

MAR 18 2004

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Lamar Johnson)
3011 Normount Court)
Baltimore, MD 21216)

Plaintiff,)

v.)

Case No. _____

Paul A. Quander, in his official capacity as)
Director,)
Court Services and Offender Supervision Agency)
for the District of Columbia)
633 Indiana Avenue N.W.)
Washington, D.C. 20004)

CASE NUMBER 1:04CV00448

JUDGE: Reggie B. Walton

DECK TYPE: TRO/Preliminary Injunction

DATE STAMP: 03/18/2004

Michael Johnson, in his official capacity as)
Community Supervision Officer,)
Court Services and Offender Supervision Agency)
for the District of Columbia)
409 East Street N.W. Room 311)
Washington, D.C. 20004)

Defendants.)

COMPLAINT
(Fed. R. Civ. P. 3 & 8)

Pursuant to Rules 3 and 8 of the Federal Rules of Civil Procedure, Plaintiff Lamar Johnson states the following complaint against Defendants.

PRELIMINARY STATEMENT

1. Plaintiff is District of Columbia probationer Lamar Johnson who, pursuant to the DNA Analysis Backlog Elimination Act of 2000, 42 U.S.C. § 14135b (the DNA Act),¹ has been ordered by Defendants to provide a DNA sample for inclusion in the Federal

¹ Portions of the DNA Act are also codified at D.C. Code § 22-4151.

Bureau of Investigation's Combined DNA Index System (CODIS). Defendants are the Director of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) and Plaintiff's Community Supervision Officer (CSO). By compelling Plaintiff to submit a DNA sample, for law enforcement purposes and in the absence of individualized suspicion, Defendants have, under color of District of Columbia and federal law, deprived him of rights, privileges and immunities guaranteed by the Constitution of the United States, and of rights, privileges and immunities guaranteed by statutes and regulations of the United States. Plaintiff seeks injunctive and declaratory relief for these constitutional and statutory violations including, but not limited to, the issuance of a Temporary Restraining Order and an Order for Preliminary Injunction.²

JURISDICTION

2. Pursuant to 42 U.S.C. § 1983, Plaintiff seeks to vindicate rights protected by the United States Constitution and the laws of the United States. This Court accordingly has jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and (4).

VENUE

3. This is a civil rights action in which Defendants are officers and employees of agencies of the United States, acting in their official capacities and under color of legal authority. A substantial part of the events or omissions giving rise to Plaintiff's claims occurred within the District of Columbia. No real property is involved in this action.

²Per Local Rules of Civil Procedure 65.1(a) and 65.1(d) these requests are made in a concurrent motion separate from this complaint.

Venue is therefore appropriate in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1391(e).

PARTIES

4. Plaintiff Lamar Johnson is a D.C. Code probationer and an African American. On December 20, 2001, Mr. Johnson was convicted of two counts of unarmed robbery, in violation of D.C. Code § 22-2801, in District of Columbia Superior Court cases F-5081-01 and F-2054-01. The charges in these cases arose out of an incident that took place on March 30, 2001. On March 15, 2002, Mr. Johnson was sentenced to one year of incarceration and two years of supervised release in each case. The execution of both sentences was suspended entirely and Mr. Johnson was placed on two years of concurrent probation in each case.

5. Defendant Paul A. Quander, Jr. is the Director of CSOSA. He was appointed by the President and subsequently confirmed by the United States Senate on August 5, 2002. CSOSA supervises all District of Columbia offenders placed on probation by the D.C. Superior Court and all individuals on parole or supervised release pursuant to the District of Columbia Code. CSOSA was established as an independent executive branch agency within the federal government by the National Capital Revitalization and Self-Government Improvement Act of 1997.³ Mr. Quander is sued in his official capacity in connection with actions taken under color of federal and District of Columbia law.

6. Defendant Michael Johnson is a CSOSA employee, assigned by the agency to supervise Lamar Johnson. As set out below, it is CSO Johnson who informed Lamar Johnson that he was required to submit a DNA sample and it is CSO Johnson who has

³ Pub.L. 105-33, Title XI, Sec. 1123.

taken adverse actions against Lamar Johnson in the wake of CSOSA DNA demand. CSO Johnson is sued in his official capacity in connection with actions taken under color of federal and District of Columbia law.

FACTS GIVING RISE TO THE CAUSE OF ACTION

7. The DNA Act provides that the Defendants “shall collect a DNA sample” from every individual in custody, on supervised release, on parole or on probation for a qualifying District of Columbia offense, 42 U.S.C. § 14135b(a), and that they “shall furnish each DNA sample collected under subsection (a) of this section to the Director of the Federal Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in CODIS,” 42 U.S.C. § 14135b(b).

8. The DNA Act further provides that Defendants may “use or authorize the use of such means as are reasonably necessary to detain, restrain and collect a DNA sample from an individual who refuses to cooperate in collection of the sample,” 42 U.S.C. § 14135b(a)(4)(A), and that any eligible offender who “fails to cooperate” with DNA collection may be prosecuted for a federal criminal offense, 42 U.S.C. § 14135b(a)(5).

9. On or about February 18, 2004, Defendants, pursuant to the DNA Act, ordered Lamar Johnson to provide a sample of his DNA for inclusion in the Federal Bureau of Investigation’s CODIS system, a law enforcement database. According to the dictates of the DNA Act, the DNA sample that Lamar Johnson was ordered to provide is to be used in the investigation and, potentially, the prosecution, of both past and future crimes. Lamar Johnson is not, however, a suspect in any crime and no individualized suspicion animates or supports Defendants’ demands for his DNA.

10. Defendants have now alleged to the D.C. Superior Court that Lamar Johnson has violated the terms of his probation by “refus[ing] to report for DNA testing.” See CSOSA “Memorandum” dated March 8, 2004, attached hereto as Exhibit A. In response to this allegation, the D.C. Superior Court has ordered Lamar Johnson to show cause why his probation should not be revoked. See D.C. Superior Court “Order” dated March 11, 2004, attached hereto as Exhibit B.⁴ These revocations proceedings are to take place on April 9, 2004.

11. In addition, CSO Johnson has informed Lamar Johnson that all community supervision officers have been directed by CSOSA to refer supervisees who have allegedly refused to submit to DNA testing to the Office of the United States Attorney for the District of Columbia for prosecution under the DNA Act. See Electronic Mail Transmission, dated October 2, 2003, attached hereto as Exhibit C.

12. Defendants, acting in their official capacities, have thus directed, authorized and approved the taking of DNA samples from Lamar Johnson, and have done so for the express law enforcement purpose of providing Lamar Johnson’s DNA to the Federal Bureau of Investigation for inclusion in the CODIS database.

13. There are no administrative procedures available to Lamar Johnson to challenge Defendants’ proposed search and seizure. Thus, immediate injunctive relief is necessary to prevent the irreparable injury that will otherwise result.

⁴ Although Lamar Johnson’s terms of probation were to expire on March 15, 2004, the Superior Court’s initiation of revocation proceedings tolls expiration until such time as the Superior Court revocation proceedings take place. *Brown v. United States*, 666 A.2d 493, 494 (D.C. 1995); *Belcher v. United States*, 572 A.2d 453, 454 (D.C.1990).

CLAIMS FOR RELIEF

First Claim: Fourth Amendment Violation

14. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 13 above. Defendants' proposed actions would violate the Fourth Amendment to the United States Constitution as they amount to a nonconsensual seizure and search of Lamar Johnson, for an express law enforcement purpose, in the absence of individualized suspicion.

Second Claim: Substantive Due Process Violation

15. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 13 above. Defendants' proposed actions would violate the Fifth Amendment to the United States Constitution as they would result in the deprivation of protected and fundamental interests central to personal privacy, dignity and autonomy widely accepted as an integral part of human freedom.

Third Claim: Procedural Due Process Violation

16. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 13 above. Defendants' proposed actions would violate the Fifth Amendment to the United States Constitution as they would result in the deprivation of protected liberty interests without the requisite due process.

Fourth Claim: Equal Protection Violation

17. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 13 above. As the DNA Act disproportionately impacts members of a racial minority,

Defendants' proposed conduct would violate the Equal Protection component of the Due Process Clause of the Fifth Amendment to the United States Constitution by treating similarly-situated individuals unequally on the basis of race without a compelling reason for doing so.

**Fifth Claim:
Ex Post Facto Violation**

18. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 13 above. Defendants' proposed actions would violate Article 1, Sections 9 and 10 of the United States Constitution (the "Ex Post Facto Clauses") by significantly increasing punishment for robbery retroactively as the pertinent portion of the DNA Act, requiring those convicted of robbery to submit a DNA sample, D.C. Code § 22-4151(27), was enacted after the date on which Lamar Johnson committed the crimes underlying his sentences.

**Sixth Claim:
Health Insurance Portability and Accountability Act of 1996 (HIPPA),
Pub.L. 104-191, 110 Stat 1936 (1996), Violation**

19. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 13 above. Defendants' proposed actions would violate HIPPA by disclosing highly sensitive medical and genetic information in which Lamar Johnson has a strong privacy interest.

**Seventh Claim:
International Convention of the Elimination of all Forms of Racial Discrimination
(CERD) Violation**

20. Plaintiff hereby realleges and incorporates by reference Paragraphs 1 through 13 above. Defendants' proposed actions would violate CERD, to which the United States is a state party, by discriminating on the basis of race.

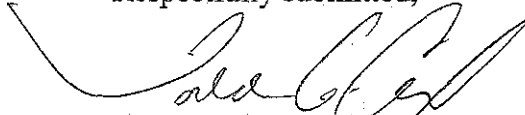
PRAYER FOR RELIEF

WHEREFORE, Lamar Johnson respectfully requests that this Court do the following:

- a. Assume jurisdiction over this action;
- b. Issue a Temporary Restraining Order and Preliminary Injunction pursuant to Federal Rules of Civil Procedure 65 (a) and (b) and Local Rule 65.1;
- c. Issue permanent injunctive and declaratory relief sufficient to correct the violations of Lamar Johnson's constitutional and statutory rights complained of in this action;
- d. Issue an order prohibiting defendants from forcibly extracting Lamar Johnson's bodily fluids, tissue or other biological materials in the absence of individualized suspicion;
- e. Prohibit retaliation against Lamar Johnson through the revocation of Mr. Johnson's probation, the establishment of additional probationary conditions, the initiation of criminal prosecution, or any other sanctions for exercising his constitutional rights;

- f. Retain jurisdiction over Defendants until such time as the Court is satisfied that Defendants' unlawful policies, practices, customs, acts or omissions no longer exist and will not recur; and
- g. Award such other and further relief as this Court deems just and proper.

Respectfully submitted,



Timothy P. O'Toole
D.C. Bar No. 469800
Todd A. Cox*
D.C. Bar No. 445316
Jennifer Di Toro
D.C. Bar No. 456829
Alison Flaum
D.C. Bar No. 461616
Public Defender Service
633 Indiana Avenue N.W.
Washington, D.C. 20004
(202) 628-1200
*Attorney of Record for Plaintiff

Exhibit A



Court Services and Offender Supervision Agency
for the District of Columbia
Community Supervision Services
Substance Abuse and Treatment Branch

RECEIVED

MEMORANDUM

MAR 8 - 2004

TO: The Honorable John M. Campbell
FROM: *Michael Johnson*
Michael Johnson, Community Supervision Officer
THRU: *Rosalind Leggett*
Rosalind Leggett, Supervisory Community Supervision Officer
DATE: March 4th, 2004
SUBJECT: Lamar W. Johnson, PDID #: 366478, Case #: F-2081-01 & F-2054-01
RE: To Advise Your Honor of this offender's failure to report for DNA testing.

CHAMBERS OF
JUDGE JOHN M. CAMPBELL

This memorandum is being sent to advise Your Honor of the above named offender's refusal to submit for DNA testing. It should be noted that on 02-18-2004, this offender reported to this office as scheduled. During that office visit, this officer explained to him the importance of DNA testing and that it is mandated and required by law. This offender refused to report for DNA testing, and stated "I will not DNA test and I do not care what happens at this point". On 03-04-2004, he reported to this office as scheduled and again he refused to report for DNA testing. At that time, he met with both this officer and his immediate supervisor, Rosalind Leggett for a supervisory conference. During this conference, Ms. Leggett disclosed to him that it is mandated and required by law for him to be referred for DNA testing. He refused to submit for DNA testing. Ms. Leggett then sanctioned him as per this agency's policy and procedure to report to this office daily. This offender indicated that he would not report daily as his probation supervision is scheduled to expire on ~~03-04-2004~~. His daily reporting is to commence on 03-05-2004. This offender failed to report to this office on 03-05-2004 as per the above given sanction.

It should be noted that this officer notified Ms. Lisa Terry with the Office of General Counsel via-fax with the information regarding this offender's refusal to submit for DNA testing. Ms. Perry will proceed to follow her office's policy and procedures in taking the proper measures to pursue this matter.

300 Indiana Avenue, NW, 2044, Washington, DC 20001
Voice: (202) 585-7455 Fax: (202) 585-7374

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Exhibit B

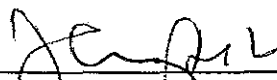
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
DOMESTIC VIOLENCE BRANCH

UNITED STATES	:	F-5081-01
	:	F-2054-01
vs.	:	PDID No. 366-478
	:	
	:	
LAMAR W. JOHNSON	:	Judge John M. Campbell

ORDER

Upon consideration of the Report received from the Court Services and Offender Supervision Agency on March 6, 2004, it is hereby

ORDERED, this 11th day of March, 2004, that the defendant appear before the Court on **Friday, April 9th, 2004, at 2:00 p.m.**, to show cause why his probation should not be revoked. The grounds for the show cause hearing are set out in the attached report.



John M. Campbell
Associate Judge
(signed in chambers)

Copies to:

Gerald Balacek, Esq.
United States Attorney's Office

Todd Edelman, Esquire
Public Defender Service

Lamar Johnson
1214 Barnaby Terrace, S. E.
Washington, D. C. 20032

Michael Johnson, CSO
Court Services and Offender Supervision Agency
Substance Abuse and Treatment Branch

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U.S. DISTRICT COURT

Exhibit C

Feb 24 04 03:13p

G'town Criminal Clinic

2026624224

p.2

Feb 24 04 02:46p

Franklin St One Stop Ctr

2026624224

p.2

Michael Johnson

From: Rosalind Connell Leggett
Sent: Thursday, October 02, 2003 10:07 AM
To: SAT-Team#42
Subject: FW: DNA Collection - Offender Refusal

Importance: High

Please review the below email. After sanctions are imposed, please refer offender's who refuse to test to Lisa Terry with OGC. We'll discuss sanctions options during our next team meeting.

-----Original Message-----

From: Tom Williams
Sent: Thursday, October 02, 2003 8:42 AM
To: CSS Branch Chiefs; CSS - SCSO's
Cc: McKinley Rush; Erika Evans; Sylvia Lawson
Subject: DNA Collection - Offender Refusal

This e-mail is being forwarded as a reminder regarding the above-noted topic. The Congressional & DC Statute mandates that offenders with certain qualifying offenses must submit to DNA Collection. We have instituted several collection days, sites and have included a Saturday DNA Collection date. Offenders who indicate that on advise of counsel, they will not submit to DNA Collections, as well as offenders who have been scheduled, rescheduled and have failed to comply with the law are to be immediately referred to Ms. Lisa Terry of the OGC. Ms. Terry will coordinate with the AUSA for prosecution. If an parolee provided a DNA sample while incarcerated, he/she is not required from a DNA Sample while under community supervision.

We have only one referral for prosecution, even though our non-compliance rate for collection is high. If offenders will not comply with our directive for DNA Collection after sanctioning, make the referral for prosecution.

As Branch Chiefs, I need for each of you with supervision responsibility to monitor staff's compliance with the CSS's DNA Collection and Compliance Process.

Tom

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U.S. DISTRICT COURT