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

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

DEFENDANTS' MOTION *IN LIMINE*, AND MEMORANDUM IN SUPPORT OF MOTION *IN LIMINE*, TO EXCLUDE EVIDENCE OR ARGUMENT THAT INMATES IN THE STEP DOWN PROGRAM ARE SUBJECT TO CAVITY SEARCHES

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] move *in limine* for entry of an Order excluding from trial any and all evidence or argument suggesting that inmates in the Step Down Program are subject to cavity searches. Any such evidence or argument is irrelevant and should be excluded under Federal Rule of Evidence 402. Alternatively, such evidence or argument should be excluded under Rule 403 because any probative value is substantially outweighed by the risk of undue delay and wasting time.

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

BACKGROUND

Plaintiffs repeatedly have claimed that inmates in the Step Down Program "are subject to intrusive and dehumanizing cavity searches whenever they leave their cell." *See, e.g.*, Plaintiffs' Am. Mem. of Law in Support of Plaintiffs' Am. Mot. for Partial Sum. Judg. ("Plaintiffs' Mot. for Partial Sum. J.") (ECF No. 383) at 9 ("To access out-of-cell activities, including recreation, showers, and programming, prisoners in the Step Down Program are subject to intrusive cavity searches whenever they leave their cell, in addition to frisk searches before entering." (internal quotations omitted)); Plaintiffs' Mem. of Law in Opp. to Defendants' Mot. for Sum. Judg. (ECF No. 400) at 7; Br. of Appellees at 6, *Thorpe, et al. v. Clarke, et al.*, No. 21-1714 (4th Cir. Oct. 8, 2021) (referring to "dehumanizing, daily cavity searches"). This is false. Inmates in the Step Down Program are not subject to cavity searches, but far less intrusive strip searches.

There is no true dispute about the nature of the searches conducted on inmates in the Step Down Program. As David Robinson, the recently-retired Chief of Correction Operations for Virginia Department of Corrections (VDOC), testified, a "strip search" is "where you see somebody's cavity, but you don't see in it, that's not a body cavity search. A body cavity search is when you actually – someone goes in and determines something's there or is not there. . . . I don't know when we've done a body cavity search on an inmate at Red Onion or any other prison in the recent years." 2/16/23 Dep. of David Robinson at 142:1-10. By Plaintiffs' own account, inmates in the Step-Down Program are ***visually*** examined, after which time they have restraints placed on their wrists and legs before being escorted out of their cells. *See* Plaintiffs' Mot. for Partial Sum. Judg. at 9. Plaintiffs describe the search process as inmates being required to remove all clothing, expose their genital area and buttocks, and lift their feet up. *Id.* Plaintiffs do not allege

that guards or any other VDOC employees touch or otherwise make physical conduct with inmates during these routine searches.

These searches – the nature of which the parties do not dispute – simply are not cavity searches. There is absolutely no evidence that inmates in the Step Down Program are subject to cavity searches.

ARGUMENT

I. Any reference to cavity searches should be excluded as irrelevant under Rule 402.

Any evidence or argument suggesting that inmates in the Step Down Program are subject to cavity searches should be inadmissible at trial because it fails the relevance test of Rule 401. Evidence is relevant if "(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Fed. R. Evid. 401. "Irrelevant evidence is not admissible." *Id.* at 402. Courts grant motions in limine to exclude evidence when such evidence is irrelevant to any genuine issue in the case. *See, e.g., United States v. Sanders*, 107 F.4th 234, 257–58 (4th Cir. 2024) (affirming district court's grant of motion in limine to exclude irrelevant evidence). Indeed, courts have precluded parties from using a term to describe an event when that characterization "is irrelevant to any genuine issue in the case[.]" *Estate of Fuentes v. Thomas*, No. 98-2408-CM, 2000 WL 1114892, at *4 (D. Kan. July 13, 2000) (precluding the plaintiffs' expert from characterizing the decedent's manner of death as "homicide" because "the manner of decedent's death is irrelevant to any genuine issue in the case").

There is no dispute about the nature of the searches to which inmates in the Step Down Program are subjected. But Plaintiffs' characterization of the searches as "intrusive cavity searches" is plainly wrong. Plaintiffs' Mot. for Partial Sum. Judg. at 9. These searches fall squarely

within widely-accepted definitions of a strip search. For example, the International Association of Chiefs of Police define a strip search as: "any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of any or all skin surface, including genital areas, breasts, and buttocks." Int'l Ass'n of Chiefs of Police Nat'l Law Enf't Pol'y Ctr., STRIP AND BODY CAVITIES SEARCHES 1, (2019) ("Report of Nat'l Law Enf't Pol'y Ctr.").[2] The Fourth Circuit has defined strip searches similarly, stating that a "strip search under federal law includes the exposure of a person's naked body for the purpose of a visual or physical examination", as opposed to a body cavity search, which "under federal law includes a visual or physical examination into the body's recesses." *Amaechi v. West*, 237 F.3d 356, 363 (4th Cir. 2001).

Defendants unambiguously do not and did not subject inmates in the Step Down Program to cavity searches as part of the Step Down Program. Referring to a strip search as a cavity search does not make it so. Evidence or argument using the term "cavity searches" to describe strip searches does not make any fact of consequence more or less probable. Thus, such evidence or argument is plainly irrelevant and should be excluded.

II. Alternatively, references to cavity searches should be excluded under Rule 403.

Even if relevant (it is not), reference to cavity searches still should be excluded because it has no probative value. "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative

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[2] The Department of Justice provides an abstract of this report containing these definitions on its website, available at https://web.archive.org/web/20250202005208/https:/www.ojp.gov/ncjrs/virtual-library/abstracts/strip-and-body-cavities-searches (attached as Exhibit A).

evidence." Fed. R. Evid. 403. "Situations in this area call for balancing the probative value of and need for the evidence against the harm likely to result from its admission." Advisory Committee Notes, Fed. R. Evid. 403. Evidence referring to cavity searches has no probative value. Unless the Court keeps out such evidence and argument, Plaintiffs' incorrect characterization of the searches as cavity searches would cause undue delay and waste time.

Courts in this circuit and beyond regularly – and in far less egregious circumstances – exclude evidence in bench trials on the basis that the risks of undue delay or wasting time substantially outweigh its probative value. *See, e.g., Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994) (stating that "excluding relevant evidence in a bench trial because it is cumulative or a waste of time is clearly a proper exercise of the judge's power"); *Moke Am. LLC v. Am. Custom Golf Cars, Inc.*, No. 3:20cv400, 2023 WL 3686963, at *5 (E.D. Va. Jan. 11, 2023) (granting motion in limine to exclude in a bench trial evidence that "would needlessly delay trial and waste judicial resources"); *In re Oil Spill*, No. MDL 2179, 2012 WL 413860, at *2–3 (E.D. La. Feb. 9, 2012) (granting motion in limine to exclude evidence of previous, unrelated incidents in a bench trial due in part to the Court's "concern[s] about considerations of 'undue delay, waste of time, and presentation of cumulative evidence'" and "real danger of creating a 'trial within a trial'").

In all of these cases, the court excluded ***true*** evidence due to its risk causing undue delay and wasting time. In stark contrast, Plaintiffs' characterization here of the searches as "cavity" searches is false. Such misleading references have no probative value. The admission of such evidence would detract from the true issues, needlessly waste time, and risk a "trial within a trial" by causing Defendants to put on evidence or arguments rebutting Plaintiffs' clearly incorrect characterization of the searches as "cavity searches," in spite of the fact that parties do not dispute the nature of the searches.

Thus, because of its risk of undue delay and wasting time, evidence or argument referencing cavity searches should be excluded.

CONCLUSION

For these reasons, Virginia Department of Corrections respectfully requests that the Court prohibit Plaintiffs from introducing any evidence or argument that suggests that inmates in the Step Down Program are subject to cavity searches.

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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