UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

WILLIAM THORPE, *et al.*,	)	
Plaintiff,	)	
v.	)	Case No. 3:19cv332
VIRGINIA DEPARTMENT OF CORRECTIONS, *et al.*,	)	
Defendants.	)	

DEFENDANTS' STATEMENT OF POSITION IN SUPPORT OF TRANSFER TO THE WESTERN DISTRICT OF VIRGINIA

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INTRODUCTION

This Court asked the parties to consider why this case—brought by Plaintiffs incarcerated in the U.S. District Court for the Western District of Virginia (the "Western District"), challenging the constitutionality of a prison program operated only in the Western District, and seeking relief in the Western District—should not be transferred to the Western District. ECF No. 30. Plaintiffs' statement of position (ECF No. 31) ("Pls.' Br.") presented no compelling reasons warranting a result different from *Reyes v. Clarke*, No. 3:18cv611, slip op. (E.D. Va. Sept. 4, 2019), and Defendants know of no such reason.

Like *Reyes*, this action belongs in the Big Stone Gap Division of the Western District, where Plaintiffs could have (and should have) brought it, where the only facilities administering the Step-Down Program operate, and where Plaintiffs, some Defendants, likely witnesses, and other evidence are all located. In the interest of justice and convenience of the parties, and for the reasons discussed below, the Court should transfer this case there.

ARGUMENT

I. Legal standards.

Under the federal venue statute, "[f]or the convenience of parties and witnesses, [and] in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). "[T]he transfer of a case can be accomplished *sua sponte*." *Am. Int'l Specialty Lines Ins. Co. v. A.T. Massey Coal Co.*, 628 F. Supp. 2d 674, 685 (E.D. Va. 2009) (citing *Jensen v. Klayman*, 115 F. App'x 634, 635-36 (4th Cir. 2004)).[1]

[1] To the extent Plaintiffs suggest that transfer would be "inappropriate" and "unfair" because "Defendants have not challenged venue," Pls.' Br. at 1, that ignores the Court's authority in this regard. *See Am. Int'l Specialty Lines Ins. Co.*, 628 F. Supp. 2d at 685 (transferring case even though "neither Massey nor AISLIC have made a motion to transfer").

"[A] decision whether to transfer an action to another district is committed to the district court's sound discretion." *Koh v. Microtek Int'l*, 250 F. Supp. 2d 627, 630 (E.D. Va. 2003). That discretion is applied "according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Corning Optical Commc'ns Wireless, Ltd. v. Solid, Inc.*, No. 3:14CV367-HEH, 2014 WL 4104058, at *2 (E.D. Va. Aug. 18, 2014) (quoting *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988)). A court makes two inquiries in considering whether to transfer venue: "(1) whether the claims might have been brought in the transferee forum, and (2) whether the interest of justice and convenience of the parties and witnesses justify transfer to that forum." *Koh*, 250 F. Supp. 2d at 630; *see also Hengle v. Curry*, No. 3:18cv100, 2018 WL 3016289, at *5 (E.D. Va. June 15, 2018).

II. This case could have been brought in the Western District.

This case easily clears the first step of the transfer analysis, which requires that both venue and jurisdiction with respect to each defendant be proper in the transferee district. *Koh*, 250 F. Supp. 2d at 630; *Hengle*, 2018 WL 3016289, at *5. Plaintiffs do not appear to dispute that this case could have been brought in the Western District and, for the reasons below, Defendants agree.

First, each Defendant is subject to personal jurisdiction in the Western District.

> [U]nder Federal Rule of Civil Procedure 4(k)(1)(A), a federal court may exercise personal jurisdiction over a defendant in the manner provided by state law." *Diamond Healthcare of Ohio, Inc. v. Humility of Mary Health Partners*, 229 F.3d 448, 450 (4th Cir. 2000) (citing *ESAB Grp., Inc. v. Centricut, Inc.*, 126 F.3d 617, 622 (4th Cir. 1997)). In Virginia, a Virginia court may exercise personal jurisdiction 'over a person . . . as to a cause of action arising from the person's . . . [t]ransacting any business' in Virginia." *Id.* (alteration and omissions in original) (quoting Va. Code Ann. § 8.01-328.1(A)).

Reyes, slip op. at *21. Application of these standards yields the same result as in *Reyes*. The Western District has personal jurisdiction over the Defendants because each "is sued in the context

of his or her employment for allegedly improper actions taken with respect to an inmate incarcerated in the Western District of Virginia while the inmate was in the care, custody or supervision of the Defendants." *Id.* at *21-22.

Second, venue is proper in the Western District because that is a "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(1). As in *Reyes*, slip op. at *22, "unquestionably" the same is true here too. The conduct of Defendants that Plaintiffs primarily challenge occurred at Red Onion and Wallens Ridge, where Plaintiffs are incarcerated and the Step-Down Program is implemented. Both are located in the Western District.

Because this suit could have been brought in the proposed transferee division, the first inquiry is satisfied.

III. The relevant Section 1404(a) factors weigh heavily in favor of transfer.

For the second step of the transfer analysis, courts have identified several factors to evaluate, but the "'[t]he principal factors to consider . . . are plaintiff's choice of forum, witness convenience, access to sources of proof, party convenience, and the interest of justice.'" *Hengle v. Curry*, No. 3:18-CV-100, 2018 WL 3016289, at *5 (E.D. Va. June 15, 2018) (quoting *Byerson v. Equifax Info. Servs., LLC*, 467 F. Supp. 2d 672, 632 (E.D. Va. 2006). As set forth below, the relevant factors under 28 U.S.C. § 1404(a) militate in favor of transfer even more strongly than in *Reyes*.

A. Plaintiffs' choice of forum is entitled to little weight.

Although a plaintiff's choice of forum is "*ordinarily* entitled to substantial weight," that choice is accorded less weight in certain circumstances. *Koh*, 250 F. Supp. 2d at 633 (emphasis added). Here, two aspects of Plaintiffs' case militate against according much weight to their preference to litigate in this district.

First, "courts can disregard" a plaintiff's choice of forum "'when the plaintiff selects a forum other than its home forum and the claims bear little or no relation to the chosen forum.'" *In re Interior Molded Doors Antitrust Litig.*, No. 3:18-CV-00718-JAG, 2019 WL 1062382, at *3 (E.D. Va. Mar. 6, 2019) (quoting *Koh*, 250 F. Supp. 2d at 633). In other words, the "'weight given to plaintiff's choice of venue varies with the significance of the contacts between the venue chosen by plaintiff and the underlying cause of action.'" *Corning Optical Commc'ns Wireless, Ltd. v. Solid, Inc.*, No. 3:14CV367-HEH, 2014 WL 4104058, at *3 (E.D. Va. Aug. 18, 2014) (quoting *Bd. of Trs., Sheet Metal Workers Nat'l Fund v. Baylor Heating & Air Conditioning, Inc.*, 702 F. Supp. 1253, 1256 (E.D. Va. 1988)).

The allegations in Plaintiffs' complaint bear little connection to this district, which is not their "home forum." They allege that the circumstances of their confinement at two prison facilities in the Western District violate various constitutional and statutory provisions, as well as the terms of a settlement agreement involving another, long-closed prison. *See generally* Compl. ¶¶ 222-64. They purport to bring their claims on behalf of hundreds of prisoners incarcerated in the Western District, Compl. ¶¶ 208, 216, all of whom allegedly have suffered harm as a result of the Step-Down Program, which is administered and only operates in the Western District. While the claims' relationship to the Western District is apparent from the complaint, their connection to this district is merely indirect, at best.

Plaintiffs fail to establish a direct connection in their Statement of Position, either. Although they cast their allegations as "focus[ing] on decisions and policies adopted by VDOC's upper management in Richmond for governing the administration of VDOC's supermax prisons and the impact of those decisions on a class of prisoners," Pls.' Br. at 3, that too is insufficient. There simply is no "impact . . . on a class of prisoners" in ***this*** district; the alleged impact is in the

Western District. And the Court in *Reyes* was unpersuaded by the same contention, that the plaintiff's "'constitutional and statutory claims arise in significant part from the acts and omissions of specific Defendants in Richmond who have implemented and (continue to implement) the policies and procedures designed in Richmond that are central to this litigation.'" *Reyes*, slip op. at *23 (quoting Reyes's pleadings). Thus, the Court's conclusion in *Reyes* also holds true here:

> [Plaintiffs' claims] do not rest only, or even heavily, upon facial challenges to Defendants' policies that may have been formulated in the Eastern District of Virginia. Instead, the nucleus of operative facts for [Plaintiffs'] claims relies extensively upon the specific misconduct of Defendants and other individuals in the Western District of Virginia.

Id. at *23-24. Plaintiffs' assertion that their claims are unlike Reyes's and "predominantly facial," Pls.' Br. at 1, flies in the face of allegations in their complaint, *see, e.g.*, Compl. ¶¶ 214-21 (describing the need for subclasses based on the different claims), as well as their discovery plan, *see, e.g.*, Joint Rule 26(f) Report, ECF No. 29, at 6-7 ("Plaintiffs contend that discovery will be needed on . . . administration of the Step-Down Program and its predecessor programs at ROSP and WRSP, including, but not limited to, ***how the Step-Down Program and policies have been applied to each class member***, decisions to place and retain prisoners in solitary confinement; decisions to alter the Pathway of prisoners in segregation, including the Named Plaintiffs and class members; . . . .") (emphasis added).

This Court is hardly alone in concluding that a suit by prisoners in one district, alleging harm as a result of a policy or agreement in another district, belongs in the district where the harm is experienced. For instance, in *Mathis v. GEO Group, Inc.*, 535 F. Supp. 2d 83 (D.D.C. 2008), a putative class of past, present, and future prisoners at a facility in North Carolina asserted a variety of claims (including under the Eighth Amendment), stemming from the alleged lack of health care provided by the federal Bureau of Prisons (the "BOP") and the contractor that operated the facility,

GEO Group ("GEO"). The prisoners brought suit in the District of Columbia, arguing that unlawful acts and omissions had occurred there, rather than in North Carolina, and stressing the contract between the BOP and GEO, GEO's allegedly inadequate reporting to the BOP, and "the improper oversight of the facility by the BOP." *Id.* at 88. But the court disagreed, finding that those claimed "connections" to the District of Columbia were "merely incidental to the plaintiffs' claims." *Id.* Rather, because the plaintiffs' claims "rest[ed] squarely within the Eastern District of North Carolina," the court transferred the case there. *Id.* at 88-89. So too here: because Plaintiffs' claims bear little relation to this district, their choice of forum is entitled to little weight, and transfer to the Western District is warranted.

Second, Plaintiffs' choice of forum is entitled to diminished weight for an additional reason not present in *Reyes*: this is a class action. As this Court has repeatedly noted, "courts often give less weight to the plaintiff's choice of forum in class actions." *See, e.g.*, *Byerson v. Equifax Info. Servs., LLC*, 467 F. Supp. 2d 627, 633 (E.D. Va. 2006); *King v. Corelogic Credco, LLC*, No. 3:17CV761, 2018 WL 2977393, at *3 (E.D. Va. June 13, 2018) ("Although the Eastern District of Virginia is King's home forum, her choice of forum receives less weight in this putative class case."). That is because "[i]n class actions, . . . there will be numerous potential plaintiffs, each possibly able to make a showing that a particular forum is best suited for the adjudication of the class'[s] claim.'" *Id.* (quoting *Eichenholtz v. Brennan*, 677 F. Supp. 198, 202 (S.D.N.Y. 1988)). Here, the members of the putative class proposed by named Plaintiffs—consisting of "themselves and the classes of prisoners who are, have been, or will be incarcerated in solitary confinement at Red Onion and Wallens Ridge," Compl. ¶ 205—presumably live in multiple judicial districts.[2]

[2] Yet, all proposed class members either suffered, are suffering, or will suffer the alleged harm in the Western District.

And although *Byerson* provides that a suit's class-action status does not "materially" alter the analysis where the plaintiffs' chosen "forum is home both to the [p]laintiffs and to key non-party witnesses" (making the forum "amenable to inexpensive discovery and trial"), 467 F. Supp. at 633, that exception does not apply here. This district is not home to either the plaintiffs or key non-party witnesses.

For both these reasons, Plaintiffs' decision to bring suit in this district is entitled to little weight in the analysis.

B. Witness convenience does not weigh against transfer.

"The convenience of witnesses is of considerable importance when considering a transfer, especially the convenience of non-party witnesses, whose location should be afforded greater weight in deciding a motion to transfer venue." *Seaman*, 2019 WL 1474392, at *5. But "'the influence of this factor cannot be assessed in the absence of reliable information identifying the witnesses involved and specifically describing their testimony.'" *Id.* (quoting *Bd. of Trs., Sheet Metal Workers Nat'l Fund v. Baylor Heating & Air Conditioning, Inc.*, 702 F. Supp. 1253, 1258 (E.D. Va. 1988)).

Despite the Court's request for information relevant to "why this action should not be transferred to the . . . Western District" ECF No. 30 at 1, Plaintiffs failed to identify, even generally, any non-party witness who would be inconvenienced if this case were transferred to the Western District. *See Reyes*, slip op. at *25 ("The party asserting witness inconvenience must offer sufficient details respecting the witnesses and their potential testimony, 'by affidavit or *otherwise*,' to enable the Court to assess the materiality of evidence and the degree of inconvenience" (quoting *Koh*, 250 F. Supp. 2d at 636)). In fact, they admit that "[n]o one—other than the parties themselves—have been identified as potential witnesses." Pls.' Br. at 10. To their credit, they effectively concede that there should be little inconvenience to the Plaintiff witnesses in

transferring to the Western District, since "their testimony can be presented in the form of video deposition or via live contemporaneous transmission from Big Stone Gap or Abingdon." Pls.' Br. at 11.

Admittedly, at this stage Defendants also do not know the identities and scope of testimony of all non-party witnesses. But given the nature of Plaintiffs' claims, involving the constitutionality of the conditions in which they and the putative class members have been confined at Red Onion and Wallens Ridge, it is likely that many of the non-party witnesses will be prison administrators, corrections officials, and other employees and staff located in the Western District. They will be the witnesses equipped to discuss the topics of discovery sought by Plaintiffs—including, generally, the "use of solitary confinement at [Red Onion] and [Wallens Ridge]"; "how the Step-Down Program and policies have been applied to each class members"; and the "detection, assessment, and treatment of medical and mental illnesses." *Id.* at 7.[3] It also stands to reason, given the number of Plaintiffs and the lengthy periods of their incarceration, that the number of non-party witnesses will be far greater here than in *Reyes*. *See Reyes*, slip op. at *26-27. *See also* Joint Rule 26(f) Report, ECF No. 29, at 9 (emphasis added) (indicating that Plaintiffs "anticipate taking approximately fifty (50) depositions of fact witnesses, the Defendants, and the Defendants' current employees, in addition to third-party witnesses" and others).

Thus, the concerns acknowledged in *Reyes* will be the same, but correspondingly more pronounced to match the number of Plaintiffs and the scope of their allegations:

> [I]n order to counter or justify the circumstances of [Plaintiffs'] confinement, Defendants will be required to call prison employees from Red Onion [and Wallens Ridge] to defend against [Plaintiffs'] claims. Given that [Plaintiffs'] claims do not involve isolated incidents, but charge prolonged periods of neglect and mistreatment,

[3] This list does not include the discovery that may be necessary in connection with Plaintiffs' plan to seek class certification, which could entail depositions of each of the named Plaintiffs.

> Defendants obviously will be required to call a significant number of current and former prison employees . . . in order to defend themselves.

Reyes, slip op. at *30. At least some of the most critical witnesses are likely current employees of Red Onion and Wallens Ridge. *Cf. Koh*, 250 F. Supp. 2d at 636 ("[I]t is permissible to infer, absent any contrary evidence from the non-movant, that witnesses are located at or near the center of the allegedly [wrongful] activities."). For the reasons discussed in Mr. Ponton's affidavit, they could not leave that prison, *en masse*, to testify in Richmond at a multi-day jury trial occurring 370 miles (about a six-hour drive away) from the prison where they work. *See id.* Ex. 1 (Ponton Aff.) ¶¶ 4, 5. By contrast, the VDOC administrators who live or work in the Eastern District are accustomed to traveling to southwest Virginia and do not object to accommodating the needs and convenience of the other defendants by conducting a trial in Big Stone Gap. *See id.* ¶ 18. Those witnesses are better situated, from a scheduling perspective, to travel a long distance to testify at trial than the correctional officers and prison administrators at Red Onion and Wallens Ridge.

In sum, although the Court lacks complete information regarding witness convenience, the information submitted by the parties indicates, at the least, that witness convenience does not weigh against transfer.

C. Access to evidence weighs in favor of transfer.

A substantial amount of the document evidence that Plaintiffs seek is located in the Western District. Among the documents they have requested are:

- "[c]omplete institutional files, including medical documents for Named Plaintiffs," Joint Rule 26(f) Report, ECF No. 29, at 8;
- "documentation created, relied upon, referenced, or in any way related to the . . . administration of the Step-Down Program at [Red Onion] and [Wallens Ridge]," *id.*;
- "[m]edical records and related materials for all class members," *id.*;

- "pod log books," *id.* at 7;
- "grievances and decisions on external classification status or internal status within the Step-Down Program," *id.*; and
- "disciplinary charges and related underlying evidence and decisions," *id.*

Many of these documents do not exist in electronic form and can only be found at the facilities where Plaintiffs are incarcerated, in the Western District.

Defendants also note that, depending on what facts are still in dispute at trial, Plaintiffs' challenge may well require the jury to view the physical interior of Red Onion or Wallens Ridge.[4] Courts have the inherent discretion to permit a jury view,[5] and allowing the factfinder to physically observe any disputed conditions of confinement would not be feasible if that jury were empaneled six hours away from the facilities.

Thus, the access-to-evidence factor also weighs in favor of transferring this suit to the Western District.

D. The convenience of the parties weighs in favor of transfer.

As in *Reyes*, "Defendants would be substantially inconvenienced by conducting a trial in the Eastern District of Virginia." *Reyes*, slip op. at * 32. By contrast, Plaintiffs would not be substantially inconvenienced to litigate in their home forum.

First, although a smaller proportion of Defendants live or work in the Western District than do the *Reyes* defendants, the problems identified in *Reyes* still remain. Much of the inconvenience in conducting a trial in Richmond has to do with the need to reallocate staffing resources at the

[4] Some courts consider "access to premises that might have to be viewed" as part of the interest-of-justice analysis. *See, e.g.*, *Koh*, 250 F. Supp. 2d at 639.

[5] *See, e.g.*, *United States v. Simmons*, 380 F. App'x 323, 327 (4th Cir. 2010) (recognizing federal courts' "inherent power" to permit views by the trier of fact); *see also United States v. Harvey*, 181 F.3d 92 (4th Cir. 1999).

prisons where Defendants work and Plaintiffs live. Logistical difficulties arise not just from the need to provide coverage during Defendants' (and non-party witnesses') absences from the facilities, but also the need to transport inmates to and from the courthouse to attend or testify at trial. Thus, any reduction in inconvenience because fewer Defendants are from the Western District is more than counterbalanced by the increased burdens that would be associated with accommodating not just one plaintiff from the Western District, as in *Reyes*, but ***a dozen*** named Plaintiffs. The logistical difficulties and costs of transporting so many Plaintiffs to the Eastern District over the course of this case (and possibly housing them there for some period of time) would quickly pile up. *See generally* Ex. 1 (Ponton Aff.) ¶¶ 9-16. By contrast, if the trial were to take place in Big Stone Gap, Plaintiffs would not need to be transferred to other prisons and could return to their own cells in the evenings. *Id.* ¶ 17. In short, the "significant shifting of VDOC resources at Red Onion to conduct a trial [in *Reyes*] in the Eastern District," *Reyes*, slip op. at 32, pales in comparison to the massive undertaking that would be required to conduct this trial here. Moreover, as noted above, VDOC administrators in the Eastern District are accustomed to traveling across the Commonwealth and are willing to accommodate the convenience of the other Defendants by conducting a trial in Big Stone Gap.

Second, by contrast, Plaintiffs identify no countervailing inconvenience in litigating in their home district. Indeed, they already plan to take deposition testimony at courthouses in Abingdon or Big Stone Gap, *see* Pls. Br. at 12—perhaps because that is, in fact, more convenient.

Because Plaintiffs have "'cho[sen] a forum away from home,'" and "'the venue substantially inconveniences defendants, transfer may be ordered.'" *Seaman v. IAC/InterActiveCorp, Inc.*, No. 3-18-cv-401, 2019 WL 1474392, at *7 (E.D. Va. Apr. 3, 2019) (quoting *Bd. of Trustees, Sheet Metal Workers Nat. Fund v. Baylor Heating & Air Conditioning,*

Inc., 702 F. Supp. 1253, 1259 (E.D. Va. 1988)). And just as this factor "strongly favor[ed] transfer to the Western District" in *Reyes*, *id.* at *32, it does here as well.

E. The interest of justice weighs strongly in favor of transfer.

1. The considerations analyzed in *Reyes* weigh in favor of transfer.

The two primary observations made by this Court in *Reyes* apply even more forcefully in favor of transfer here.

First, the Court correctly noted the importance of "avoiding inconsistent judgments and judicial economy." *Id.* at *33. *See also Samsung Elecs. Co., Ltd. v. Rambus, Inc.*, 386 F. Supp. 2d 708, 722 (E.D. Va. 2005) ("There is no doubt that the prospect of inconsistent judgments is a concern which should be taken into account in weighing the interest of justice."). Those interests would be served by transfer to the Western District, which "regularly addresses" the issues in this case. *Id.* Every district court judge in the Western District has addressed claims about the constitutionality of aspects of the Step-Down Program or the conditions of confinement for level "S" inmates at ROSP.[6] By contrast, "this Court has not ever issued a final judgment as to whether the conditions at Red Onion and the Step-Down Program pass constitutional muster." *Reyes*, slip

[6] *See, e.g.*, *Delk v. Youce*, No. 7:14cv00643, 2017 U.S. Dist. LEXIS 36581, at *21-25 (W.D. Va. Mar. 14, 2017) (Moon, J.), *aff'd*, 709 F. App'x 184 (4th Cir. 2018); *DePaola v. Va. Dep't of Corr.*, No. 7:14cv00692, 2016 U.S. Dist. LEXIS 132980, at *22-31 (W.D. Va. Sept. 28, 2016) (Jones, J.), *aff'd*, 703 F. App'x 205 (4th Cir. 2017); *Obataiye-Allah v. Va. Dep't of Corr.*, No. 7:15cv00230, 2016 U.S. Dist. LEXIS 133316, at *25-31 (W.D. Va. Sept. 28, 2016) (Jones, J.), *aff'd sub nom. Obataiye-Allah v. Clarke*, 688 F. App'x 211 (4th Cir. 2017); *Cooper v. Gilbert*, No. 7:17cv00509, 2018 U.S. Dist. LEXIS 65096, at *8-9 (W.D. Va. Apr. 17, 2018) (Conrad, J.); *Jordan v. Va. Dep't of Corr.*, No. 7:16cv00228, 2017 U.S. Dist. LEXIS 150501, at *23-26 (W.D. Va. Sept. 18, 2017) (Dillon, J.); *Muhammad v. Smith*, No. 7:16cv00223, 2017 U.S. Dist. LEXIS 125335, at *32-33 (W.D. Va. Aug. 8, 2017) (Conrad, J.); *Barksdale v. Clarke*, No. 7:16cv00355, 2017 U.S. Dist. LEXIS 123518, at *13-20 (W.D. Va. Aug. 4, 2017) (Kiser, J.); *Snodgrass v. Gilbert*, No. 7:16cv00091, 2017 U.S. Dist. LEXIS 39122, at *34-38 (W.D. Va. Mar. 17, 2017) (Conrad, J.); *Hubbert v. Washington*, No. 7:14cv00530, 2017 U.S. Dist. LEXIS 41695, at *12-18 (W.D. Va. Mar. 22, 2017) (Urbanski, J.); *Muhammad v. Mathena*, No. 7:14cv00529, 2017 U.S. Dist. LEXIS 11734, at *4-5 (W.D. Va. Jan. 27, 2017) (Conrad, J.).

op. at *33. Litigating this case here would increase the possibility of inconsistent judgments, given the Western District's case load involving suits of this nature. Indeed, the possibility of inconsistent judgments is not theoretical: *Reyes* itself is now pending in the Western District. The same court should be deciding these matters.

Second, the Western District is in a better position to enforce and monitor any injunctive relief, *see Reyes*, slip op. at *34—such as "end[ing] long-term solitary confinement at Red Onion and Wallens Ridge," Compl. ¶ 270(2). And if, as Plaintiffs also request, a special master is appointed "to inspect long-term solitary confinement conditions at Red Onion and Wallens Ridge," Compl. ¶ 273, a court in the Western District would be in a better position to oversee that process. That is where most Plaintiffs currently are confined, and where "the conditions of incarceration which [they] challenge[] are located." *Reyes*, slip op. at *34.

Plaintiffs misread the case law in arguing otherwise. Seeking to distinguish *Boyd v. Snyder*, 44 F. Supp. 2d 966 (N.D. Ill. 1999), where relief was "focused 'almost exclusively' on a single prison," Pls.' Br. at 14 (citing *Boyd*, 44. F. Supp. at 970-71), Plaintiffs argue that *Farmer v. Hawk*, No. 94-CV-2274 (GK), 1996 WL 525321 (D.D.C. Sept. 5, 1996), is more analogous because there "the relief requested sought to end the policies across *multiple* prisons." *Id.* at 14 (emphasis added). But *Farmer* is plainly inapposite because the policy at issue there was applied "nationwide," ostensibly in many different judicial districts. 1996 WL 525321, at *3. Here, although it is true that Plaintiffs seek changes at more than one prison, both Red Onion and Wallens Ridge are located in the Western District.

2. Plaintiffs' counter-arguments are unavailing.

There is no merit to Plaintiffs' arguments that the interest of justice disfavors transfer.

First, for the reasons discussed above, it is no answer to repeat that the "operative factual nucleus of this class action arises from VDOC and its leadership in Richmond." Pls.' Br. at 13.

Whatever "local interest" there may be in this district in the "policies, decisions, and actions . . . implemented . . . by VDOC regarding the Step-Down Program," that interest is far stronger in the ***Western*** District, the only district where the Step-Down Program operates and where the challenged policies, decisions, and actions are ***actually*** implemented. Indeed, by contrast with a jury in Big Stone Gap or Abington, a jury in Richmond would have comparably little "local interest" in a program that only operates more than 300 miles away. "[T]he interest in having local controversies decided at home weighs in favor of transferring the case to the WDVA." *Shenton v. Aerojet Rocketdyne, Inc.*, No. 3:17CV404 (MHL), 2018 WL 2729234, at *8 (E.D. Va. May 21, 2018) (noting that the "unfairness of burdening Richmond jurors with a case that has little, if any, connection to this Division, weighs in favor of transfer to the WDVA"), *report and recommendation adopted*, 2018 WL 2728020 (E.D. Va. June 6, 2018).

Second, Plaintiffs assert that this district's "rocket docket" would offer the "most expeditious route" for resolution of their case. *Id.* at 15. That may well be true—just as it may be true for hundreds of thousands of other cases filed in United States district courts each year. But "[t]his Court cannot stand as a willing repository for cases which have no real nexus to this district." *Cognitronics Imaging Sys., Inc. v. Recognition Research, Inc.*83 F. Supp. 2d 689, 699 (E.D. Va. 2000) (noting additionally that this Court's reputation as the "'rocket docket' certainly attracts plaintiffs" but "it must ensure that this attraction does not dull the ability of the Court to continue to act in an expeditious manner"). "Thus, when a plaintiff with no significant ties to the Eastern District of Virginia chooses to litigate in this district primarily because it is known as the 'rocket docket,' the interest of justice 'is not served.'" *CIVIX-DDI LLC v. Loopnet, Inc.*, No. 2-12cv2, 2012 WL 3776688 (E.D. Va. Aug. 30, 2012) (quoting *Original Creatine Patent Co., Ltd. v. Met–Rx USA, Inc.*, 387 F. Supp. 2d 564, 572 (E.D. Va. 2005). In any event, "the speed of a

district's docket is not decisive, and a comparison of docket conditions yields only slight weight for or against transfer in a § 1404(a) analysis." *Bluestone Innovations, LLC v. LG Elecs., Inc.*, 940 F. Supp. 2d 310 (E.D. Va. 2013) (internal citation and punctuation omitted). Thus, this factor does not move the analysis in Plaintiffs' direction.

Third, Plaintiffs are not warranted in asserting, contrary to this Court's observation in *Reyes*, that this Court has more relevant experience than the Western District with claims like those in this case. *See id*. at 15. No doubt the Eastern District hears more claims emanating from ***Virginia's death row***—as in all the cases cited by Plaintiffs, *see id.*—but that is because death-row inmates are housed at Sussex I State Prison, located in the Eastern District. Again, this case challenges a program that operates only at prisons in the Western District.

Finally, Plaintiffs argue that the Western District "has never considered most of the evidence to be adduced in this case," including "the extensive evidence of class-wide harm." *Id*. For the reasons discussed above, Defendants respectfully submit that the Western District is in a better position to consider the evidence of class-wide harm, not least because that district is where Plaintiffs are incarcerated—and, thus, where the alleged harm is felt and the evidence is located.

CONCLUSION

For these reasons, Defendants request that this case be transferred to the Western District of Virginia, Big Stone Gap Division.

November 15, 2019

Respectfully submitted,

/s/ Maya M. Eckstein

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2019, 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.

/s/ *Maya M. Eckstein*
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