rationale," because they shed light on Defendants' decision making. *Id.* at 180 (quotation marks omitted). In *Tate v. Park*, the court reiterated its holding in *Stirling* by disallowing courts from "simply accept[ing] a defendant's justification for placing a detainee in administrative segregation" and requiring them to "meaningfully consider" the relationship between the conditions and the stated purpose, and analyze the initial placement of

the detainee in solitary confinement and "all conditions and restrictions attendant thereto." 791 F. App'x 387, 390 (4th Cir. 2019) (vacating and remanding a grant of summary judgment on substantive due process claim).

This is precisely why Plaintiff's requested discovery on Defendants' rationale for subjecting Plaintiff to harsher conditions than those imposed in his pre-trial detention, Hallett Decl. ¶ 5, and "facts underlying the Defendant's subsequent reviews of Plaintiff's classification," *id.* ¶ 6, are material to his claim. It is not only fundamental to Plaintiff's ability to oppose summary judgment, but it is also essential for the court to "meaningfully consider" whether Mr. Trabelsi's conditions of confinement are reasonably related to Defendants' stated objective of "safety of FDC and broader public safety at large." ECF 39 at 14.

Plaintiff's requested discovery is also material to his First Amendment and Religious Freedom Restoration Act ("RFRA") claims. As explained, Plaintiff has made out prima facie claims under the First Amendment and RFRA by alleging that he "holds a sincere religious belief" and that his conditions of confinement—including his exclusion from Jum'ah services and inability to speak with the imam—substantially burden "his ability to practice his religion." *See* ECF No. 46 at 7 (citing *Wilcox v. Brown*, 877 F.3d 161, 168 (4th Cir. 2017); *Greenhill v. Clarke*, 944 F.3d 243, 250 (4th Cir. 2019)). Defendants do not dispute that they have denied Plaintiff access to Jum'ah services and access to the imam, but characterize these restrictions as a "one-time denial of Plaintiff's request." *See* ECF 39 at 22. Through discovery, Plaintiff will acquire evidence establishing that his exclusion from group worship and inability to speak with the imam represent more than a one-time loss of privileges: they are ongoing restrictions with no end in sight, and no quantity of requests could reasonably be expected to alleviate them.

Additionally, to prevail on his First Amendment claim, Plaintiff must establish that the substantial burdens Defendants have placed on his religious exercise are not "reasonably related to a legitimate penological interest." *Jehovah v. Clarke*, 798 F.3d 169, 181 (4th Cir. 2015). He cannot fairly do so without discovery, through which he will seek records shedding light on Defendants' communications regarding the restrictions to which he is subject (including, e.g., emails) and depositions of key decision makers.

Finally, because Plaintiff's conditions of confinement substantially burden his religious exercise, Plaintiff's RFRA claim must succeed unless Defendants prove that his conditions represent the "least restrictive means of furthering" a legitimate governmental interest, "a standard that is exceptionally demanding and requires the government to show that it lacks other means of achieving its desired goal." *Holt v. Hobbs*, 574 U.S. 352, 353 (2015) (cleaned up). Through discovery, Plaintiff will seek records establishing that Defendants have not, and cannot, meet their burden. *See generally Greenhill*, 944 F.3d 243.

IV. Plaintiff has not waived his ability to dispute the facts asserted by Defendants.

Plaintiff has not, as Defendants wishfully argue, conceded the truth of Defendants' statement of undisputed material facts. *Compare* ECF 46 at 13, *with* ECF 52 at 3. As Plaintiff explained, even if the Court denies Plaintiff's Rule 56(d) motion, Plaintiff would (with the Court's leave) file as thorough an opposition to Defendants' motion for summary judgment as he could under the circumstances. ECF 46 at 13. That said, the reason Plaintiff sought relief under Rule 54(d) is that, at this early stage, Plaintiff's ability to "present facts essential to justify [his] opposition" to Defendants' motion for summary judgment is unfairly limited. Fed. R. Civ. P. 56(d). Without the benefit of discovery, Plaintiff—who is confined at Defendants' mercy and subject to Defendants' utter control over his possessions, communications, and records—faces major practical obstacles in attempting to justify his disputation of Defendants' asserted facts by "citing to particular parts

of materials in the record, including *depositions*, documents, *electronically stored information*, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, *interrogatory answers*, or other materials." Fed. R. Civ. P. 56(c)(1)(A) (emphasis added). Put differently, the gravamen of Plaintiff's Rule 56(d) motion is that Plaintiff, having had no opportunity for discovery, is not fairly positioned to demonstrate that (a) he is, himself, entitled to summary judgment, or (b) the facts material to his claims are in dispute. Rule 56(d) is made for just such circumstances. *McCray*, 741 F.3d at 484.

Nevertheless, if the Court denies Plaintiff's Rule 56(d) motion, Plaintiff will make every effort to vigorously oppose Defendant's motion for summary judgment on the merits, and seeks only a reasonable frame of time in which to do so. *See* ECF 46 at 13.

CONCLUSION

The Court should grant Plaintiff's motion for time to conduct discovery under Rule 56(d) and deny without prejudice, or defer ruling on, Defendants' motion for summary judgment.

Respectfully submitted,

/s/

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