

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Civil Case Number: 9:15-CV-80480-XXXX

C.R.N.H, a minor by his mother, guardian, and next friend,
HEATHER HIRONIMUS,

Plaintiff,

vs.

DENNIS NEBUS, THE HONORABLE JEFFREY GILLEN and
all judges of the Fifteenth Judicial Circuit of the State of Florida,
and SHERIFF OF PALM BEACH COUNTY FLORIDA
RIC BRADSHAW and all sheriffs of the State of Florida,

Defendants.

**CIVIL RIGHTS COMPLAINT
UNDER TITLE 42 UNITED STATES CODE SECTIONS 1983 AND 1985**

1. Plaintiff C.R.N.H. a minor and a United States citizen by his mother, guardian, and next friend, Heather Hironimus, brings this complaint for violations and threatened violations of Plaintiff's individual rights under the Fifth and Fourteenth Amendments to the United States Constitution, in violation of Title 42 United States Code, Sections 1983 and 1985; Title 18 United States Code, Section 116; article I, section 23, of the Florida Constitution; section 61.13, Florida Statutes; section 784.011, Florida Statutes; section 784.021, Florida Statutes; section 784.03, Florida Statutes; section 784.045, Florida Statutes; and section 827.03, Florida Statutes.

2. Jurisdiction of this court is invoked pursuant to Title 28 of the United States Code, Sections 1331 and 1342, this being a suit in equity authorized by Title 42 of the United

States Code, Sections 1983 and 1985. Jurisdiction is further invoked under Title 28 of the United States Code, Sections 2201 and 2202, this being a suit for declaratory judgment. Plaintiff seeks a declaration that section 61.13, Florida Statutes, is unconstitutional as applied under the circumstances of this case.

3. This action challenges the constitutionality of a state statute, thereby making appropriate final declaratory relief.

4. Venue is proper in this district under Title 28 United States Code, Section 1391(b) because it is the district in which the claim arose.

5. Plaintiff C.R.N.H. is at all times relevant a resident of Palm Beach County, State of Florida.

6. Defendant Dennis Nebus is C.R.N.H.'s biological father.

7. In January 2014, when C.R.N.H. was over three years old, Defendant Nebus filed a motion in the Fifteenth Judicial Circuit of Florida to compel C.R.N.H.'s circumcision.

8. Dennis Nebus has no religious purpose for seeking to impose circumcision upon C.R.N.H.

9. Defendant Honorable Jeffrey Gillen, Circuit Judge of the Fifteenth Judicial Circuit of Florida, compelled C.R.N.H.'s circumcision by enforcing a provision of a parenting plan entered into by C.R.N.H.'s biological parents pursuant to section 61.13, Florida Statutes, which provided for C.R.N.H.'s circumcision. Section 61.13 provides that the standard governing enforcement of provisions of parenting plans is the "best interests of the child."

10. C.R.N.H. was born on October 31, 2010 and is now approximately 4 ½ years old.

11. C.R.N.H. does not want circumcision.

12. C.R.N.H. expressed that he does not want circumcision.

13. C.R.N.H. expressed that he is afraid of circumcision.
14. C.R.N.H. is in constant fear of circumcision being forced upon him pursuant to the court's order.
15. C.R.N.H. does not have any medical condition that would make circumcision medically necessary.
16. Under the circumstances of this case, circumcision is not medically necessary.
17. Under the circumstances of this case, circumcision is non-therapeutic, elective, cosmetic surgery.
18. Under the circumstances of this case, circumcision is invasive, irreversible, painful, and will cause C.R.N.H physical and psychological harm.
19. Under the circumstances of this case, circumcision results in permanent physical alteration of one of C.R.N.H.'s most private body parts at an age when C.R.N.H. is aware of what his body looks like and will be traumatized by it.
20. Circumcision at C.R.N.H.'s age results in the loss and/or disfigurement of a normal, healthy, functional, valuable body part.
21. Circumcision at C.R.N.H.'s age will result in severe and permanent psychological damage.
22. Circumcision at C.R.N.H.'s age does not provide medical benefits.
23. Any "potential" medical benefits of circumcision at C.R.N.H.'s age are vastly outweighed by the risks of harm to his physical, psychological, and emotional condition.
24. Any "potential" medical benefits of circumcision at C.R.N.H.'s age can be achieved by less invasive measures such as personal hygiene.
25. Because C.R.N.H. is no longer a newborn, performing circumcision upon him

will require general anesthesia.

26. Under the circumstances of this case, circumcision is not “medical treatment” because there is no diagnosis of any condition which would make it medically necessary.

27. In the state circuit court, the only medical evidence presented was the testimony of Dr. Charles Flack.

28. Dr. Flack testified that, based on his examination of C.R.N.H., circumcision is not medically necessary.

29. Dr. Flack did not recommend circumcision because of the risks.

30. Dr. Flack stated that C.R.N.H. would have to be placed under general anesthesia in order to perform the procedure.

31. Dr. Flack unequivocally stated that he would not circumcise his own son at C.R.N.H.’s age because it is too risky to put the child under general anesthesia unless he had a medical problem.

32. Dr. Flack stated that the best time to perform circumcision is when the child is a newborn because general anesthesia is not required.

33. There was no testimony or evidence regarding the psychological impact the procedure would have on C.R.N.H.

34. There is no compelling, important, or legitimate reason why the procedure cannot be postponed until C.R.N.H. reaches the age of 18 and can seek to have it performed upon himself if he so desires at that time.

35. The purported benefits of circumcision with regard to sexually transmitted diseases and penile cancer have been disputed and/or debunked by current medical research. See Peter W. Adler, *Is Circumcision Legal?*, 16 RICHMOND JOURNAL OF LAW AND THE PUBLIC

INTEREST 439, 448-449 (Spring 2013) and sources cited therein.

36. According to the American Medical Association, “data are not sufficient to recommend routine neonatal circumcision.” AM. MED. ASS’N, CSA REP. 10, I-99, 17 (1999).

37. Several international medical associations actively discourage the practice. See Adler, *supra* at 442 and sources cited therein.

38. The American Academy of Pediatrics’ Bioethics Committee has declared that a minor’s input into surgical decisions must be heard and considered.

39. In contrast to the rare disease of penile cancer which occurs mostly in the elderly, breast cancer is far more common but the law does not permit forcible removal of a female child’s healthy breasts in order to prevent the possibility that the child may one day develop breast cancer.

40. Penile cancer occurs in circumcised and uncircumcised males alike.

41. Circumcision does not significantly reduce the risk of sexually transmitted diseases.

42. Penile cancer and sexually transmitted diseases can be adequately prevented by less invasive methods such as personal hygiene and safe sex.

43. Under the circumstances of this case, forcing circumcision on C.R.N.H. constitutes assault, aggravated assault, battery, aggravated battery, and/or child abuse under Florida law. See §§ 784.011, 784.021, 784.03, and 784.045, Fla. Stat. prohibiting assault, aggravated assault, battery, and aggravated battery); § 827.03, Fla. Stat. (prohibiting child abuse); cf. Dr. K., Wa. 151 Ns 168/11 (Cologne Germany Regional Court (Landgericht)) (holding that nontherapeutic circumcision constituted criminal assault and violated the child’s fundamental right to physical integrity).

44. Under the circumstances of this case, forcing circumcision is contrary to C.R.N.H.'s best interests in violation of section 61.13, Fla. Stat. (requiring family court judgments to be in the best interest of the child).

45. Under the circumstances of this case, circumcision will seriously affect the relationship between C.R.N.H. and Defendant Nebus whom C.R.N.H. views as relentlessly trying to permanently physically harm C.R.N.H.'s genitalia.

46. Under the circumstances of this case, circumcision will have a pronounced effect on Nebus capability to properly care for C.R.N.H. See *In re Marriage of Boldt*, 176 P.3d 388, 394 (Or. 2008) (holding that circumcision could not be imposed on child without consideration of the child's state of mind due to the potential it would cause to the relationship between the child and the parent seeking to impose the circumcision and the ability of the parent to care for the child).

47. Under the circumstances of this case, circumcision will seriously affect the relationship between C.R.N.H. and his mother because C.R.N.H. will view her as having failed to protect him from the unwanted violation of his bodily integrity.

48. Under the circumstances of this case, circumcision will have a pronounced effect on C.R.N.H.'s mother's capability to properly care for C.R.N.H.

49. Defendant Honorable Jeffrey Gillen has ordered all sheriffs of the State of Florida to pick up C.R.N.H. and bring him to court in order to permit Defendant Nebus to carry out the circumcision.

50. The Sheriff of Palm Beach County and other sheriffs have made efforts to pick up C.R.N.H. in furtherance of the court's pick up order.

51. Defendant Nebus has made efforts to carry out the circumcision without

providing any safeguards to protect C.R.N.H.'s psychological well-being.

52. Defendant Nebus' efforts include setting pre-operative and surgery appointments without providing notice of their time and location to C.R.N.H.'s mother.

53. Defendant Nebus has not provided for a psychological evaluation to determine the emotional and psychological impact the procedure will have on C.R.N.H.

54. Defendant Nebus has rejected requests by C.R.N.H.'s mother to appoint a guardian ad litem and mental health professional to evaluate the psychological and emotional impact circumcision will have on C.R.N.H.

55. Defendant Honorable Jeffrey Gillen has ignored and/or rejected motions to appoint a guardian ad litem and for a mental health professional to evaluate the psychological and emotional impact circumcision will have on C.R.N.H.

56. Title 42 of the United States Code, Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C.A. § 1983.

57. Section 61.13, Florida Statutes as applied to the circumstances of this case and the state court orders compelling C.R.N.H.'s circumcision constitute a deprivation of the rights, privileges, and immunities secured by the Constitution and laws of the United States to C.R.N.H.

58. Defendants' application of Florida law to impose unnecessary, elective, cosmetic

circumcision upon C.R.N.H. at the age of 4 ½ years old for no religious reason without an opportunity for a guardian ad litem to assert C.R.N.H.'s rights or for a mental health specialist to assess the psychological impact the procedure will have on C.R.N.H. deprives C.R.N.H. of procedural due process guaranteed by the Fourteenth Amendment to the United States Constitution. Defendants' interference with this right is not supported by a compelling state interest that cannot be achieved by less intrusive means. In the alternative, Defendants' interference with this right is not supported by a sufficiently important state interests to justify such an intrusion, nor is it closely tailored to effectuate any State interest which may exist. In the alternative, there is no rational relationship between any legitimate State purpose and the means chosen to achieve this purpose.

59. Defendants' application of Florida law to impose unnecessary, elective, cosmetic circumcision upon C.R.N.H. at the age of 4 ½ years old for no religious reason violates C.R.N.H.'s fundamental right to privacy and bodily integrity secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Defendants' interference with this right is not supported by a compelling state interest that cannot be achieved by less intrusive means. In the alternative, Defendants' interference with this right is not supported by a sufficiently important state interests to justify such an intrusion, nor is it closely tailored to effectuate any State interest which may exist. In the alternative, there is no rational relationship between any legitimate State purpose and the means chosen to achieve this purpose.

60. Defendants' application of Florida law to impose unnecessary, elective, cosmetic circumcision upon C.R.N.H. at the age of 4 ½ years old for no religious reason violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, in that it sets out impermissible classifications. First, Title 18 United States Code section 116 prohibits female

circumcision and C.R.N.H. has been impermissibly denied equal protection under this law because of his age and gender. Second, under the circumstances of this case, circumcision and the threat of circumcision constitute assault, aggravated assault, battery, and aggravated battery pursuant to sections 784.011, 784.021, 784.03, and 784.045, Florida Statutes, and C.R.N.H. has been impermissibly denied the equal protection under these laws because of his age and gender. Third, under the circumstances of this case, circumcision constitutes child abuse pursuant to section 827.03, Florida Statutes, and C.R.N.H. has been denied equal protection under this law because of his gender. Fourth, under the circumstances of this case, circumcision is not in the best interest of C.R.N.H. under section 61.13, Florida Statutes, and C.R.N.H. has been denied equal protection under this law because of his age and gender. Fifth, under the circumstances of this case, circumcision violates C.R.N.H.'s right to privacy and bodily integrity under article I, section 23, of the Florida Constitution and C.R.N.H. has been denied equal protection under this law because of his age and gender.

61. Defendants' application of Florida law to impose unnecessary, elective, cosmetic circumcision upon C.R.N.H. at the age of 4 ½ years old for no religious reason violates the Establishment and Free Exercise of Religion Clauses of the First Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment. Under the circumstances of this case, imposing circumcision upon C.R.N.H. would interfere with his freedom to exercise his religion. C.R.N.H. is Christian and the New Testament affirmative discourages of the practice of circumcision. See Gal. 5:2-3, 11-12; Gal. 6:13; Titus 1:10-11; Phil. 3:2-3; 1 Cor. 7:17; Acts 15:1-2, 7, 10. In general, Christianity neither requires nor condones circumcision except where medically necessary and less invasive methods are not available. See e.g., Catechism of the Catholic Church 2297 ("Except when performed for strictly

therapeutic medical reasons, directly intended *amputations, mutilations, and sterilizations* performed on innocent persons are against the moral law.”). Such is not the case here. Under the circumstances of this case, eschewing unnecessary surgery is a central component of ensuring the open future, including religion.

62. Title 42 United States Code, Section 1985(3) states:

If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

63. Defendants have conspired to deprive C.R.N.H. of equal protection of the laws and equal privileges and immunities guaranteed by the Constitution and laws of the United States by force, intimidation and threats.

64. Defendants have acted in furtherance of the conspiracy resulting in an injury and deprivation of C.R.N.H.’s rights.

65. By failing to institute any proceeding to impose circumcision upon C.R.N.H. until C.R.N.H. was over three years old, Defendant Nebus waived any alleged parental right to impose circumcision upon C.R.N.H.

66. Any parental right Defendant Nebus may have had to circumcise C.R.N.H. as a

newborn is now outweighed by C.R.N.H.'s rights.

67. Defendant Nebus was and is at all times material to this action, acting under the color of state law, including section 61.13, Florida Statutes and the orders of Honorable Jeffrey Gillen compelling C.R.N.H.'s circumcision.

68. C.R.N.H. is a Medicaid recipient and Defendant Nebus seeks to use Medicaid funds to pay for C.R.N.H.'s circumcision in violation of state and federal law.

69. Defendants Honorable Jeffrey Gillen and The Palm Beach County Sheriff and each member of the class they represent, were, and are at all times material to this action, acting in their position as circuit court and law enforcement officer, under color of state statute.

70. Pursuant to Federal Rule of Civil Procedure 23:

- a. The class "all judges of the Fifteenth Judicial Circuit of the State of Florida" is so numerous that joinder of all members is impracticable.
- b. There are questions of law or fact common to the class.
- c. The claims or defenses of The Honorable Jeffrey Gillen are typical to the claims and defenses of the class.
- d. The Honorable Jeffrey Gillen is a proper class representative for the defendant class "all judges of the Fifteenth Judicial Circuit of the State of Florida" and will fairly and adequately protect the interests of the class.
- e. Prosecuting separate actions against individual class members would create a risk of:
 - i. inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

- ii. adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;
- f. the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or
- g. questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

71. Pursuant to Federal Rule of Civil Procedure 23:

a. The class “all sheriffs of the State of Florida” is so numerous that joinder of all members is impracticable.

b. There are questions of law or fact common to the class.

c. The claims or defenses of The Sheriff of Palm Beach County Ric Bradshaw are typical to the claims and defenses of the class.

d. The Sheriff of Palm Beach County Ric Bradshaw is a proper class representative for the defendant class “all sheriffs of the State of Florida” and will fairly and adequately protect the interests of the class.

e. Prosecuting separate actions against individual class members would create a risk of:

i. inconsistent or varying adjudications with respect to individual

class members that would establish incompatible standards of conduct for the party opposing the class; or

ii. adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests;

f. the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole; or

g. questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

72. There exists an actual controversy set forth in this cause between the parties.

73. C.R.N.H. has no plain, adequate, or complete remedy at law to redress the wrongs alleged in this complaint.

74. This suit for declaratory judgment and injunctive relief is C.R.N.H.'s only means of securing adequate relief.

75. C.R.N.H. is now suffering, and will continue to suffer, irreparable injury from Defendants' unlawful conduct as set forth in this complaint unless Defendants are enjoined by this court.

76. The foregoing constitutional issues have not been previously raised in or adjudicated by the state court.

77. Defendants' actions and threatened actions present a threat of immediate and

irreparable injury to C.R.N.H. warranting this court's exercise of jurisdiction.

RELIEF REQUESTED

Plaintiff requests that this court certify the defendant class "all judges of the Fifteenth Judicial Circuit of the State of Florida" and determine that The Honorable Jeffrey Gillen is the appropriate class representative.

Plaintiff requests that this court certify the defendant class "all sheriffs of the State of Florida" and determine that the Sheriff of Palm Beach County Florida is the appropriate class representative.

Plaintiff requests a declaration that Defendants have violated Plaintiff's rights under the United States Constitution, United States Statutes, Florida Constitution, and Florida Statutes.

Plaintiff requests a declaration that Defendants have conspired to violate Plaintiff's rights under the United States Constitution, United States Statutes, Florida Constitution, and Florida Statutes.

Plaintiff requests injunctive relief to restrain Defendants from carrying out circumcision and executing the pickup order.

Plaintiff requests reasonable attorney's fees and costs incurred in bringing this action pursuant to title 42 United States Code sections 1983, 1985, and 1988.

JURY DEMAND

Plaintiff demands a jury trial on all issues triable.

Respectfully submitted,

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