UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA
Big Stone Gap Division

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| WILLIAM THORPE, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*,<br><br>Defendants. | ) | Civil Action No. 2:20-CV-00007-JPJ-PMS |

**DEFENDANTS' MOTION, AND MEMORANDUM IN SUPPORT OF MOTION, FOR JUDICIAL NOTICE UNDER FED. R. EVID. 201**

Individual Defendants Harold Clarke, Randall Mathena, H. Scott Richeson, David Robinson, Henry Ponton, Marcus Elam, Denise Malone, Tori Raiford, Jeffrey Kiser, and Carl Manis (collectively, "Defendants"),[1] by counsel and pursuant to Federal Rules of Evidence 201(b)(2) and 201(c)(2), respectfully ask this Court to take judicial notice of (1) the existence, content, and dispositions of certain prior federal court adjudications concerning the Step-Down Program ("Program" or "SDP"), and (2) a 50-state survey identifying state laws that impose substantive restrictions on the use, duration, or conditions of "solitary confinement," restrictive housing, or equivalent forms of prolonged isolation for the general adult prison population, attached here to as Exhibit A. In support of this Motion, Defendants state as follows.

[1] The Virginia Department of Corrections (VDOC) is not a party to Plaintiffs' Eighth Amendment and Due Process claims.

## BACKGROUND

Plaintiffs are a certified class of prisoners confined in VDOC facilities who challenge the conditions and duration of their confinement under the Eighth Amendment and the review procedures of the SDP under the Due Process Clause of the Fourteenth Amendment. This Court denied Defendants' motions to dismiss. *Thorpe v. Va. Dep't of Corr.*, No. 2:20CV00007, 2020 WL 10354128 (W.D. Va. Sept. 4, 2020), *R. & R. adopted in part, rejected in part*, 2021 WL 2435868 (W.D. Va. June 15, 2021), *aff'd sub nom. Thorpe v. Clarke*, 37 F.4th 926 (4th Cir. 2022). The Court subsequently certified a Constitutional Violation Injunction Class and a Constitutional Violation Damages Class. *Thorpe v. Va. Dep't of Corr.*, No. 2:20CV00007, 2023 WL 2908575 (W.D. Va. Apr. 12, 2023).

Defendants' motion addresses two subjects of judicial notice. First, Defendants seek notice of the prior adjudications to supply the predicate for defensive issue preclusion against two named Plaintiffs and to establish the legal landscape against which Defendants acted. Second, Defendants seek notice of a 50-state survey of legislative enactments restricting or regulating "solitary confinement," which bears on the objective prong of Plaintiffs' Eighth Amendment claim under the Supreme Court's evolving-standards-of-decency framework. Both subjects of this motion satisfy Rule 201(b)(2) because the noticed facts—court records and enacted legislation, respectively—"can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2).

### A. Prior Merits Adjudications Against Named Plaintiffs.

The two adjudications in this group are prior federal judgments entered against individuals who are now named Plaintiffs in this action: Peter Mukuria and Kevin Snodgrass. Each Plaintiff previously brought individual federal lawsuits challenging the Step-Down Program on the same constitutional grounds they now press as class members. In each case, the Court entered summary

judgment against the plaintiff on the merits of his due process and Eighth Amendment claims, and those determinations were either affirmed on appeal or otherwise remain final. The adjudicative facts established by those prior judgments—*i.e.*, their existence, their dates, the claims resolved, and their dispositions—are directly relevant to this Court's pretrial determination of whether issue preclusion bars Mukuria and Snodgrass from relitigating issues that have already been decided against them.

**1. *Mukuria v. Clarke*, No. 7:15-cv-00172, 2016 WL 5396712 (W.D. Va. Sept. 27, 2016) (Jones, J.), *aff'd*, 706 F. App'x 139 (4th Cir. 2017).**

On September 27, 2016, this Court entered summary judgment against named Plaintiff Peter Mukuria on his 42 U.S.C. § 1983 claims that the Step-Down Program violated his due process rights and that the conditions of his confinement as an IM-0 inmate violated the Eighth Amendment. In granting summary judgment on the due process claim, the Court held that Mukuria had "no constitutionally protected liberty interest in avoiding any particular security classification or reclassification" under VDOC Operating Procedure 830.A. *Mukuria*, 2016 WL 5396712, at *9. On the Eighth Amendment claim, the Court held that Mukuria "fail[ed] to allege that these restrictions have caused him any serious or significant harm." *Id.* at *11. The Fourth Circuit affirmed per curiam "for the reasons stated by the district court." *Mukuria v. Clarke*, 706 F. App'x 139 (4th Cir. 2017).

**2. *Snodgrass v. Gilbert*, No. 7:16-cv-00091, 2017 WL 1049582 (W.D. Va. Mar. 17, 2017) (Conrad, C.J.), *vacated in part*, 2018 WL 1972721 (W.D. Va. Apr. 26, 2018).**

On March 17, 2017, then-Chief Judge Conrad entered summary judgment for the defendants on named Plaintiff Kevin Snodgrass's due process and Eighth Amendment conditions-of-confinement claims challenging the Step-Down Program, on the ground of qualified immunity, after determining that no constitutional violation had been shown. On the due-process claim, the

Court held that Snodgrass failed to show a constitutionally protected liberty interest in avoiding Security Level S or any particular step within the Step-Down Program. *See Snodgrass v. Gilbert*, No. 7:16-cv-00091, 2017 WL 1049582, at *12-14 (W.D. Va. Mar. 17, 2017). On the Eighth Amendment claim, the Court held that Snodgrass had not alleged that the conditions of his confinement caused or were likely to cause him any serious or significant physical or mental injury. *Id.* at *14. The only claim to survive summary judgment was a First Amendment retaliation claim unrelated to the due process or Eighth Amendment issues presented here.

On April 26, 2018, the Court vacated a narrow portion of the original summary judgment order to permit litigation of a grievance-based retaliation claim against three defendants in light of intervening Fourth Circuit precedent. *Snodgrass v. Gilbert*, 2018 WL 1972721, at *3-4 (W.D. Va. Apr. 26, 2018). All other portions of the 2017 order—including the due process and conditions-of-confinement rulings—survived the partial vacatur and remain final.

### B. The Broader Pattern of Federal Adjudications Upholding the Step-Down Program.

Between 2016 and 2021, various inmates, including two named Plaintiffs here, filed separate federal lawsuits challenged the constitutionality of the Step-Down Program in this district on due process grounds, Eighth Amendment grounds, or both. In at least eleven, the constitutional challenge to the Program was rejected, and in three cases the Fourth Circuit affirmed. The following adjudications are representative of that pattern:

#### 1. *Mukuria v. Clarke*, No. 7:15-cv-00172, 2016 WL 5396712 (W.D. Va. Sept. 27, 2016) (Jones, J.), *aff'd*, 706 F. App'x 139 (4th Cir. 2017).

As explained above, in *Mukuria*, the Court granted summary judgment against named Plaintiff Mukuria on his § 1983 challenges to the Step-Down Program, holding that Mukuria had no constitutionally protected liberty interest in avoiding any particular security classification under Operating Procedure 830.A, *Mukuria*, 2016 WL 5396712, at *9, and that he had not shown the

conditions of his IM confinement caused any serious or significant harm, *id.* at *11. The Fourth Circuit affirmed. *Mukuria v. Clarke*, 706 F. App'x 139 (4th Cir. 2017). Both the due process and Eighth Amendment challenges to the Program were adjudicated and rejected on the merits.

**2. *DePaola v. Va. Dep't of Corr.*, No. 7:14-cv-00692, 2016 WL 5415903 (W.D. Va. Sept. 28, 2016) (Jones, J.), *aff'd*, 703 F. App'x 205 (4th Cir. 2017).**

In *DePaola*, the Court granted summary judgment for the defendants on materially identical Fourteenth Amendment due process and Eighth Amendment conditions-of-confinement challenges to Operating Procedure 830.A, holding that the inmate had no protected liberty interest in his classification, *DePaola*, 2016 WL 5415903, at *10, and had not shown any serious or significant harm, *id*. at *11; summary judgment was granted on all claims, *id*. at *12. On appeal—after full briefing, oral argument, and the participation of appointed counsel and amici—the Fourth Circuit affirmed, expressly adopting the Court's analysis of both constitutional claims. *DePaola v. Va. Dep't of Corr.*, 703 F. App'x 205, 206 (4th Cir. 2017).

**3. *Obataiye-Allah v. Va. Dep't of Corr.*, No. 7:15-cv-00230, 2016 WL 5415906 (W.D. Va. Sept. 28, 2016) (Jones, J.), *aff'd sub nom. Obataiye-Allah v. Clarke*, 688 F. App'x 211 (4th Cir. 2017).**

In *Obataiye-Allah*, the Court granted summary judgment for the defendants on an inmate's due process, equal protection, and Eighth Amendment challenges to Operating Procedure 830.A, again holding that the Step-Down Program created no protected liberty interest and that the conditions caused no serious or significant harm. *Obataiye-Allah*, 2016 WL 5415906, at *10-12.[2]

[2] Although the Court denied summary judgment as to a single religious-exercise claim under RLUIPA, *Obataiye-Allah*, 2016 WL 5415906, at *15, the constitutional challenges to the Program were rejected in their entirety.

The Fourth Circuit affirmed "for the reasons stated by the district court." *Obataiye-Allah v. Clarke*, 688 F. App'x 211 (4th Cir. 2017).

**4. *Snodgrass v. Gilbert*, No. 7:16-cv-00091, 2017 WL 1049582 (W.D. Va. Mar. 17, 2017) (Conrad, C.J.), *vacated in part*, 2018 WL 1972721 (W.D. Va. Apr. 26, 2018).**

As explained above, in *Snodgrass*, Chief Judge Conrad granted summary judgment for the defendants, on the ground of qualified immunity, on named Plaintiff Snodgrass's due process and Eighth Amendment challenges to the Step-Down Program, holding that the Program created no protected liberty interest in avoiding SLS status or any of its steps and that the conditions of confinement did not amount to cruel and unusual punishment. *Snodgrass*, 2017 WL 1049582, at *12–14. The only claim to survive was a discrete retaliation claim, *id.* at *19, which was later resolved in the defendants' favor, *Snodgrass*, 2018 WL 1972721, at *2–4. The Program-based constitutional challenges were rejected on the merits and were not disturbed by the 2018 partial vacatur.

**5. *Delk v. Younce*, No. 7:14-cv-00643, 2017 WL 1011512 (W.D. Va. Mar. 14, 2017) (Moon, J.), *aff'd*, 709 F. App'x 184 (4th Cir. 2018).**

In *Delk*, Judge Moon granted summary judgment for the defendants, holding that the inmate had no constitutionally protected liberty interest in avoiding classification under Operating Procedure 830.A. *Delk*, 2017 WL 1011512, at **10.* Judge Moon dismissed the due-process claim with prejudice and dismissed the Eighth Amendment conditions-of-confinement claim without prejudice for failure to exhaust administrative remedies. *Id.* at *12, 15. The Fourth Circuit affirmed "for the reasons stated by the district court." *Delk v. Younce*, 709 F. App'x 184 (4th Cir. 2018).

**6. *Muhammad v. Mathena*, No. 7:14-cv-00529, 2017 WL 395225 (W.D. Va. Jan. 27, 2017) (Conrad, J.).**

In *Muhammad*, Judge Conrad granted summary judgment for the defendants on an inmate's due process challenge to the SDP, holding that the inmate had no constitutionally protected liberty

interest in avoiding classification under Operating Procedure 830.A. *Muhammad*, 2017 WL 395225, at *1–2. A separate failure-to-intervene claim proceeded to trial and does not bear on the due process determination addressed here.

**7. *Hubbert v. Washington*, No. 7:14-cv-00530, 2017 WL 1091943 (W.D. Va. Mar. 22, 2017) (Urbanski, J.).**

In *Hubbert*, Judge Urbanski granted summary judgment for the defendants, holding that the conditions of confinement under the Step-Down Program did not constitute an atypical and significant hardship triggering due process protections and that the Eighth Amendment claim failed. *Hubbert*, 2017 WL 1091943, at *6-7.

**8. *Barksdale v. Clarke*, No. 7:16-cv-00355, 2017 WL 3381370 (W.D. Va. Aug. 4, 2017) (Kiser, J.).**

In *Barksdale*, Judge Kiser granted summary judgment for the defendants on an inmate's due process and Eighth Amendment challenges to the Step-Down Program, holding that the Program created no protected liberty interest and that the conditions of confinement did not violate the Eighth Amendment. *Barksdale*, 2017 WL 3381370, at *7–8.

**9. *Jordan v. Va. Dep't of Corr.*, No. 7:16-cv-00228, 2017 WL 4127905 (W.D. Va. Sept. 18, 2017) (Dillon, J.).**

In *Jordan*, Judge Dillon granted summary judgment for the defendants on an inmate's due process and Eighth Amendment challenges to the Step-Down Program, holding that the inmate had no protected liberty interest in avoiding Security Level S and that the conditions of confinement did not violate the Eighth Amendment.

**10. *Alexander v. Collins*, No. 7:19-cv-00261, 2021 WL 1541033 (W.D. Va. Apr. 20, 2021) (Cullen, J.).**

In *Alexander*, Judge Cullen dismissed an inmate's due process and Eighth Amendment challenges to the Step-Down Program, holding that the inmate had no constitutionally based liberty interest in avoiding segregated confinement and failed to state an Eighth Amendment claim.

*Alexander*, 2021 WL 1541033, at *9–10. This decision, entered on the pleadings during the pendency of this lawsuit, continued the pattern through 2021.

* * *

In sum, the pattern above shows that every sitting federal judge in this District at the time this lawsuit was filed (2019) had rejected constitutional challenges to the Step-Down Program: Judge Jones in *Mukuria*, 2016 WL 5396712, *DePaola*, 2016 WL 5415903, and *Obataiye-Allah*, 2016 WL 5415906; Judge Conrad in *Snodgrass*, 2017 WL 1049582, and *Muhammad*, 2017 WL 395225; Judge Moon in *Delk*, 2017 WL 1011512; Judge Urbanski in *Hubbert*, 2017 WL 1091943; Judge Kiser in *Barksdale*, 2017 WL 3381370; and Judge Dillon in *Jordan*, 2017 WL 4127905. After Plaintiffs filed this action, Judge Cullen continued the pattern in *Alexander*, 2021 WL 1541033.

## ARGUMENT

### I. The Court should take judicial notice of the prior federal adjudications concerning the Step-Down Program.

#### A. The existence and dispositions of the prior adjudications are proper subjects of judicial notice under Rule 201(b)(2).

A court "may judicially notice a fact that is not subject to reasonable dispute" because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned," and it "must take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(b)(2), (c)(2). The Fourth Circuit has long recognized that "the most frequent use of judicial notice of ascertainable facts is in noticing the content of court records," and that a court may notice "proceedings in other courts ... if those proceedings have a direct relation to matters at issue." *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989). Notice may be taken "at any stage of the proceeding," Fed. R. Evid. 201(d), including on the eve of or during a bench trial.

Each fact for which Defendants seek notice—that a federal court entered a particular judgment, on a particular date, against a particular party, and disposed of the case in a particular way—is exactly the kind of indisputable court action that Rule 201 reaches. Courts "recognize . . . indisputable court actions, such as the entry of a guilty plea or the dismissal of a civil action," and the entry and affirmance of a summary judgment are no less certain. *United States v. Daley*, 378 F. Supp. 3d 539, 546–47 (W.D. Va. 2019), *aff'd sub nom*. *United States v. Miselis*, 972 F.3d 518 (4th Cir. 2020). These facts "can be accurately and readily determined from" PACER and published reporters, whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b)(2).

Defendants are mindful of the limit on this doctrine, and their request respects it. A court may take notice of "the proceedings of another court," but it may not "take judicial notice of another court's findings of fact for the truth asserted therein because such facts are usually disputed." *Hughes v. Freightliner, LLC*, No. 7:04-cv-00309, 2006 WL 1842997, at *1 (W.D. Va. June 29, 2006); *see also United States v. Zayyad*, 741 F.3d 452, 463–64 (4th Cir. 2014) (explaining facts adjudicated in a prior case "do not meet either test of indisputability contained in Rule 201(b)"). Defendants do not ask the Court to accept any prior court's findings as true for their own sake. Rather, the prior determinations against Mukuria and Snodgrass acquire binding force, if at all, through collateral estoppel—the doctrine designed precisely to give a prior adjudication preclusive effect—and the fact of the wider litigation and its outcomes is offered for a non-truth purpose: to show the legal landscape against which Defendants acted. So framed, the request seeks notice only of indisputable court actions, and it does not ask the Court to treat any contested finding as established truth.

**B. The noticed judgments establish the predicates for defensive issue preclusion against Plaintiffs Mukuria and Snodgrass.**

This Court has already recognized the preclusion problem. In denying Plaintiffs' motion to reconsider, the Court found that "the risk of defensive issue and claim preclusion is possible" as to Mukuria and was "a sufficient reason to bar Mukuria as class representative" for the injunctive class. Op. & Order at 7–8, Dkt. 467 (Mar. 29, 2024). The Court cited *Mukuria v. Clarke* and set out the governing res judicata standard, which encompasses both claim and issue preclusion. *Covert v. LVNV Funding, LLC*, 779 F.3d 242, 246 (4th Cir. 2015). Judicial notice of the prior judgments now provides the factual predicate for the Court to determine their preclusive effect.

In the Fourth Circuit, defensive collateral estoppel requires that: (1) the issue is identical to one previously litigated; (2) the issue was actually determined in the prior proceeding; (3) that determination was critical and necessary to the prior judgment; (4) the prior judgment is final and valid; and (5) the party against whom estoppel is asserted had a full and fair opportunity to litigate. *Sedlack v. Braswell Servs. Grp., Inc.*, 134 F.3d 219, 224 (4th Cir. 1998). Because the prior judgments were rendered by federal courts, federal preclusion law governs their effect. *Shoup v. Bell & Howell Co.*, 872 F.2d 1178, 1179–80 (4th Cir. 1989). Defensive use of the doctrine—a defendant preventing a plaintiff "from asserting a claim the plaintiff has previously litigated and lost"—does not carry the fairness concerns the Supreme Court reserved for offensive preclusion, and courts apply it without special caution. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329–31 (1979); *see In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004) (recognizing "a greater possibility for unfairness from the use of offensive collateral estoppel").

Each element is satisfied here. A prior summary judgment is a determination on the merits with full preclusive effect; "[f]or purposes of res judicata, a summary judgment has always been considered a final disposition on the merits." *Shoup*, 872 F.2d at 1181. And the Fourth Circuit's

affirmance confirms the judgment's finality and fixes the scope of its preclusive effect, which extends to the facts necessary to "the judgment actually affirmed" on appeal. *In re Microsoft*, 355 F.3d at 328–29. That Mukuria and Snodgrass litigated pro se does not exempt them; a pro se § 1983 prisoner-plaintiff is bound by the preclusive effect of a prior federal judgment on the same series of events. *Garrett v. Angelone*, 940 F. Supp. 933, 941 (W.D. Va. 1996).

**As to Mukuria.** This Court's summary judgment in *Mukuria v. Clarke* determined, on a developed record and after full briefing, that (a) no constitutionally protected liberty interest attaches to security classifications under Operating Procedure 830.A, and (b) the IM-0 conditions of confinement caused Mukuria no serious or significant harm. Both determinations were critical and necessary to the judgment—not merely "supportive of" it—and the Fourth Circuit affirmed. *In re Microsoft*, 355 F.3d at 326–28 (the precluded issue must be "critical and necessary," meaning "essential" and "indispensable," to the judgment). Mukuria may not relitigate these determinations for the period they adjudicated—*i.e.*, through September 27, 2016.

**As to Snodgrass.** The surviving portion of *Snodgrass v. Gilbert* determined that the Step-Down Program afforded constitutionally adequate process and that the conditions did not violate the Eighth Amendment during Snodgrass's confinement. Although the Court entered summary judgment on the ground of qualified immunity, its threshold determinations that Snodgrass had no protected liberty interest and suffered no serious or significant injury were necessary predicates to that ruling and were therefore "actually determined" and "critical and necessary" to the judgment. *See Sedlack*, 134 F.3d at 224; *In re Microsoft*, 355 F.3d at 326–28. The 2018 partial vacatur — limited to his retaliation claims against three defendants — did not disturb those holdings, which remain final. Snodgrass is likewise estopped from relitigating them for the period adjudicated—*i.e.*, through March 17, 2017.

The intervening decision in *Smith v. Collins*, 964 F.3d 266 (4th Cir. 2020), does not defeat preclusion, properly scoped. Defendants seek issue preclusion only as to the discrete issues ***actually determined*** against Mukuria and Snodgrass, and only for the periods their cases adjudicated. Defendants recognize that *Smith* subsequently held that materially similar SDP conditions might support a protected liberty interest, and that an intervening change in controlling law can, in some circumstances, limit the preclusive effect of an earlier determination. That principle does not aid Plaintiffs here. *Smith* did not vacate or reopen the final judgments entered against Mukuria and Snodgrass. Those final judgments fixed the parties' rights as to the issues and periods they resolved. Defendants accordingly do not contend that the prior rulings resolve the class claims or bind the Court's present-day, class-wide analysis under *Smith* and *Thorpe*. They contend only that these two named Plaintiffs cannot relitigate the specific issues they already litigated and lost, for the specific past periods those judgments adjudicated.

### C. The prior adjudications bear on Defendants' state of mind during the period before the governing law shifted.

Plaintiffs' Eighth Amendment claim requires proof that Defendants acted with deliberate indifference. A prison official is not liable "unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The inquiry is subjective: it "mandate[s] inquiry into a prison official's state of mind," and rejects a purely objective test. *Id.* at 838; *see Scinto v. Stansberry*, 841 F.3d 219, 225–26 (4th Cir. 2016) (deliberate indifference requires actual knowledge, shown by direct or circumstantial evidence). In this Circuit, the official must have "subjectively recognized a risk of substantial harm" and "subjectively recognized that his actions

were inappropriate in light of that risk"—a "very high standard" that mere negligence or good-faith error cannot meet. *Campbell v. Florian*, 972 F.3d 385, 394–95 (4th Cir. 2020).

Against that standard, the existence and dispositions of the prior adjudications are probative evidence of Defendants' state of mind during the earlier years of the class period. Through 2018, every federal court to examine the Step-Down Program had rejected the claim that it was unconstitutional. An official who maintained the Step-Down Program against that backdrop cannot readily be said to have subjectively "dr[awn] the inference" of an excessive risk and consciously disregarded it during that period. *Farmer*, 511 U.S. at 837. *Farmer* expressly leaves officials free to show that they "knew the underlying facts but believed (albeit unsoundly) that the risk ... was insubstantial or nonexistent," and that they "responded reasonably to the risk," in which case they "cannot be found liable under the Cruel and Unusual Punishments Clause." *Id.* at 844–45.

The Fourth Circuit's decision in *Campbell v. Florian*, 972 F.3d 385 (4th Cir. 2020), supports the point. There, the Fourth Circuit declined to infer deliberate indifference from an official's legal interpretation that a reviewing court later deemed unreasonable, holding that "legal error alone is not deliberate indifference." *Id.* at 396–97, 99. The consistent judicial validation available to Defendants in the earlier years is comparable to circumstantial evidence of what they knew and how they read the legal landscape at the time. *Farmer*, 511 U.S. at 842.

The same facts bear on whether Defendants responded reasonably to any perceived risk—a showing that, under *Farmer*, forecloses Eighth Amendment liability even where a substantial risk of serious harm existed. *Farmer*, 511 U.S. at 844–45.

**D. There is no basis to defeat judicial notice.**

**Relevance.** Plaintiffs may argue that the prior pro se cases are factually distinguishable and therefore irrelevant. Relevance under Rule 401 does not require identical facts; evidence is relevant if it has "any tendency" to make a consequential fact more or less probable. The prior

adjudications are relevant both as predicates for estoppel against the same parties and as evidence of the information available to Defendants. Fed. R. Evid. 401.

**"No precedential value."** Plaintiffs may invoke *Thorpe v. Clarke*, 37 F.4th 926, 943 n.6 (4th Cir. 2022), for the proposition that unpublished decisions carry no precedential value. That principle governs whether a decision ***binds a future court***; it has nothing to do with judicial notice. Notice is sought for the ***existence*** of these judgments, their ***preclusive effect*** on the same parties who litigated them, and their ***factual bearing*** on Defendants' state of mind. A judgment need not be published or precedential to bind the party who lost it, *Garrett*, 940 F. Supp. at 941-42, or to inform the factfinder about what a defendant reasonably knew, *Campbell*, 972 F.3d at 396–97.

**Changed conditions.** Plaintiffs may argue that changed conditions since the prior adjudications make estoppel inappropriate. Defendants concede that estoppel reaches only the periods actually adjudicated—not conditions arising afterward—which eliminates the objection while preserving binding findings for the earlier periods. Separately, VDOC's continued modification of the Program, including the four-hour out-of-cell floor codified in Va. Code § 53.1-39.2(B)(5), reinforces attentiveness rather than indifference.

**Full and fair opportunity.** Plaintiffs may argue that Mukuria and Snodgrass, proceeding pro se, lacked a full and fair opportunity to litigate. Mukuria submitted evidence, the court weighed it, and the Fourth Circuit affirmed on the merits; Snodgrass likewise litigated his claims through full summary judgment briefing on a developed record. Pro se litigants receive liberal construction of their filings, but they are not exempt from the preclusive effect of final judgments. *Garrett*, 940 F. Supp. at 941.

## II. The Court should take judicial notice of the 50-state survey of legislative restrictions on "solitary confinement" under Rule 201(b)(2).

Defendants further request that the Court take judicial notice, pursuant to Federal Rules of Evidence 201(b)(2) and 201(c)(2), of a 50-state survey identifying state laws that impose substantive restrictions on the use, duration, or conditions of "solitary confinement," restrictive housing, or equivalent forms of prolonged isolation for the general adult prison population, attached hereto as Exhibit A. The survey does not purport to catalog every state provision that references restrictive housing, nor provisions limited to juveniles, pregnant prisoners, persons with serious mental illness, or other special populations unless the statute also imposes generally applicable restrictions on adult prisoners. Rather, it identifies state legislative enactments that substantively limit how, when, or for how long restrictive housing may be used for the general adult prison population. Because the survey compiles the text of legislative enactments drawn from official state codes and session laws—sources whose accuracy cannot reasonably be questioned—the facts cataloged therein "can be accurately and readily determined" under Rule 201(b)(2). Fed. R. Evid. 201(b)(2).

### A. The existence and content of legislative enactments are proper subjects of judicial notice under Rule 201(b)(2).

The propriety of taking judicial notice of state legislative enactments is well settled. The Supreme Court has held that "[t]he law of any [S]tate of the Union, whether depending upon statutes or upon judicial opinions, is a matter of which the courts of the United States are bound to take judicial notice, without plea or proof." *Lamar v. Micou*, 114 U.S. 218, 223 (1885). The Fourth Circuit has long applied the same rule: "The federal courts take judicial notice of the statutes of the states." *S. Ry. Co. v. O'Dell*, 252 F. 540, 543 n.4 (4th Cir. 1918). Whether characterized as adjudicative facts under Rule 201(b)(2) or legislative facts, the enactments are equally subject to judicial notice, because a court possesses inherent authority to notice legislative facts. *See United*

*States v. Perez*, 150 F.4th 237, 248 (4th Cir. 2025) (acknowledging state and federal statutes are legislative facts a court may judicially notice). If a federal court may take judicial notice of each state's enacted legislation individually, then a survey that accurately compiles those enactments is simply a convenient aggregation of judicially noticeable facts—each entry independently verifiable against its official state code.

The Fourth Circuit has likewise recognized that compilations and official records drawn from authoritative sources are proper subjects of judicial notice. A court may notice any fact "readily determined from an indisputably accurate source," and the Fourth Circuit and other courts "routinely take judicial notice of information contained on state and federal government websites." *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017); *see Hall v. Virginia*, 385 F.3d 421, 424 n.3 (4th Cir. 2004) (taking judicial notice of statistics on an official state legislative website). So too with compiled public-record data drawn from authoritative government sources. *United States v. White*, 620 F.3d 401, 415–16 (4th Cir. 2010) (taking judicial notice of national and local sentencing statistics as "capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned"). That principle applies with equal force to official state codes and session laws, which are the authoritative repositories of enacted legislation.

The 50-state survey here satisfies these standards. Each entry in the survey identifies a specific statutory provision by code section, drawn from the official state code of the enacting jurisdiction. Official state codes are paradigmatic "sources whose accuracy cannot reasonably be questioned," Fed. R. Evid. 201(b)(2), and their content is verifiable by any party or the Court at any time. Unlike a survey of disputed factual assertions, the survey here catalogs the bare existence and content of legislative enactments, which are indisputable adjudicative facts. No reasonable dispute can attach to whether a state legislature has enacted a particular statute, and the Court is

accordingly "supplied with the necessary information" to make judicial notice mandatory under Rule 201(c)(2).

**B. The 50-state survey bears on the objective indicia relevant to Plaintiffs' Eighth Amendment claim.**

The 50-state survey is relevant to Plaintiffs' Eighth Amendment claim because the Supreme Court has repeatedly recognized that legislative enactments across the states are among the most reliable "objective indicia of society's standards" for purposes of the Eighth Amendment's prohibition on cruel and unusual punishment. *Graham v. Florida*, 560 U.S. 48, 61 (2010). In determining whether a challenged practice violates "the evolving standards of decency that mark the progress of a maturing society," *Trop v. Dulles*, 356 U.S. 86, 101 (1958), the Court examines, as its first step, "objective indicia of society's standards, as expressed in legislative enactments and state practice." *Roper v. Simmons*, 543 U.S. 551, 563 (2005); *see also Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008) (same). In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Court held that a "national consensus" against executing intellectually disabled offenders—demonstrated by the number of states that had legislatively prohibited the practice—rendered such punishment "truly unusual" and excessive under the Eighth Amendment. *Id.* at 316. Similarly, in *Roper*, the Court relied on the fact that 30 states had prohibited the juvenile death penalty as "sufficient evidence that [American] society view[ed] juveniles as categorically less culpable than the average criminal." 543 U.S. at 567. And in *Graham*, the Court applied the same methodology—examining "objective indicia of society's standards, as expressed in legislative enactments and state practice"—to hold that life-without-parole sentences for juvenile nonhomicide offenders violated the Eighth Amendment. 560 U.S. at 61.

The Fourth Circuit measures conditions-of-confinement claims against the same lodestar. In *Porter v. Clarke*, the court held that whether conditions of confinement amount to cruel and

unusual punishment "must be measured against 'the evolving standards of decency that mark the progress of a maturing society.'" 923 F.3d 348, 355 (4th Cir. 2019) (quoting *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)); *accord Jones v. Solomon*, 90 F.4th 198, 208 (4th Cir. 2024) (explaining courts are "guided by contemporary standards of decency" in assessing the objective component). Defendants recognize that the categorical "objective indicia" analysis of *Atkins*, *Roper*, *Graham*, and *Kennedy* arose in the distinct setting of determining whether a punishment or sentence is categorically disproportionate, and that the objective component of a conditions-of-confinement claim ultimately turns on the seriousness of the deprivation. *See Jones*, 90 F.4th at 208. But contemporary legislative treatment of standards for confinement remains probative evidence of the "contemporary standards of decency" against which the challenged conditions are judged, and the Court may take judicial notice of that legislation for that purpose.

Defendants accordingly request that the Court take judicial notice of the 50-state survey, attached as Exhibit A, pursuant to Federal Rule of Evidence 201(c)(2). Judicial notice is sought for the limited purpose of establishing, as an adjudicative fact not subject to reasonable dispute, the current state of legislative enactments across all United States jurisdictions that restrict or regulate standards of confinement. This evidence bears on the Court's determination of whether the conditions at issue in this case are consistent with or contrary to the evolving standards of decency reflected in contemporary legislative judgments—a determination that is central to the objective prong of Plaintiffs' Eighth Amendment claim.

## CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court take judicial notice under Federal Rule of Evidence 201(b)(2) of (1) the existence, dates, parties, and dispositions of the prior adjudications identified above; (2) the 50-state survey identifying state laws that impose substantive restrictions on the use, duration, or conditions of "solitary

confinement," restrictive housing, or equivalent forms of prolonged isolation for the general adult prison population, attached as Exhibit A, as an adjudicative fact bearing on the objective prong of Plaintiffs' Eighth Amendment conditions-of-confinement claim under the evolving-standards-of-decency framework.

Dated: August 24, 2026

Respectfully submitted,

/s/ *Maya M. Eckstein*

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 24, 2026, I caused a copy of the foregoing to be electronically filed using the CM/ECF system, which will send notification to counsel of record of such filing by operation of the Court's electronic system. Parties may access this filing via the Court's electronic system.

By: /s/ *Maya M. Eckstein*
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