

**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

**STIPULATED PROTECTIVE ORDER**

**WHEREAS**, the Parties intend to produce or have produced certain documents and information pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure that they deem or may deem to be confidential, private, subject to an applicable privilege, or otherwise inappropriate for public disclosure; and

**WHEREAS**, the Parties seek to ensure the confidentiality of these documents and information remains protected; and

**WHEREAS**, the Parties are aware that the Virginia Department of Corrections believes that certain documents to be produced would be considered records excluded from disclosure under the Virginia Freedom of Information Act because the disclosure of such documents would jeopardize security; and

**WHEREAS**, this court finds that good cause exists for issuance of an appropriately tailored confidentiality order covering the pretrial phase of this matter;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED,**

pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, by and among the Parties hereto, through their undersigned counsel, as follows:

1. This “Matter” shall mean the above-captioned matter, 2:20-cv-00007-JPJ-PMS.
2. “Plaintiffs” shall mean William Thorpe, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Gary Wall, Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Peter Mukuria, Steven Riddick, and Kevin Snodgrass (and those similarly situated, if the putative class is certified).
3. “Defendants” shall mean Virginia Department of Corrections, (“VDOC”), Harold Clarke, Randall C. Mathena, H. Scott Richeson, A. David Robinson, Henry J. Ponton, Marcus Elam, Denise Malone, Steve Herrick, Tori Raiford, Jeffrey Kiser, and Carl Manis.
4. “Parties” shall mean Plaintiffs and Defendants. “Party” shall mean either Plaintiffs or Defendants.
5. As used herein, without waiving the right to later interpose objections concerning these documents, “Confidential Materials” shall mean:
  - (a) Photographs or video footage taken of or within a VDOC correctional facility, including, but not limited to, Red Onion State Prison and Wallens Ridge State Prison, provided those photographs or videos depict information that (1) contain images of, or could otherwise be used to identify, prisoners who are not Parties, or (2) if disseminated to the public could jeopardize the safety or security of a person or prison;
  - (b) Correspondence or other documentation identifying the names and/or inmate identification numbers of prisoners who are not Parties; and
  - (c) Material containing personal, sensitive, and confidential information of Plaintiffs or Defendants or of a third party to whom Plaintiffs or Defendants reasonably believe is owed an obligation of confidentiality with respect to such documents, including, without limitation, Plaintiffs’ medical and mental health records.

6. As used herein, without waiving the right to later interpose objections concerning these documents, “Highly Confidential Attorneys’ Eyes Only Materials” shall mean:

- (a) Material contained in Defendants’ personnel records;
- (b) VDOC 400 series security protocols or procedures; and
- (c) Correspondence, reports, training materials, or other documentation created or used by Defendants or VDOC;

provided that the information contained in subparagraphs (b) or (c) above is not lawfully available to the public and, if disseminated to the public, would jeopardize the imminent safety or security of a person or prison. Such information would include, but is not limited to, identification of:

- (i) Critical physical infrastructure information;
- (ii) The location or operation of security equipment and systems or operation of security equipment and systems;
- (iii) Security telecommunications equipment and systems;
- (iv) Utility equipment and systems;
- (v) Vulnerability assessments;
- (vi) Surveillance techniques;
- (vii) Personnel deployments, alarm or security systems or technologies, or operational or transportation plans or protocols; or
- (viii) Institutional security or criminal investigatory reports.

7. The documents and information as defined in paragraphs 5 and 6 shall not be deemed Confidential Materials or Highly Confidential Attorneys’ Eyes Only Materials to the extent that they are: (a) legitimately obtained by Plaintiffs from sources other than Defendants, or (b) otherwise publicly available.

8. The Parties shall designate in good faith particular documents as Confidential Materials or Highly Confidential Attorneys’ Eyes Only Materials by labeling

such documents Confidential Materials or Highly Confidential Attorneys' Eyes Only, respectively. If a Party cannot feasibly label a particular document, it may designate the document in a writing directed to the other Party at the time the document is produced. For the avoidance of doubt, Plaintiffs' medical and mental health records are Confidential Materials under Paragraph 5 of this Stipulated Protective Order, regardless of whether they are labeled Confidential Materials or Highly Confidential Attorneys' Eyes Only. A Party who designates documents or information as Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials must take care to limit any such designation to specific material that meets those definitions, and to only seek designation upon a good-faith belief that the documents, information, or material contain personal, sensitive, or confidential information of the Party or third party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents. Mass, indiscriminate, or routinized designations are prohibited. If it comes to a designating Party's attention that information or items it has designated for protection do not qualify for protection, that designating Party must promptly notify the other Party that it is withdrawing the mistaken designation.

9. Any documents that are produced by a non-party pursuant to a subpoena and designated as Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials by a Party shall be governed by the terms of this Stipulated Protective Order.
10. The Parties reserve the right to designate any document as Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials pursuant to this Stipulated Protective Order if necessary after production of such documents to the other Party, provided they do so within 30 days of production.
11. Counsel for any Party may designate deposition testimony concerning any Confidential Materials as Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials either by:
  - (a) indicating on the record during a deposition that a question relates to Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials, in which event the reporter will bind the transcript of the testimony relating to the Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials, together with any exhibits referred to therein, in a separate volume and mark it as Confidential Materials or

Highly Confidential Attorneys' Eyes Only Materials Governed by this Protective Order; or

- (b) notifying the reporter and all counsel of record, in writing, within 30 days after a deposition has concluded, that the transcript or portions of the transcript are to be designated Confidential or Highly Confidential Attorneys' Eyes Only, in which event all counsel receiving the transcript will be responsible for marking the copies of the designated transcript in their possession or under their control as directed by the designating Party's counsel.

Such portion(s) of the transcript shall be deemed to be Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials within the meaning of this Stipulated Protective Order.

- 12. If a Party objects to the designation of a particular document as Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials, that Party shall state such objection in writing to the other Party, and the Parties shall endeavor in good faith to resolve such an objection. If such an objection cannot be resolved, then, within 15 days of the designating Party receiving the objection to the material's classification as Confidential or Highly Confidential Attorneys' Eyes Only, the Parties shall jointly seek judicial intervention, absent an agreement by the Parties to extend the deadline. Any such materials or information shall remain Confidential or Highly Confidential Attorneys' Eyes Only until the Parties resolve the objection or the court issues its ruling regarding the objection.
- 13. Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials produced in discovery in this Matter may not be used for any purpose other than for the evaluation, preparation, presentation, or settlement of claims or defenses in this Matter.
- 14. The Parties shall not disclose the portion of any document containing Confidential Materials to any person other than a Party, an attorney of record for that Party, or any member of the staff of that attorney's office, or law students affiliated with the attorney's office whether through an internship, externship, or law school clinic, except under the following conditions:
  - (a) Disclosure may be made for the purpose of preparing or presenting the Party's claims or defenses in this Matter, to those individuals described in the subparagraph (b) below;

- (b) Disclosure before trial may be made only to an expert, consultant, or litigation support vendor who has been retained or specially employed by a Party's attorney in anticipation of litigation or preparation for trial for this Matter; to a witness at a deposition; or to the court, court personnel, any appellate court in this Matter, professional court reporters, any member of the court reporter's staff, or video operators transcribing deposition or testimony in this Matter; or
  - (c) Before any disclosure is made to a person listed in subparagraph (b) above (other than to the court, court personnel, professional court reporters, any member of the court reporter's staff, or video operators transcribing deposition or testimony in this Matter, or any appellate court in this Matter), the disclosing Party's attorney shall provide each such person with a copy of this Stipulated Protective Order for review, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Confidential Materials for any purpose other than in connection with the prosecution, defense, or settlement of this Matter and not to further disclose the Confidential Materials except in testimony taken in this Matter. The attorney for a Party making such disclosure shall retain the signed consent and furnish a copy to the attorney for the other Party upon request at a deposition or immediately before trial, although the name of an expert that a Party does not intend to call as a trial witness may be redacted from such a consent before it is produced.
- 15. The Parties shall not disclose Highly Confidential Attorneys' Eyes Only Materials to any person other than an attorney of record for that Party, or any member of the staff of that attorney's office, or law students affiliated with the attorney's office whether through an internship, externship, or law school clinic, except under the following conditions:
  - (a) Disclosure may be made for the purpose of preparing or presenting the Party's claims or defenses in this Matter, to those individuals described in the subparagraph (b) below.
  - (b) Disclosure before trial may be made only to an expert, consultant, or litigation support vendor who has been retained or specially employed by a Party's attorney in anticipation of litigation or preparation for trial for this Matter; to Defendants' employees and other non-expert witnesses (excluding prisoners) at a deposition; or to the court, court personnel, any appellate court in this Matter, professional court

reporters, any member of the court reporter's staff, or video operators transcribing deposition or testimony in this Matter.

- (c) Before any disclosure is made to a person listed in subparagraph (b) above (other than to the court, court personnel, professional court reporters, any member of the court reporter's staff, or video operators transcribing deposition or testimony in this Matter, or any appellate court in this Matter), the disclosing Party's attorney shall provide each such person with a copy of this Stipulated Protective Order for review, and such person shall consent in writing, in the form annexed hereto as Exhibit A, not to use the Highly Confidential Attorneys' Eyes Only Materials for any purpose other than in connection with the prosecution, defense, or settlement of this Matter and not to further disclose the Highly Confidential Attorneys' Eyes Only Materials except in testimony taken in this Matter. The attorney for a Party making such disclosure shall retain the signed consent and furnish a copy to the attorney for the other Party upon request at a deposition or immediately before trial, although the name of an expert that a Party does not intend to call as a trial witness may be redacted from such a consent before it is produced.
- 16. Any Party seeking to file any paper with the court which incorporates any Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials, or reveals the contents thereof, shall first make an application to the court for permission to file under seal those portions of the papers containing Confidential Materials or Highly Confidential Attorneys' Eyes Only Materials in accordance with the rules of the District Court in which the Matter is filed and the individual rules of the judge to whom the papers are directed. No materials shall be filed under seal unless the court has issued an order approving the filing, in which event the filing shall follow the District Court's local rules applicable to filing under seal.
  - 17. The Parties have agreed that the redaction of personal, confidential, and/or identifying information of any person is sufficient to protect the interests of Parties or non-parties, and the Parties may file redacted documents without further order of the court provided that the filing of the redacted document complies with applicable rules and regulations, including the individual rules of the judge to whom the papers are directed.
  - 18. In all circumstances, the portion of any materials marked as Confidential or Highly Confidential Attorneys Eyes Only that references the name or

identification number of prisoner who is not a Party shall be redacted to obscure that information prior to filing of the document with the court.

19. At the conclusion of this litigation, including any direct appeal, counsel shall, upon request, destroy or return to the designating Party's counsel all copies of Confidential Materials and Highly Confidential Attorneys' Eyes Only Materials, and shall certify in writing that all copies of such information have been destroyed or returned. Nothing in this Stipulated Protective Order shall be construed to limit the Parties' use of their own Confidential Materials or Highly Confidential Attorney's Eyes Only Materials in any manner.
20. This Stipulated Protective Order shall be binding upon the Parties immediately upon signature and shall be submitted to the court for entry as an Order.
21. The terms of this Stipulated Protective Order shall be binding upon all current and future Parties to this Matter and their counsel.

**SO STIPULATED AND AGREED:**

/s/ Alyson Cox

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*Counsel for Defendants*

**SO ORDERED.**

**ENTERED:** May 27, 2020.

/s/ Pamela Meade Sargent  
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

The undersigned hereby acknowledges that s/he has read the Stipulated Protective Order dated \_\_\_\_\_ 2020, entered into the Matter entitled *Thorpe v. Virginia Department of Corrections*, and understands the terms thereof.

The undersigned agrees not to use the Confidential Materials or Highly Confidential Attorney's Eyes Only Materials defined therein for any purpose other than as permitted by the Stipulated Protective Order, and will not further disclose the Confidential Materials or Highly Confidential Attorney's Eyes Only Materials except in testimony taken in this case.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_