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' REPLY IN SUPPORT OF MOTION *IN LIMINE* TO EXCLUDE UNFOUNDED TESTIMONY REGARDING STATEMENTS AND CONDUCT OF NON-DEFENDANT VDOC PERSONNEL

Plaintiffs' opposition (ECF No. 598 Filed Under Seal) ("Opp'n") misapprehends the motion's scope and reframes the evidentiary issues to avoid engaging with the grounds actually argued. Defendants' Motion in Limine (ECF No. 561) ("Mot.") does not seek to prevent Plaintiffs from pursuing as-applied claims. It seeks to enforce the Federal Rules of Evidence against a discrete category of testimony—out-of-court statements and conduct of non-Defendant VDOC personnel—offered to prove a named Defendant's constitutional liability. That is a routine application of the Rules, not an attack on Plaintiffs' theories.

The opposition fails to rebut the motion's core arguments on multiple grounds. Plaintiffs say nothing about double hearsay under Rule 805, nothing about statements by unidentified declarants, nothing about statements attributed to fellow inmates, nothing about the inapplicability of Rules 803(1) through (3), nothing about Rule 804 unavailability, and nothing of substance about Rule 807's trustworthiness requirements. Silence on each of those grounds is concession. Each is independently sufficient to exclude large swaths of the anticipated testimony.

What the opposition does argue rests on two fundamental errors. First, Plaintiffs conflate relevance with admissibility. That as-applied claims remain in the case does not make hearsay about what unnamed counselors and officers allegedly said to individual inmates admissible to prove those claims. Relevance is necessary but not sufficient for admission. Second, the one new authority Plaintiffs raise—*Carter v. Cabell*, 185 F. 4th 467 (4th Cir. 2026)—is a ruling on the substantive legal standard for supervisory liability, not an evidentiary holding. *Carter* reinforces rather than defeats the motion: it reaffirms that supervisory liability turns on widespread unconstitutional conditions—precisely what scattered, multi-layered hearsay accounts cannot show.

For the reasons below, the motion should be granted. The Court should require Plaintiffs to lay the required foundation before any challenged statement is admitted, and it should categorically exclude alleged statements of unidentified declarants and fellow inmates, which cannot satisfy those requirements as a matter of law.

ARGUMENT

I. Plaintiffs' opposition does not contest multiple grounds of the motion.

Plaintiffs' opposition fails to address numerous arguments Defendants raised in support of exclusion. Their silence is concession.

First, Plaintiffs do not dispute that double hearsay must independently satisfy an exception at each level. The motion demonstrated that much of the anticipated testimony relays what one person said another person said, and that each link in that chain must independently qualify for admission. Fed. R. Evid. 805; *Precision Piping & Instruments, Inc. v. E.I. du Pont de Nemours & Co.*, 951 F.2d 613, 619 (4th Cir. 1991). The opposition is silent on Rule 805 and double hearsay entirely. Testimony recounting one inmate's report of what another person allegedly said—including several of the racial-slur accounts and multiple Step-Down Program statements—is

inadmissible on this ground alone. *Precision Piping* is controlling Fourth Circuit authority, and Plaintiffs do not distinguish it or even acknowledge the issue. The Court should exclude every multi-layered account on this uncontested ground. *See, e.g.*, Mot. Ex. 4 (Riddick) Tr. 109:16–18 (ECF No. 561-4 filed under seal); Mot. Ex. 7 (Hammer) Tr. 260:17–18 (ECF No. 561-7 filed under seal); Mot. Ex. 11 (Snodgrass) Tr. 328:11–15 (ECF No. 561-11).

Second, Plaintiffs do not dispute that statements by unidentified declarants cannot satisfy Rule 801(d)(2)(D)'s foundation requirements. Where a Plaintiff cannot identify the declarant, no foundation can be laid to treat the statement as a party admission under Rule 801(d)(2)(D). *E.E.O.C. v. Watergate at Landmark Condo.*, 24 F.3d 635, 640 (4th Cir. 1994); *Tabor v. Thomas Built Buses, Inc.*, 2010 WL 148431, at *5 (M.D.N.C. Jan. 12, 2010). The opposition does not address unidentified declarants at all. Statements attributed to "unnamed staff," "some officer," or unspecified personnel are inadmissible as a matter of law. Without an identified declarant, Plaintiffs cannot prove agency, employment, or scope. The Court should categorically exclude them.

Third, Plaintiffs do not dispute that statements attributed to other inmates are hearsay without an applicable exclusion or exception. Inmates are not VDOC agents or employees. Their out-of-court statements cannot qualify as party admissions under Rule 801(d)(2) and are ordinary hearsay under Rule 802. The motion specifically flagged this category, and the opposition makes no argument to the contrary. The Court should exclude these statements. *See, e.g.*, Mot. Ex. 1 (Cornelison) Tr. 365:16–22 (ECF No. 561-1).

Fourth, Plaintiffs do not dispute that Rules 803(1)–(3) do not rescue the anticipated testimony. The motion demonstrated that the challenged testimony—narrative counselor explanations, program-related statements, and medical observations—does not qualify as a present

sense impression, excited utterance, or statement of then-existing state of mind. Fed. R. Evid. 803(1)–(3). The opposition addresses only Rule 803(4) and is silent on Rules 803(1) through (3). Those exceptions do not apply, and exclusion on that basis is uncontested. Plaintiffs bear a "formidable burden" to establish any hearsay exception. *United States v. Bumpass*, 60 F.3d 1099, 1102 (4th Cir. 1995). They have not attempted to carry it as to Rules 803(1)–(3).

Fifth, Plaintiffs do not dispute that Rule 807 applies "very rarely" and "only in exceptional circumstances," or that trustworthiness is lacking here. *United States v. Huskey*, 90 F.4th 651, 670 (4th Cir. 2024). Rule 807 is a "narrow exception" that should not be construed broadly. *United States v. Covington*, No. 3:23CR68 (RCY), 2023 WL 8481004, at *5 (E.D. Va. Dec. 7, 2023). The anticipated testimony lacks the guarantees of trustworthiness the residual exception demands—as Plaintiffs' own witnesses conceded. *See* Mot. Ex. 4 (Riddick) Tr. 109:16–18; Mot. Ex. 7 (Hammer) Tr. 260:17–18. Plaintiffs characterize these examples as "cherry-picked," but do not identify a single statement that satisfies Rule 807, do not address *Huskey* or *Covington*, and do not explain what "exceptional circumstances" are present. Opp'n at 9. That cannot carry the day. *Bumpass*, 60 F.3d at 1102.

The same is true of Rule 804. The motion pointed out that current and former VDOC employees are likely amenable to subpoena and that Plaintiffs cannot establish unavailability under any of Rule 804(a)'s five criteria. Mot. (ECF No. 561) at 17. Plaintiffs' only response is to call the point speculative; they do not identify a single witness who cannot be subpoenaed. Opp'n at 9. Speculation does not satisfy Plaintiffs' burden.

II. Plaintiffs' "as-applied" relevance arguments do not defeat the hearsay rules.

A. The Fourth Circuit's recognition of Plaintiffs' as-applied claims does not determine the admissibility of hearsay evidence.

Plaintiffs invoke *Thorpe v. Clarke*, 37 F.4th 926, 947 (4th Cir. 2022), and this Court's summary judgment order (ECF No. 516) to argue that the presence of as-applied claims in the case makes testimony about non-party employee conduct relevant. But that argument conflates relevance with admissibility. Relevance under Rules 401 and 402 is a necessary but not sufficient condition for admission. Even if evidence of how non-party employees implemented the Program is relevant—Defendants do not concede that it is without more—it still must be offered in admissible form. Establishing relevance does not waive Rules 801, 802, 805, or 807, the foundational requirements of Rule 801(d)(2)(D), or Rule 403's balancing.

Thorpe v. Clarke was a decision on jurisdiction, class certification, and the scope of Plaintiffs' claims—not on whether hearsay is admissible to prove those claims. It does not address the Rules of Evidence. The constitutional questions reserved for trial—including whether inmates received notice of BMC reviews, whether they attended hearings, and whether review bodies "rubber-stamped" decisions—must be proven through admissible evidence. ECF No. 516 at 9, 15. *Hutto v. Finney*, 437 U.S. 678, 687 (1978), which Plaintiffs characterize as allowing consideration of the "totality of conditions," Opp'n at 3, addresses the scope of the constitutional inquiry, rather than evidentiary admissibility. Whether evaluation of a claim involves considering the totality of conditions does not result in a waiver of the Rules of Evidence.

B. Plaintiffs' previous representation that the case does not concern individualized incidents of misconduct was not limited to distinguishing *Reyes*.

Plaintiffs argue that their statement in ECF No. 31—that the case "does not concern individualized incidents of misconduct or application of VDOC policies"—was made solely to distinguish the *Reyes* case and should be read narrowly. Opp'n at 3. That reading is incorrect. The statement appeared in an affirmative description of Plaintiffs' own case theory, not merely as a contrast to *Reyes*. Plaintiffs represented that their claims challenge how Defendants "devised,

formulated, implemented, and oversaw" the Program—systemic-design allegations—and that "individualized incidents of misconduct" are not the substance of the case. ECF No. 31 at 2, 3, 5. Having made those representations to the Court in an effort to obtain a desired outcome, Plaintiffs should not now be permitted to adopt a contradictory posture because those representations are no longer convenient.

In any event, even if Plaintiffs may pursue as-applied claims, the evidentiary rules do not bend to accommodate them. The motion seeks to enforce the Rules of Evidence against inadmissible testimony.

C. The "as-applied" framing does not transform hearsay into admissible evidence.

Plaintiffs argue that employee conduct and statements are "evidence of how VDOC operated the Program." Opp'n at 3. That may be true as a matter of relevance. But hearsay is hearsay regardless of how relevant its content would be if admitted. As-applied claims must be proven through documents, admissible testimony, party admissions with proper foundation, and expert opinion—not through unverified anecdotes about what unnamed counselors said to individual inmates years ago. The standard Plaintiffs invoke—that a motion in limine should exclude evidence "clearly inadmissible on all potential grounds," Opp'n at 6 (quoting *In re Aqueous Film-Forming Foams Prods. Liab. Litig.*, 2023 WL 3409039, at *1 (D.S.C. May 12, 2023))—is satisfied. The challenged statements are hearsay with no cognizable exception; statements by unidentified declarants cannot satisfy Rule 801(d)(2)(D); and statements by other inmates are not admissions under any theory. Plaintiffs do not show otherwise.

D. *Carter v. Cabell* does not support admission of the challenged testimony.

Plaintiffs tout *Carter v. Cabell*, 185 F.4th 467 (4th Cir. 2026), as if it requires admission of the challenged testimony. Opp'n at 3, 5. It does not. The Rules of Evidence apply regardless of

what substantive theory Plaintiffs pursue. No decision of the Fourth Circuit—including *Carter*—holds that the hearsay rules yield when a plaintiff asserts supervisory liability. The Rules of Evidence apply to all claims, constitutional or otherwise. *See* Fed. R. Evid. 101. Liability for constitutional violations is determined "person by person." *King v. Riley*, 76 F.4th 259, 269 (4th Cir. 2023). The motion does not contest the legal standard for supervisory liability. It seeks enforcement of the evidentiary rules that govern how that standard must be proven.

In *Carter*, the Fourth Circuit reversed the district court for failing to analyze Harold Clarke's supervisory liability claim under the correct legal standard. The Fourth Circuit's ruling concerned the substantive elements of supervisory liability—not what evidence is admissible to prove those elements. The court's observation that "[i]f Clarke knew that his subordinates had created widespread unconstitutional conditions of confinement, posing an 'unreasonable risk' to prisoners . . . , that would be sufficient to satisfy" constructive knowledge is a restatement of the *Slakan* standard. 185 F.4th at 480; *see Slakan v. Porter*, 737 F.2d 368, 373 (4th Cir. 1984). It is not a holding that hearsay statements about what those subordinates allegedly said are admissible without foundation. Nothing in *Carter v. Cabell* holds that out-of-court statements by non-party employees may come in without satisfying Rule 801(d)(2)(D).

Indeed, *Carter* reinforces the "widespread" requirement that the challenged testimony cannot satisfy. Under *Carter*, as well as *Slakan* and *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994), supervisory liability requires proof of widespread unconstitutional conditions—not isolated incidents. Scattered anecdotal accounts of what individual non-party staff allegedly said or did to particular inmates do not establish a widespread practice. They are the isolated incidents the law says are insufficient. *Carter* thus reinforces the motion: even if admitted for a supervisory-liability purpose, the individual anecdotes Plaintiffs intend to offer cannot establish the widespread pattern

the standard requires. Mot. at 9. *Shaw* confirms the same point. It addresses the substantive legal standard, not evidentiary admissibility, and requires "widespread" conduct—not a parade of isolated hearsay anecdotes. *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994).

III. Plaintiffs' other claimed hearsay exceptions do not apply.

A. Plaintiffs' claimed nontruth purposes are truth purposes relabeled.

Plaintiffs claim five ostensibly nontruth purposes for the challenged testimony. Opp'n at 6–7. But each depends on whether the out-of-court statement accurately describes the underlying state of affairs.

First, "how staff believed the program to operate and applied it in practice," Opp'n at 6, is a truth inquiry: whether the program operated as alleged depends on whether the declarant's alleged description was accurate. *Second*, "how complaints were being handled," Opp'n at 7, is offered to prove complaints allegedly were mishandled—a classic truth purpose. The "effect on listener" doctrine applies when the listener's response is the fact of consequence; here, the contested fact is the program's actual operation. *Third*, "conditions that prisoners endured" and "lack of training guards received," *id.*, are offered to prove those facts. *Fourth*, inmates receiving (or not receiving) information about their program prospects, *id.*, depends on whether the declarant's alleged statement was true. *Fifth*, establishing a widespread pattern showing "constructive knowledge," *id.*, is a relevance argument, not a nontruth purpose. A statement cannot simultaneously be "not offered for its truth" and offered to show the "truth" that conditions were widespread enough to establish constructive knowledge.

Plaintiffs' cited case *United States v. Ferguson*, 140 F.4th 538 (4th Cir. 2025), recognizes that nontruth purposes exist, but courts must assess whether the stated purpose is genuinely non-assertive. *Id.* at 545. The five purposes Plaintiffs identify fail that assessment.

B. The "notice" purpose does not apply on these facts.

Plaintiffs cite *Bland v. Fairfax County*, 2011 U.S. Dist. LEXIS 66911 [2011 WL 2490995] (E.D. Va. June 20, 2011), for the proposition that a statement offered to show the recipient was "on notice" is not hearsay. Opp'n at 7. That doctrine applies when the recipient's knowledge and subsequent inaction are the contested facts—*i.e.*, when the fact of consequence is what the recipient (who is a party) was told and how they responded. Here, the recipients of the challenged statements are the plaintiff-inmates, not the named Defendants. A statement a counselor allegedly made to an inmate does not place a named senior official "on notice" through an inmate's out-of-court relay at trial. That chain is multiple layers of hearsay.

IV. Plaintiffs cannot satisfy the foundation requirements of Rule 801(d)(2)(D).

A. The opposition's broad "any employee" standard is inapplicable to individual-capacity claims.

Plaintiffs invoke *Tucker v. Norfolk & W. Ry. Co.*, 849 F. Supp. 1096, 1098 (E.D. Va. 1994), and *Queensberry v. Norfolk & W. Ry. Co.*, 157 F.R.D. 21, 23 (E.D. Va. 1993), for the proposition that "virtually any employee may conceivably make admissions binding on his or her employer." Opp'n at 8. But those cases address entity and employer liability—admissions offered against a corporate or governmental entity. The Section 1983 damages claims here proceed against the named Defendants in their individual capacities.

As the Supreme Court held in *Kentucky v. Graham*, 473 U.S. 159, 165–67 (1985), an individual-capacity suit "seek[s] to impose personal liability upon a government official for actions taken under color of state law." It is not a suit against the employing entity. The "any employee" standard for entity admissions does not govern. When a statement is offered against an individual, the proponent must establish an agency relationship between the declarant and that individual defendant. *Zaken v. Boerer*, 964 F.2d 1319, 1322 (2d Cir. 1992); *United States v. Wiedyk*, 71 F.3d

602, 605–06 (6th Cir. 1995); *Ascent Aviation, LLC v. Smith*, No. 3:23-cv-101, 2024 WL 5454571, at *3 n.4 (S.D. Tex. Nov. 8, 2024).

The Fourth Circuit's own cases independently establish the same foundational requirements. Agency must be proven by independent evidence; the putative agent's own out-of-court statements cannot alone establish the declarant's authority; and scope of employment must be demonstrated. *Watergate*, 24 F.3d at 638–40; *Precision Piping*, 951 F.2d at 619; *United States v. Portsmouth Paving Corp.*, 694 F.2d 312, 321 (4th Cir. 1982). The named Defendants are senior VDOC leadership several supervisory layers removed from the line officers, counselors, and medical staff whose statements are at issue. Plaintiffs have not identified any statement by a declarant who received instructions from, or was personally directed by, a named Defendant.

B. The opposition does not identify any statement that satisfies the scope-of-employment requirement.

Even for official-capacity claims, where agency runs to VDOC as an entity, a statement qualifies as an admission only if the "subject of the statement" relates to the declarant's area of authority. *United States v. Bros. Constr. Co. of Ohio*, 219 F.3d 300, 310–11 (4th Cir. 2000); *Watergate*, 24 F.3d at 638; *Quesenberry v. Volvo Grp. N. Am., Inc.*, 267 F.R.D. 475, 483 (W.D. Va. 2010). The opposition defends the statements at a high level of generality—calling them relevant to "how the Step-Down Program operated," Opp'n at 1—without demonstrating that any specific statement was made within the declarant's scope of employment.

A floor officer's alleged offhand opinion that the program did not make much sense, Mot. Ex. 10 (Cavitt) Tr. 170:1–2 (ECF No. 561-10); a guard's alleged racial epithet during morning count, Mot. Ex. 2 (McNabb) Tr. 106:21–22 (ECF No. 561-2); a treatment officer's alleged personal view of how Challenge Series books were administered, Mot. Ex. 4 (Riddick) Tr. 239:7–11—none of these alleged statements was made in the course of the declarant's official duties.

Casual asides, personal opinions, and gratuitous remarks are outside the scope of employment and are not party admissions. The burden is on Plaintiffs to establish scope. They have not met it. Even *United States v. Barile*, 286 F.3d 749 (4th Cir. 2002), which Plaintiffs cite favorably, *see* Opp'n at 8, confirms that the statement must be made within the scope of the declarant's employment, *see Barile*, 286 F.3d at 758.

V. Plaintiffs' remaining arguments are without merit.

A. Rule 403 supports categorical exclusion even in a bench trial.

Defendants were up front in acknowledging that the unfair-prejudice prong of Rule 403 carries diminished weight in a bench trial. Mot. at 20 (citing *United States v. Hassanzadeh*, 271 F.3d 574, 578 (4th Cir. 2001)). But the remaining dangers—confusion of the issues, undue delay, and wasting time—apply fully. *Lund-Ross Constructors, Inc. v. Vecino Nat. Bridge, LLC*, No. 8:19-cv-550, 2023 WL 5607563, at *4 (D. Neb. Aug. 30, 2023). Admitting a parade of anecdotes about what non-party employees allegedly said to individual inmates would require a mini-trial on each: who the declarant was, what authority they had, what the context was, and whether any named Defendant knew about the incident. In a three-week bench trial on class-wide constitutional questions, that is undue delay and waste of time. Categorical exclusion of cumulative, confusing, anecdotal testimony "is clearly a proper exercise of the judge's power" even at a bench trial. *Lund-Ross*, 2023 WL 5607563, at *4.

Plaintiffs argue that categorical exclusion would spawn collateral disputes over what falls within the ruling, Opp'n at 10, which proves Defendants' point: if the Court must litigate each challenged statement one by one, that just shows the category is unwieldy. A categorical exclusion order paired with a foundation requirement—Plaintiffs must lay the Rule 801(d)(2)(D) foundation

before eliciting each challenged statement—provides a clear, administrable standard.[1] In a three-week bench trial, the Court's time is limited. A targeted pretrial exclusion protects that resource; real-time objections after every anecdote do not.

B. Racial slur testimony should be excluded under Rule 403.

Plaintiffs argue that racial slurs should be admitted not to prove racial animus but "to establish the conditions of confinement Plaintiffs experienced." Opp'n at 9. But the case they cite purportedly in support of that proposition—*Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264 (4th Cir. 2015) (en banc)—is inapposite. It is a Title VII hostile-work-environment case in which racial epithets go to the core element of a hostile environment. *Id.* at 280. In the very different context of this Eighth Amendment conditions-of-confinement case, alleged racial animus by a non-party line officer is not an element and has little tendency to prove the objective severity of conditions class-wide. Even if marginally relevant, the danger of distraction—particularly where several slur accounts are relayed secondhand—substantially outweighs any probative value. Fed. R. Evid. 403.

C. Plaintiffs' concession on lay opinion does not resolve the Rule 701 and related Rule 26(e) issue.

Plaintiffs concede they will not offer class members as expert witnesses on medical causation. Opp'n at 10. That concession does not resolve the issue. The motion identified specific deposition testimony that crosses from permissible lay observation into opinion requiring specialized knowledge: relaying a psychologist's diagnostic conclusion about schizophrenia;

[1] For damages claims, agency must run to the individual named Defendant. For injunctive claims, Plaintiffs must identify the declarant, prove VDOC employment through independent evidence, and demonstrate scope. For any relayed statement, each link must independently qualify. *Precision Piping*, 951 F.2d at 619.

describing a mental-health classification and its clinical significance; and recounting a cardiac diagnosis and its proper treatment. Mot. Ex. 4 (Riddick) Tr. 294:9–10; Mot. Ex. 6 (Brooks) Tr. 234:15–18 (ECF No. 561-6 filed under seal); Mot. Ex. 1 (Cornelison) Tr. 235:10–15.

The question is not whether the witness holds himself out as an expert. It is whether the opinion requires "a process of reasoning which can be mastered only by specialists." Fed. R. Evid. 701 advisory committee's note to 2000 amendment; *Certain Underwriters at Lloyd's, London v. Sinkovich*, 232 F.3d 200, 203 (4th Cir. 2000). Testifying that a psychologist concluded an inmate had schizophrenia—offered to prove harm from solitary confinement—is expert opinion regardless of lay packaging. *United States v. Johnson*, 617 F.3d 286, 293 (4th Cir. 2010). The proper remedy is a categorical ruling now, before trial.

Plaintiffs also argue that their supplemental disclosures comply with Rule 26(e) because they "provided additional or corrective information," Opp'n at 10, conceding that, to the extent the supplemental disclosures added opinions not contained in the original reports, those opinions are untimely and must be excluded, *Campbell v. United States*, 470 F. App'x 153, 157 (4th Cir. 2012). The nondisclosing party bears the burden of showing substantial justification or harmlessness. Fed. R. Civ. P. 37(c)(1); *Hall v. Gestamp W. Va., LLC*, No. 2:20-CV-00146, 2021 WL 1240635, at *3 (S.D.W. Va. Apr. 2, 2021). Plaintiffs have made no such showing.

D. Plaintiffs' Rule 803(4) argument misreads the medical statement exception.

Plaintiffs argue that Rule 803(4) is not limited to patient-to-provider statements. Opp'n at 9. The argument in Defendants' motion is narrower and correct: every medical example Plaintiffs intend to offer involves a provider's statement to an inmate—the reverse of a statement made for medical diagnosis or treatment. The rule's reliability rationale rests on the "patient's strong motivation to be truthful" about symptoms because care depends on accurate disclosure. Fed. R.

Evid. 803(4) advisory committee's note. A provider's statement to a patient carries no such reliability guarantee.

The opposition's textual argument does not address the rule's purpose. A provider's statement to a patient—"you'll be all right," Mot. Ex. 1 (Cornelison) Tr. 139:20–22, or that "solitary confinement" was not causing his symptoms, Mot. Ex. 8 (Thorpe) Tr. 114:20–21 (ECF No. 561-8)—is offered to prove the truth of the medical conclusion, not as a statement made for diagnosis or treatment. Rule 803(4) does not apply.

CONCLUSION

The opposition leaves the motion's core evidentiary grounds unrebutted: double hearsay under Rule 805, statements by unidentified declarants, statements attributed to fellow inmates, Rules 803(1)–(3), Rule 804 unavailability, and Rule 807 trustworthiness. The opposition's principal counter-argument—that the case raises as-applied claims—does not override the Rules of Evidence or the foundational requirements of Rule 801(d)(2)(D). Defendants respectfully request that the Court grant their motion and enter an order precluding Plaintiffs from offering at trial the categories of testimony identified.

Dated: September 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 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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