IN THE 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.	)	Case No. 2:20-cv-00007-JPJ-PMS

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION IN LIMINE TO EXCLUDE EVIDENCE OR ARGUMENT THAT INMATES IN THE STEP DOWN PROGRAM ARE SUBJECT TO CAVITY SEARCHES

INTRODUCTION

Plaintiffs dismiss Defendants' Motion in Limine, (ECF No. 566) ("Mot.") as "silly." Yet their Plaintiffs' Opposition, (ECF No. 585) ("Opp'n.")confirms the core problem the motion seeks to cure: Plaintiffs intend to use the term "cavity search" throughout trial to describe a search procedure that, by their own description, involves only visual inspection of the exterior skin surface. Their opposition provides no persuasive justification for doing so. It relies on out-of-circuit authority that cannot displace Fourth Circuit authority, overlooks that its own witnesses describe nothing more than a visual skin-surface inspection, misreads the scope of the Federal Rules of Evidence, and incorrectly treats a bench trial as license to ignore the undue delay and wasted time that Rule 403 independently prohibits.

The physical description of the searches is, at least insofar as is relevant to this motion, undisputed. Inmates in the Step-Down Program must remove clothing, expose their genital area and buttocks, lift their feet, and submit to visual inspection. There is no allegation that guards touch inmates or physically examine body cavities. Under controlling Fourth Circuit authority,

that procedure is not a cavity search, but merely a strip search. *Amaechi v. West*, 237 F.3d 356, 363 (4th Cir. 2001). Calling it a "cavity search" injects a false factual characterization into the record, is irrelevant under Fed. R. Evid. 401 and 402, and would waste trial time under Rule 403. The motion should be granted.

ARGUMENT

I. *Amaechi* Is Controlling Authority, and It Compels the Conclusion That These Were Strip Searches

The governing definitions come from the Fourth Circuit, not from the out-of-circuit decisions Plaintiffs rely on. In *Amaechi*, the Fourth Circuit held 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," while a body cavity search under federal law includes a "visual or physical examination ***into*** the body's recesses." *Id.* (emphasis added).

The searches Plaintiffs describe—exposure of the naked body followed by visual inspection—are strip searches under *Amaechi's* first definition. They are not "examination[s] into the body's recesses." Thus, calling them "cavity searches" is therefore both legally and factually wrong, rendering any such characterization irrelevant and inadmissible under Rules 401 and 402.

The Fourth Circuit's contemporaneous decision in *Leverette v. Bell*, 247 F.3d 160 (4th Cir. 2001) further emphasizes this point. There, the court explained that a standard strip search "require[s] the subject to disrobe, squat, and cough." *Id.* at 165. A body cavity search, on the other hand, requires something categorically different: the searched individual must be made "to expose her anal and vaginal cavities for visual inspection", *Id.* at 167, or for "digital touching or probing." *Id.* at 165 n.3. *Leverette* establishes that the threshold to cross from strip search to body cavity search requires more than a marginal amount of viewing the body's cavities.

Plaintiffs attempt to escape Fourth Circuit authority by citing a string of cases from the Second, Sixth, Ninth, and Eleventh Circuits, and from district courts in various states. None is binding here, and none displaces the Fourth Circuit's controlling definition that speaks directly to the issue. Plaintiffs cannot be permitted to supplant the Fourth Circuit's controlling definition merely because other courts elsewhere use different ones.

II. Plaintiffs' Own Evidence Proves "Strip Search" is the Accurate Term

Plaintiffs' opposition inadvertently underscores why Defendants' motion should be granted. The distinction *Leverette* draws is that a body cavity search requires a direct examination into the body's recesses, while a strip search requires only visual examination of the skin's surface. The testimony Plaintiffs submit does not come close to crossing that line. Their own witness, Red Onion State Prison unit manager Larry Collins, describes a basic visual inspection: the inmate is ordered to "raise his penis, raise his testicles, spread his butt cheeks, squat, and cough," show the bottoms of his feet, open his mouth, and run his fingers through his hair. Opp'n. Ex. A at 85:8–86:12. Collins also referred to the procedure as a strip search. Opp'n. Ex. A at 85:12–13. What Collins describes is precisely what *Leverette* identifies as a standard strip search: disrobe, squat, and cough. Class member Peter Mukuria describes the identical procedure: "lift your penis up, spread your butt cheeks, lift your feet up." He likewise calls it the "strip procedure." Opp'n. Ex. B at 234:5–20. Neither witness alleges that any officer looked into the recesses of an inmate's body, and neither alleges any physical contact. There is not even an allegation approaching the direct visual inspection of body cavities that occurred in *Leverette*, which the Fourth Circuit declined to classify as a "true body cavity search." 247 F.3d at 165.

Former Chief of Correction Operations David Robinson confirmed as much, testifying that in a strip search "you see somebody's cavity, but you don't see in it." 2/16/23 Dep. of David Robinson at 142:2–3 (attached as Exh. 1). These accounts describe basic visual inspection – the

textbook strip search under *Leverette*. Plaintiffs' evidence thus confirms that no examination into the body's recesses occurred, and "strip search" is the accurate term.

III. Courts Routinely Use the Rules of Evidence to Limit the Use of Particular Terms at Trial

Plaintiffs assert that the Federal Rules of Evidence do not empower courts to restrict the vocabulary used to describe admissible facts. That is wrong. Courts regularly grant motions in limine to preclude parties from using a particular term or characterization where that usage would be unfairly prejudicial, misleading, or a waste of time. See *United States v. Jiang*, No. 1:24-cr-65 (RDA), 2025 WL 419531, at *15 (E.D. Va. Feb. 6, 2025) (granting a motion in limine under Rule 403 precluding the Government and its witnesses from referring to a document as a "manifesto" due to the prejudicial connotations of the word); *Crawford v. City of Bakersfield*, No. 1:14-cv-01735-SAB, 2016 WL 5870209, at *8 (E.D. Cal. Oct. 6, 2016) (granting a motion in limine excluding inflammatory terms like "murder" and "homicide" in referring to the death of the decedent); *Duke v. Danfreight Sys., Inc.*, No. 2:20-cv-00125-JPH-DLP, 2022 WL 704879, at *1 (S.D. Ind. Mar. 9, 2022) (granting a motion in limine precluding defendants from referring to the subject incident as a "mere accident" or "simple mistake."). Like "manifesto", "murder," and "mere accident," the phrase "cavity search" carries connotations that extend well beyond its literal meaning, evoking a far more invasive procedure than what the undisputed evidence shows. Because no evidence in this case supports that label, the Court can and should preclude it.

IV. The Bench Trial Setting Does Not Excuse the Waste of Time That the "Cavity Search" Label Would Cause

Plaintiffs' final argument that Rule 403 has no work to do in a bench trial misreads both the Rule and Defendants' motion. Defendants do not argue that the Court will be inflamed or misled. Defendants argue that the false "cavity search" label will waste time and invite undue delay. These are dangers Rule 403 enumerates independently of unfair prejudice, and courts

exclude evidence on those grounds even in bench trials. *See Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994) (recognizing 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").

The risk of delay here is substantial, and Plaintiffs' efforts to minimize it fail. If Plaintiffs and their witnesses are permitted to describe a concededly visual strip search as a "cavity search" throughout trial, Defendants will be compelled to object each time the term is used, the Court will be required to rule on each objection, and the parties will repeatedly relitigate a definitional question that a single pretrial order can resolve now. That the factfinder is the Court rather than a jury does not make those detours any less of a waste of judicial resources.

Nor is Plaintiffs' attempt to flip the delay onto Defendants persuasive. A single pretrial ruling draws one clear line and enforces it once; Plaintiffs' alternative of leaving the label in play and curing it witness-by-witness invites repeated objections, motions to strike, and sidebars each time the term is used. Resolving the question now serves judicial economy while deferring it guarantees the very delay Plaintiffs profess to want to avoid.

CONCLUSION

For these reasons and those stated in Defendants' opening memorandum, the Court should grant the motion and preclude any evidence or argument characterizing the Step-Down Program searches as "cavity searches."

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to all CM/ECF participants.

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