

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DAN ROSS, :
 :
 Plaintiff, :
 :
 V. : No. 3:05-CV-130(PCD)
 :
 M. JODIE RELL, THERESA LANTZ, :
 DAVID N. STRANGE, :
 CHRISTOPHER L. MORANO, :
 and RICHARD BLUMENTHAL, :
 :
 Defendants. :

TEMPORARY RESTRAINING ORDER

Plaintiff Dan Ross brings this action pursuant to 42 U.S.C. § 1983 against officials of the State of Connecticut claiming that they are violating his rights under the Fourteenth Amendment in connection with their efforts to bring about the execution of his son, Michael B. Ross, who has "volunteered" to be executed. Plaintiff seeks a temporary restraining order preventing the execution on the ground that his son is not competent to make this irrevocable choice and is in fact taking advantage of the State's death penalty scheme to commit suicide, thereby putting an end to mental and emotional pain and suffering he can no longer endure after nearly two decades in solitary confinement on death row. The execution had been scheduled for today but has been stayed by virtue of an order entered by this Court in related litigation two days ago. See Ross ex rel. Smyth v.

Lantz, No. 05-CV-116(RNC)(D. Conn. filed January 25, 2005). The stay remains in place at this hour, having withstood Second Circuit review, but the State has asked the Supreme Court of the United States to lift the stay so the execution can be carried out tomorrow or the next day. During a telephone conference with counsel in this case late this afternoon, I granted plaintiff's request for a temporary restraining order to preserve the status quo. This restraining order will ensure that plaintiff's rights are preserved pending further consideration of his claims in the event the stay in the other case is lifted.

Plaintiff's request for a TRO preventing the execution of his son, analyzed in accordance with the Second Circuit's sliding scale test for injunctive relief, cannot be denied. The Due Process Clause affords plaintiff's interest in maintaining his relationship with his son "a substantial measure of sanctuary from unjustified interference by the State." See Roberts v. United States Jaycees, 468 U.S. 609, 618 (1984). If his request for a TRO is denied and the stay of execution in the other case is lifted, he will suffer the irreparable loss of his son; on the other hand, if his request for a TRO is granted and the stay is lifted, all the State will experience is some delay. Plaintiff's allegations raise questions going to the merits that are sufficiently serious and substantial to make them a fair ground for litigation and, in fact, he has a reasonable chance of

success.

In essence, plaintiff claims that the planned execution will extinguish his constitutionally protected bond with his son in violation of the Fourteenth Amendment in that the State will have assisted his son in committing suicide, which is a crime in itself. The State's reliance on his son's purported consent is unjustified, plaintiff contends, because his son lacks volitional capacity and his consent has been coerced by the conditions of his confinement. The evidence presented in the other case persuades me that these allegations have a factual basis. Furthermore, the requested order serves the compelling public interest in avoiding the wrongful execution of a "volunteer" who would not be facing execution at this time but for his purported "choice" to die, a choice that may well be the product of mental illness exacerbated by the psychiatric effects of nearly two decades of solitary confinement, not the voluntary decision of a healthy adult exercising free will.

Accordingly, plaintiff's request for a TRO is hereby granted and defendants are hereby restrained from executing plaintiff's son. Plaintiff is not required to post a bond or other security.

So ordered this 26th day of January 2005.

Robert N. Chatigny
United States District Judge