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 FOR JUDICIAL NOTICE UNDER FED. R. EVID. 201

Plaintiffs oppose a motion that is materially different from the one Defendants filed. Defendants do not ask the Court to take judicial notice of disputed factual findings from other litigation, to adopt issue preclusion as a fact, or to treat a litigation-created chart as conclusive proof of every proposition it summarizes. Defendants instead ask the Court to take notice of two familiar categories of official, readily verifiable materials: (1) prior federal court proceedings, including their parties, dates, opinions, judgments, and dispositions; and (2) enacted state statutes regulating restrictive housing, identified by citation in Exhibit A to Defendants' motion. Those materials are appropriate subjects of judicial notice.

Plaintiffs' arguments concerning the legal consequences of the prior adjudications and the ultimate weight of the state statutes do not provide a basis to deny notice of the official materials themselves. The Court may take judicial notice of the fact and contents of the prior federal adjudications without accepting prior factual findings for their truth. It may then decide, under ordinary preclusion principles, whether the final judgments entered against Plaintiffs Mukuria and Snodgrass have any preclusive effect as to the limited periods at issue in those cases. Likewise,

the Court may take notice of the statutes identified in Exhibit A without treating every phrase in the exhibit as conclusive or foreclosing Plaintiffs from disputing the statutes' relevance or weight.

Plaintiffs also do not meaningfully address several central propositions supporting the motion. They do not dispute that court records and final judgments are generally judicially noticeable. They do not address the Court's earlier recognition that the possibility of preclusion warranted declining to appoint Mukuria as an injunctive-class representative. *See* ECF No. 467. And they do not grapple with the well-established proposition that legislation may supply objective indicia relevant to an Eighth Amendment analysis based on evolving standards of decency.

The Court should grant the motion and take judicial notice of the identified federal proceedings and enacted state laws. The Court may reserve for later consideration any remaining question concerning the precise preclusive effect, evidentiary use, or weight of those materials.

ARGUMENT

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

A. Plaintiffs do not dispute that the existence, contents, and dispositions of the identified federal proceedings are proper subjects of judicial notice.

Federal Rule of Evidence 201 permits judicial notice of facts that "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). Official federal court records—including pleadings, orders, opinions, judgments, and appellate dispositions—plainly satisfy that standard.

The Fourth Circuit has long recognized that "[t]he most frequent use of judicial notice of ascertainable facts is in noticing the content of court records." *Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989). Thus, courts may take notice of proceedings in other courts when those proceedings bear directly on the matters at issue. *Id.* The prior federal adjudications identified

in Defendants' motion do exactly that: they concern constitutional challenges to the same Step-Down Program and include final adjudications involving two named Plaintiffs in this case.

Plaintiffs do not meaningfully dispute the authenticity of those proceedings, the identity of the litigants, the dates of the relevant orders, or the fact that the referenced judgments and dispositions were entered. Nor could they. Those facts are established by official judicial records and are capable of accurate and ready determination. The motion seeks notice of matters such as the following: the existence of the prior lawsuits; the parties to those lawsuits; the claims and issues presented in them; the rulings rendered by the courts; the dates and dispositions of the relevant orders and judgments; and, where applicable, the fact of affirmance. Those are precisely the types of indisputable judicial actions Rule 201 encompasses.

B. Plaintiffs improperly conflate judicial notice of the prior proceedings with the separate legal question whether the judgments have preclusive effect.

Plaintiffs principally contend that issue preclusion is a legal conclusion and therefore cannot be judicially noticed. Defendants do not disagree with the premise that preclusion involves legal analysis. But that point does not answer the motion.

Defendants do not contend that Rule 201 itself establishes collateral estoppel. Rather, Rule 201 permits the Court to take notice of the undisputed prior judgments and the official records establishing what was litigated and decided. The Court may then apply ordinary preclusion principles to those judgments. Put differently, judicial notice supplies the record; the Court separately determines the record's legal consequence.

Plaintiffs' own cited authorities confirm this distinction. *See* Plaintiffs' Opposition, ECF No. 583 ("Opp'n"), at 3.. In *Sedlack v. Braswell Services Group, Inc.*, the Fourth Circuit identified the elements necessary to establish collateral estoppel. 134 F.3d 219, 224 (4th Cir. 1998). That inquiry necessarily begins with the prior judgment and the issues actually resolved in the prior

litigation. Judicial notice of those underlying records neither resolves the preclusion question by fiat nor relieves Defendants of their burden to establish the applicable elements.

Plaintiffs' reliance on *United States v. Daley*, 378 F. Supp. 3d 539 (W.D. Va. 2019), is similarly misplaced. *Daley* rightly observes that judicial notice of "legal conclusions or legal reasoning" is inappropriate. *Id.* at 546. But the decision also recognizes the propriety of noticing indisputable judicial actions, such as the entry of a plea or dismissal of a civil case. *Id.* at 546–47. Defendants seek the latter, not the former. The Court need not judicially notice the conclusion that preclusion applies; it may take notice that the prior actions were filed, litigated, decided, and reduced to final judgments, then determine any preclusive consequences under governing law.

Nor does *United States v. Lowers*, 170 F.4th 134 (4th Cir. 2026), support Plaintiffs' position. As Plaintiffs acknowledge, *Lowers* cautions against using judicial notice to "borrow factual findings made by other courts to fill [an evidentiary] gap." *See* Opp'n at 1 (quoting *id.* at 148–49, 153). But Defendants do not seek to introduce another court's factual findings as substantive proof that disputed facts in this case are true. Defendants' motion expressly recognizes the applicable limitation: a court may not take judicial notice of another court's factual findings for their truth because those findings may remain disputed. *See* Defendants' Motion, ECF No. 564 ("Mot."), at 9 (citing *Hughes v. Freightliner, LLC*, No. 7:04-cv-00309, 2006 WL 1842997, at *1 (W.D. Va. June 29, 2006)).

Defendants seek notice of the existence, contents, and dispositions of official court records—not use of prior factfinding as a substitute for proof at trial. That distinction is dispositive.

C. The prior judgments provide the proper record for evaluating defensive preclusion as to Mukuria and Snodgrass.

Defendants do not seek to bind the certified class through the individual prior actions. Rather, they would seek a narrowly tailored determination concerning the potential defensive

preclusive effect of prior final judgments against Mukuria and Snodgrass (and only for the earlier periods and issues actually adjudicated in their respective cases).

As to Mukuria, the relevant judgment was entered on September 27, 2016. *See Mukuria v. Clarke*, No. 7:15-cv-00172, 2016 WL 5396712 (W.D. Va. Sept. 27, 2016), *aff'd*, 706 F. App'x 139 (4th Cir. 2017). As to Snodgrass, the relevant adjudication was entered on March 17, 2017. *See Snodgrass v. Gilbert*, No. 7:16-cv-00091, 2017 WL 1049582 (W.D. Va. Mar. 17, 2017), *vacated in part*, 2018 WL 1972721 (W.D. Va. Apr. 26, 2018). The scope of any preclusion must be determined according to what those judgments actually resolved, including the temporal limits of the claims and the effect, if any, of the subsequent partial vacatur in *Snodgrass*.

The governing legal framework is familiar. Federal law governs the preclusive effect of earlier federal judgments. *See Shoup v. Bell & Howell Co.*, 872 F.2d 1178, 1179–80 (4th Cir. 1989). A final judgment on the merits may preclude relitigation of claims or issues satisfying the applicable elements. *Id.* at 1181. *See also In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326, 328–29 (4th Cir. 2004). And defensive collateral estoppel serves the important function of preventing a party from relitigating an issue it has already fully litigated and lost. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 329–31 (1979).

Plaintiffs do not meaningfully address Defendants' reliance on *Shoup*, *Microsoft*, or *Parklane*. Instead, they argue broadly that preclusion would have limited practical effect. Opp'n at 5 n.1. But a limited scope is not a reason to disregard final judgments. It is a reason to define the Court's ruling with care. Defendants agree that any application of preclusion must remain confined to the issues, plaintiffs, and periods actually encompassed by the prior adjudications.

D. *Smith* and *Thorpe* do not themselves nullify the earlier final judgments.

Plaintiffs contend that *Mukuria* and *Snodgrass* lack preclusive force because subsequent decisions—including *Smith v. Collins*, 964 F.3d 266 (4th Cir. 2020), and *Thorpe v. Clarke*, 37

F.4th 926 (4th Cir. 2022)—repudiated their underlying premises. *See* Opp'n at 3 (citing *Herrera v. Wyoming*, 587 U.S. 329, 344 (2019), for the proposition that repudiated decisions do not retain preclusive force).

But that argument goes to the merits of the preclusion question. It does not provide a reason to refuse notice of the prior judgments and proceedings. More fundamentally, Plaintiffs do not identify any order vacating or reopening the *Mukuria* judgment; nor do they identify an order setting aside the relevant portions of the *Snodgrass* judgment beyond the partial vacatur reflected in that case's own docket and opinions.

Thorpe did not reopen either Mukuria's or Snodgrass's individual action. Nor did it hold that their prior judgments were void, lacked finality, or could not have any preclusive effect as to the particular issues and periods they resolved. Rather, *Thorpe* addressed legal questions arising from the allegations and record in this litigation. That later decision does not itself establish that previously entered final judgments between particular parties have no legal consequence.

Defendants do not seek to invoke the prior rulings as controlling precedent that disposes of the class's current claims. Nor do Defendants contend that the law did not evolve. The requested ruling is narrower: the Court should take notice of the prior final adjudications and determine whether, under the governing preclusion standards, the claims or issues previously resolved as to Mukuria and Snodgrass may be relitigated for the discrete earlier periods addressed in those cases.

E. That Mukuria or Snodgrass proceeded pro se does not establish they lacked a full and fair opportunity to litigate.

Plaintiffs further contend that the prior cases cannot have preclusive effect because Mukuria and Snodgrass proceeded pro se, allegedly without the discovery, experts, and assistance

available in a class action. But pro se status alone does not establish a lack of a full and fair opportunity to litigate.

The full-and-fair-opportunity inquiry is part of the ordinary preclusion analysis. *See Sedlack*, 134 F.3d at 224. Plaintiffs identify no jurisdictional defect, fraud, denial of an opportunity to be heard, or comparable procedural irregularity in the prior cases. Their generalized assertion that the plaintiffs would have preferred counsel, more discovery, or expert assistance does not itself overcome the finality of the judgments entered in those proceedings.

Anticipating Plaintiffs' position, Defendants' motion cited *Garrett v. Angelone*, 940 F. Supp. 933, 941–42 (W.D. Va. 1996), which bears directly on Plaintiffs' attempt to treat *pro se* incarceration as an automatic bar to preclusion. *See* Mot. at 11. Plaintiffs do not address that authority. Nor do they explain away Mukuria's appellate affirmance, which reinforces the conclusion that he had a full and fair opportunity to litigate the claims at issue.

To be clear, Defendants do not contend that pro se status is irrelevant in every possible preclusion dispute. The point is narrower: Plaintiffs must identify a legally sufficient basis to conclude that the prior proceedings were not full and fair. They have not done so merely by citing the plaintiffs' unrepresented status.

F. Plaintiffs' timing objection fails under Rule 201 and does not justify exclusion of official court records.

Plaintiffs argue that Defendants should have pursued preclusion at summary judgment and therefore forfeited the opportunity to seek relief now. But Rule 201 expressly provides that the Court "must take judicial notice if a party requests it and the court is supplied with the necessary information," and may do so "at any stage of the proceeding." Fed. R. Evid. 201(c)(2), (d).

Plaintiffs identify no rule limiting judicial notice of official court records to the summary-judgment stage. Nor do they identify any rule providing that the Court cannot determine a

preserved affirmative defense merely because a summary-judgment deadline has passed. The motion seeks pretrial treatment of discrete matters arising from official records. That is an appropriate use of a motion in limine or comparable pretrial motion.

Moreover, the potential preclusion issue as to Mukuria is not new to this litigation. When addressing class representation, the Court recognized the potential relevance of claim or issue preclusion and declined to appoint Mukuria as an injunctive-class representative. *See* ECF No. 467 at 6-8. Plaintiffs acknowledge the result but do not meaningfully address the Court's underlying concern. The motion simply asks the Court to consider, on a proper record, the implications of prior adjudications that the Court has already recognized may matter.

G. The prior adjudications are relevant to the deliberate-indifference inquiry.

Plaintiffs also contend that the prior adjudications are irrelevant to Defendants' state of mind. That argument, too, confuses the fact of judicial notice with the weight the Court may ultimately assign to the noticed materials.

Deliberate indifference requires more than proof that an official was mistaken about the law or that a court later identified a constitutional violation. It requires evidence that the official knew of and disregarded an excessive risk to inmate health or safety. *Farmer v. Brennan*, 511 U.S. 825, 837–38 (1994). The inquiry "mandate[s] inquiry into a prison official's state of mind." *Id.* at 838. An official may avoid liability by showing, for example, that he did not subjectively recognize an excessive risk or believed the risk was insubstantial. *Id.* at 844–45.

The Fourth Circuit has likewise distinguished legal error from deliberate indifference. "Legal error alone is not deliberate indifference." *Campbell v. Florian*, 972 F.3d 385, 394–97 (4th Cir. 2020); *see also id.* at 399. And a plaintiff's proof of subjective knowledge may be direct or circumstantial. *Scinto v. Stansberry*, 841 F.3d 219, 225–26 (4th Cir. 2016).

Against that backdrop, the legal environment in which Defendants acted is relevant. For years, federal courts considered and rejected constitutional challenges to the Step-Down Program or materially related confinement conditions.[1] Those adjudications do not conclusively prove what any individual Defendant knew, believed, or relied upon. Defendants do not argue otherwise. Defendants must establish any relevant individual knowledge or reliance through admissible evidence at trial, including testimony, communications, policies, and other proof bearing on subjective awareness. But the prior opinions themselves are appropriately noticed official materials and may provide relevant context to the state-of-mind inquiry.

Plaintiffs' contention that the earlier decisions lack precedential force does not change that conclusion. Defendants do not rely on the decisions solely as binding precedent defining clearly established law. The decisions are relevant because they form part of the contemporaneous legal context in which Defendants acted. Whether that context bears heavily, lightly, or not at all on a particular Defendant's subjective awareness is a question of evidentiary weight—not a basis to refuse judicial notice.

II. The Court may take judicial notice of the enacted state laws identified in Exhibit A to Defendants' motion.

A. The state enactments are relevant.

Plaintiffs contend that the laws identified in Exhibit A are irrelevant. Opp'n at 12. They are not. The Supreme Court has repeatedly recognized that legislative enactments may constitute objective indicia relevant to the Eighth Amendment's evolving-standards-of-decency analysis. See

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[1] *See, e.g.*, *Mukuria*, 2016 WL 5396712; *DePaola v. Va. Dep't of Corr.*, No. 7:14-cv-00692, 2016 WL 5415903 (W.D. Va. Sept. 28, 2016), *aff'd*, 703 F. App'x 205 (4th Cir. 2017); *Obataiye-Allah v. Va. Dep't of Corr.*, No. 7:15-cv-00230, 2016 WL 5415906 (W.D. Va. Sept. 28, 2016), *aff'd sub nom. Obataiye-Allah v. Clarke*, 688 F. App'x 211 (4th Cir. 2017); *Delk v. Younce*, No. 7:14-cv-00643, 2017 WL 1011512 (W.D. Va. Mar. 14, 2017), *aff'd*, 709 F. App'x 184 (4th Cir. 2018).

Trop v. Dulles, 356 U.S. 86, 101 (1958); *Atkins v. Virginia*, 536 U.S. 304, 316 (2002); *Roper v. Simmons*, 543 U.S. 551, 563, 567 (2005); *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008); *Graham v. Florida*, 560 U.S. 48, 61 (2010). The Fourth Circuit likewise has recognized the importance of evolving standards in Eighth Amendment analysis. See *Porter v. Clarke*, 923 F.3d 348, 355 (4th Cir. 2019); *Jones v. Solomon*, 90 F.4th 198, 208 (4th Cir. 2024).

Defendants do not contend that the enactments alone resolve Plaintiffs' constitutional claims. Nor do Defendants contend that the number of state statutes on either side of a question mechanically determines the Eighth Amendment's meaning. The point is more modest and well supported: enacted legislation addressing restrictive housing, prolonged isolation, and related prison conditions may be relevant objective evidence of contemporary legislative judgments.

Plaintiffs may challenge the significance of a particular statute, offer additional statutes, argue that certain enactments apply only to limited populations, or contend that the Court should assign little weight to the survey. Those are proper merits arguments. They do not establish that the Court must disregard official legal enactments altogether.

B. Exhibit A identifies official state enactments that are readily verifiable from authoritative legal sources.

Plaintiffs devote substantial attention to Exhibit A's format, describing it as an "incomplete and unauthenticated" survey of "unidentified origin." Opp'n at 8. But Exhibit A is a citation-supported organizational aid. The relevant judicially noticeable materials are the underlying statutes and session laws identified in the exhibit—not counsel's summaries as standalone factual assertions.

Federal courts are bound to take judicial notice of state law. *Lamar v. Micou*, 114 U.S. 218, 223 (1885). The Fourth Circuit has likewise recognized that state statutory law is an appropriate subject of judicial notice. *S. Ry. Co. v. O'Dell*, 252 F. 540, 543 n.4 (4th Cir. 1918). And courts

may judicially notice official government materials and authoritative compilations of public information. See *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017); *United States v. White*, 620 F.3d 401, 415–16 (4th Cir. 2010); *Hall v. Virginia*, 385 F.3d 421, 424 n.3 (4th Cir. 2004).

Thus, the question is not whether Plaintiffs (or the Court) must accept every characterization in the chart. They need not. The question is whether the Court may notice the underlying statutes, including their text, enactment dates, and cited provisions. It plainly may.

Defendants do not ask the Court to treat Exhibit A as an expert report, an empirical study, or a dispositive account of every state's law. To the extent Plaintiffs dispute a particular entry's wording, completeness, scope, or interpretation, the cited statute itself controls. The Court may take notice of the enactments while reserving any entry-specific issue concerning meaning or weight.

C. Plaintiffs' authorities concerning private party-created factual materials do not preclude notice of the cited statutes.

Plaintiffs rely on *General Electric Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074 (7th Cir. 1997), *United States v. Ritchie*, 342 F.3d 903 (9th Cir. 2003), and *United States v. Rosenschein*, 136 F.4th 1247 (10th Cir. 2025), to argue that a party-created document is not automatically a source whose accuracy cannot reasonably be questioned. Opp'n at 9–10. That proposition is unremarkable. But it does not resolve the issue presented here.

Those cases concern private documents or counsel-prepared factual assertions offered to establish disputed factual propositions. Defendants do not ask the Court to judicially notice a private document's truth. Exhibit A directs the Court to the official state enactments themselves. Those statutes are not private factual assertions. They are enacted law, available from authoritative state sources and capable of immediate verification.

Plaintiffs' hearsay argument fails for the same reason. The statutes are law—not out-of-court assertions offered to prove the truth of a factual matter. Defendants do not invoke the business-record exception, and so Plaintiffs' citation to *Palmer v. Hoffman*, 318 U.S. 109, 114 (1943), *see* Opp'n at 13, is inapposite. Nor is Exhibit A an expert opinion requiring Rule 26(a)(2) disclosure or *Daubert* treatment, as Plaintiffs' claim. *See* Opp'n at 15.

D. Exhibit A was not undisclosed expert or factual evidence subject to exclusion under Rule 37.

Plaintiffs' Rule 26 and Rule 37 arguments, *see* Opp'n at 13–15, also fail. Exhibit A is not a preexisting third-party report, a scientific or technical analysis, or an undisclosed expert opinion. It is a compilation of publicly available enacted statutes prepared in connection with Defendants' legal motion.

Plaintiffs cite Rule 37(c)(1) and *Southern States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 596 (4th Cir. 2003), but neither establishes that a party must disclose its legal research, a future motion exhibit compiling public statutes, or an attorney-created chart of legal authorities as discovery material. The cited statutes have been publicly available. Plaintiffs are fully capable of consulting the identified enactments, presenting additional statutes, and contesting Defendants' legal characterization of the legislative landscape.

Nor have Plaintiffs shown meaningful prejudice. The motion identifies the subject matter of the survey, attaches the compilation, and supplies the relevant citations. Plaintiffs identify Louisiana amendments concerning certain protections for pregnant and postpartum prisoners. *See* La. Stat. Ann. § 15:865(B)–(C). Whether those provisions fall within the survey's stated scope, concern the general adult prison population (which is the only population at issue here), or warrant a supplementary description is a question that can be answered from the statutory text. It is not a basis to deny judicial notice of Louisiana law—or of any other official state enactment.

CONCLUSION

For these reasons, Defendants respectfully request that the Court grant their Motion for Judicial Notice. The Court should take notice of the existence, contents, dates, parties, orders, judgments, and dispositions of the identified federal adjudications concerning the Step-Down Program; and the enacted state statutes and session laws identified by citation in Exhibit A. The Court may separately determine the precise preclusive effect, if any, of the prior judgments as to Plaintiffs Mukuria and Snodgrass; the relevance and permissible evidentiary use of the prior proceedings concerning Defendants' state of mind; and the ultimate weight, if any, to accord the noticed state enactments in resolving Plaintiffs' Eighth Amendment claims.

Dated: September 15, 2026

Respectfully submitted,

/s/ *Maya M. Eckstein*

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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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