

**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.

Civil Case No. 2:20-cv-00007-JPJ-PMS

**AMENDED STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
PLAINTIFFS' AMENDED MOTION FOR PARTIAL SUMMARY JUDGMENT**

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I. The Step-Down Program¹

A. Development and Structure of the Step-Down Program

1. VDOC Created the Step-Down Program to Manage Incarcerated Persons Classified as “Level S.”

1. The “Segregation Reduction Step-Down Program” (“Step-Down Program”) is a form of administrative segregation that is used to manage incarcerated persons housed at Red Onion State Prison (“ROSP” or “Red Onion”) who are classified as “Level S.” Ex. 1, VADOC-00052689 at -694 (Aug. 28, 2012 Segregation Reduction Step-Down Plan (hereinafter “2012 Step-Down Manual”); Ex. 2, VADOC-00053480 at -486 (Feb. 2020 Segregation Reduction Step-Down Plan (hereinafter “2020 Step-Down Manual”); Ex. 3, Beard Dep. at 73:5–7.
2. VDOC introduced the Step-Down Program at ROSP and Wallens Ridge State Prison (“WRSP” or “Wallens Ridge”) in 2012. Ex. 4, Mathena 30(b)(6) Dep. at 31:1–4; Ex. 1, 2012 Step-Down Manual.
3. The Step-Down Program is governed by VDOC Operating Procedures, as well as the policy document referred to as the Step-Down Manual. Local Operating Procedure (“O.P.”) 830.A applies to the Step-Down Program at ROSP. The current version of O.P. 830.A is effective as of October 1, 2021. Ex. 5, VADOC-00134589 (2021 O.P. 830.A). Previous versions are dated February 18, 2013. Ex. 6, VADOC-00003146 (2013 O.P. 830.A); Ex. 7, VADOC-00051172 (Feb. 15, 2018 O.P. 830.A); Ex. 8, VADOC-00047946 (June 27, 2018 O.P. 830.A); and Ex. 9, VADOC-00053728 (2020 O.P. 830.A).

¹ Plaintiffs file the attached Amended Statement of Undisputed Facts in Support of Their Amended Motion for Partial Summary Judgment to correct certain citation errors in the original Statement. Plaintiffs also file contemporaneously herewith corrected versions of certain exhibits submitted to the Court by email on September 8, 2023

4. The current version of the Step-Down Manual was finalized in February 2020. Previous versions were dated August 28, 2012 and September 2017. Ex. 1, 2012 Step-Down Manual; Ex. 10, VADOC-00002765 (2017 Step-Down Manual); Ex. 2, 2020 Step-Down Manual.

5. Since approximately 2016, participants in the Step-Down Program have been held at ROSP. Ex. 4, Mathena 30(b)(6) Dep. at 143:2–6. Before 2016, certain participants in the Step-Down Program were housed at WRSP. During the time that Step-Down participants were used at WRSP, the same “local operating procedure” that governed the Step-Down Program at ROSP applied to the Step-Down Program at WRSP. *Id.* at Dep. at 142:19–143:6; Ex. 11, Duncan Dep. at 24:15–25:1; Ex. 6, VADOC-00003146, -146 (Feb. 18, 2013 O.P. 830.A).

6. The Virginia Department of Corrections (“VDOC”) has no current plans to end the Step-Down Program; on the contrary, VDOC plans to continue requiring incarcerated persons classified as Level S to participate in the Step-Down Program going forward. ECF. No. 24 ¶ 134 (“Answer”); ECF. No. 1 ¶ 134 (“Complaint”).

2. The Step-Down Program Is Not Based on Evidence-Based Practices.

7. VDOC claims that the strategy of the Step-Down Program is “[REDACTED]” Ex. 1, 2012 Step-Down Manual at -694; Ex. 10, VADOC-00002765, -771 (2017 Step-Down Manual); Ex. 2, 2020 Step-Down Manual at -486). VDOC defines Evidence-Based Practices as “those things that have been proven to reduce recidivism, or most likely to reduce recidivism.” Ex. 12, Richeson Dep. at 60:1–4, 63:12–19.

8. VDOC claims that the Step-Down Program applies Evidence-Based Practices to ROSP and to WRSP operations. Ex. 2, 2020 Step-Down Manual at -486. The “Evidence-Based Principles” that purportedly govern the Step-Down Program are “spelled out in Appendix B to

the Step-Down Plan.” Ex. 13, VDOC Resps. and Objs. to Pls.’ 3rd Set of Interrogs., No. 5.

Those “Evidence-Based Principles” include:

- a. “[REDACTED]
[REDACTED]” The Principle focuses on changing: (1) “[REDACTED]”; (2) “[REDACTED]
[REDACTED]”; and (3) “[REDACTED]
[REDACTED]” Ex. 2, 2020 Step-Down Manual at -519.
- b. “[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].” *Id.* This Principle identifies five sub-groups based on the following characteristics: “[REDACTED]
[REDACTED]
[REDACTED].” *Id.* The Principle states that [REDACTED]
[REDACTED].” *Id.*
- c. “[REDACTED]
[REDACTED]
[REDACTED].” *Id.* at -520.

9. VDOC is not “aware of any scientific studies that were used to establish” the “Evidence-Based Practices that underlie the Step-Down Program” or whether such practices “are based on evidence.” Ex. 4, Mathena 30(b)(6) Dep. at 164:15–21; 168:4–8.

10. Former VDOC Director Harold Clarke does not know what evidence was used to develop the policies, procedures, and practices underlying the Step-Down Program. Ex. 14, Clarke Dep. at 206:17–207:7.

11. Helen Scott Richeson, VDOC’s Programs Director, does not know of any scientific studies that were used to establish the Evidence-Based Practices that underlie the Step-Down Program. Ex. 12, Richeson Dep. at 60:1–4, 63:12–19.

12. VDOC did not “consider any scientific studies about the effects of solitary confinement on prisoners” in developing the Step-Down Program. Ex. 4, Apr. 4, Mathena 30(b)(6) Dep. at 164:22–165:4.

II. Procedures Governing the Step-Down Program

A. Initial Placement into Level S

13. VDOC assigns each incarcerated person under its control to a security level based on a security level scoring system pursuant to which each scored security level corresponds to a point score range that is calculated using security level score sheets. The scored security levels range from 1, which is minimum security, to 5, which is maximum security. Ex. 116, VDOC O.P. 830.2 (effective Oct. 1, 2021) at 4–5, <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-830-2.pdf> (hereinafter “O.P. 830.2”).

14. Level S is not a scored security level but rather a housing level reserved for special purpose bed assignments utilized for the “protective care and management” of inmates. *Id.* at 10. Level 6 is not a scored security level either, but rather it is a security level to which Level S prisoners may progress and in which prisoners are assigned to housing within ROSP, purportedly for further programming and adaption to general population housing. *Id.* at 5, 11.

15. Pursuant to Operating Procedure 830.2, the placement of a prisoner in Level S is based on the prisoner's "security qualifier." *Id.* at 10; *see also* Ex. 4, Mathena 30(b)(6) Dep. at 212:8–16.

16. Pursuant to VDOC policy, the assignment of a prisoner to Level S requires a formal hearing in front of the Institutional Classification Authority ("ICA"). The ICA is then required to make a recommendation to the Central Classification Service, which is required to approve or disapprove the ICA's recommendation. The Central Classification Service's decision to reclassify an incarcerated person as Level S must then be approved by the Warden of ROSP or WRSP as well as the Regional Operations Chief. Ex. 2, 2020 Step-Down Manual at -489; Ex. 116, O.P. 830.2 at 11.

17. Pursuant to VDOC policy, when an incarcerated person is being considered for a security level increase, he is entitled, among other things, to written notification of the hearing 48 hours in advance of the hearing and an explanation of "the reasons for the review as a possible increase in security level." The incarcerated person is also entitled to be present at the hearing and to be advised verbally at the hearing and in writing within five working days of the ICA/Multi-Disciplinary Team ("MDT") recommendation and the reason for the decision. *Id.* at 9.

18. Gary Wall, one of the named Plaintiffs in this case, did not receive notice of his security level increase, as required by O.P. 830.2. In fact, Mr. Wall did not receive any prior notice of his change in security level status, nor did he participate in any ICA hearing. Ex. 15, 2023 Wall Decl. ¶ 5.

19. Derek Cornelison, another named Plaintiff, did not receive notice of his security level increase, as required by O.P. 830.2. Mr. Cornelison did not receive an explanation of the reasons

why he was being reviewed for a possible security level increase, nor did he participate in any ICA hearing. Ex. 16, 2023 Cornelison Decl. ¶ 5.

20. Javon Arrington, a member of the Class who is currently participating in the Step-Down Program, did not receive notice of his security level increase, as required by O.P. 830.2. Mr. Arrington was not given prior notice of any ICA hearing or provided with an explanation of the reasons why he was being reviewed for a possible security level increase. Ex. 17, 2023 Arrington Decl. ¶¶ 3, 5.



21. No VDOC policy requires that any mental health staff member participate in the process of assigning an incarcerated person to Level S. Ex. 4, Mathena 30(b)(6) Dep. at 237:3–9, 237:21–238:8.

22. Defendant Randall C. Mathena, VDOC’s Security Operations Manager and the former Warden of ROSP, considers “mental health status” to be no more important than “understanding what [an incarcerated person’s] eye color is” when assigning a security level classification to an incarcerated person. Ex. 18, Mathena Dep. at 537:6–21.

23. Dr. Denise Malone, speaking for VDOC as a 30(b)(6) representative, could not think of a time when information provided by mental health staff impacted whether an incarcerated person was classified as Level S. Ex. 19, Malone 30(b)(6) Dep. at 118:13–19.

B. Placement into a Pathway Within the Step-Down Program

24. Incarcerated persons classified as Security Level S at ROSP are automatically enrolled in the Step-Down Program. Ex. 11, Duncan Dep. at 24:15–25:1.

25. The stated purpose of the Step-Down Program is to “


[REDACTED].” Ex. 1, 2012 Step-Down Manual, at -694.

26. The Step-Down Program contains two pathways: the Intensive Management (“IM”) pathway and the Special Management (“SM”) pathway. *See generally* Ex. 6, VADOC-00003146 (O.P. 830.A); Ex. 1, 2012 Step-Down Manual; Ex. 2, 2020 Step-Down Manual.

27. The IM Pathway ends at a Level 6 pod and does not provide a pathway back to general population. *Id.* at -149 [REDACTED] for the IM population).

28. The IM and SM pathways provide for different privilege levels and require different lengths of time to achieve those privilege levels. *See generally id.*; Ex. 1, 2012 Step-Down Manual.

29. The Dual Treatment Team (“DTT”) is tasked with assigning inmates in Level S to one of the two pathways upon their arrival at ROSP. Ex. 4, Mathena 30(b)(6) Dep. at 255:9–257:18; Ex. 5, VADOC-00134589 at -603 (2021 O.P. 830.A). The DTT is headed by the Chief of Housing and Programs, and members include unit managers, Institutional Program Manager, Intelligence Officer, Mental Health Associate, Facility Medical Director, counselors, correctional officers, and other staff members with relevant information. Ex. 5, VADOC-00134589 at -591 (2021 O.P. 830.A).

30. The DTT does not review whether someone is properly placed in Level S. Ex. 4, Mathena 30(b)(6) Dep. at 264:19–265:4.

31. The DTT does not include a psychiatrist, and there is no requirement that the DTT include a mental health professional who has actually observed or treated the individual being reviewed. *Id.* at 267:8–14; Ex. 20, Gallihar Dep. at 127:19–128:1.

32. Although the Step-Down Program Manual provides that the DTT “may include” a mental health associate, the psychology associate who was solely responsible for monitoring the mental health of Level S offenders between 2015 and 2020 did not have a speaking role in DTT meetings unless called upon, and was not called upon in numerous DTT meetings. Ex. 25, Trent Dep. at 30:15–20, 276:17–278:4.

33. While incarcerated persons at Level S wait for a pathway assignment from the DTT, they are housed in an orientation pod. Ex. 4, Mathena 30(b)(6) Dep. at 242:12–15; Ex. 5, VADOC-00134589 at -591 (2021 O.P. 830.A). In the orientation pod, the inmate’s privileges and security protocols are similar to those used at SM-0 or IM-0—the most restrictive levels within the Step-Down Program. Ex. 4, Mathena 30(b)(6) Dep. at 243:11–15; *see also* Ex. 5, VADOC-00134589 at -593 (2021 O.P. 830.A) (the Intake/Orientation Unit “[REDACTED]”); Ex. 17, 2023

Arrington Decl. ¶ 8.

34. According to VDOC, incarcerated persons generally spend 30 days in the orientation pod. Ex. 4, Mathena 30(b)(6) Dep. at 320:15–18; Ex. 11, Duncan Dep. at 224:16–18.

35. The time that an inmate spends in the orientation pod does not count towards the minimum time he is required to spend at each level within his Step-Down pathway. *Id.* at 228:4–11.

36. There is no required timeframe by which the DTT must meet with the inmate to evaluate him for a pathway assignment, Ex. 4, Mathena 30(b)(6) Dep. at 245:12–16, and the DTT does not meet with a standard frequency. *Id.* at 118:15–19.

37. For example, Class Representative Peter Mukuria was sent to ROSP on November 16, 2012, but was not placed into a pathway until at least February 6, 2013. ECF No. 174-24 ¶¶ 2, 9 (Mukuria Aff.)

38. According to VDOC policy, the DTT is required to consider four factors in deciding an inmate's pathway: motivators and triggers; institutional adjustment and street behavior and crimes; offender intent and the result of their actions; and the inmate's "[REDACTED]" Ex. 2, 2020 Step-Down Manual at -699; Ex. 4, Mathena 30(b)(6) Dep. at 277:12–21.

39. No guidance is provided to the DTT on how to weigh the four factors that determine an inmate's pathway. Ex. 4, Mathena 30(b)(6) Dep. at 277:12–21. No formal training is provided to the DTT on how to weigh these factors. *Id.* at 277:22–278:5.

40. If there is no consensus among DTT members about whether a prisoner should be placed in the IM or the SM pathway, policy provides that the team is assigned to the IM pathway. Ex. 2, 2020 Step-Down Manual at -490; Ex. 21, Gibson Dep. at 145:3–6.

41. The DTT review takes on average five minutes for each inmate. Ex. 21, Gibson Dep. at 139:2–9.

42. Prior to 2017, inmates did not have the option to participate in DTT pathway assignment reviews. Gibson Dep. at 152:2:6; *see also* ECF No. 174-24 ¶ 9 (Mukuria Aff.) (class representative Mukuria attesting that he was not afforded an opportunity to be heard when he was first assigned to the IM pathway upon his arrival at ROSP in February 2013); Ex. 16, 2023 Cornelison Decl. ¶ 8 ("I did not attend any hearing to determine my pathway in the Step-Down Program").

43. The DTT decision on a pathway is final. Ex. 4, Mathena 30(b)(6) Dep. at 257:21–258:3. It may only be modified by the External Review Team (“ERT”), described below, during the biannual review process. Ex. 2, 2020 Step-Down Manual at -488.

C. Overview of the IM and SM Pathways

44. As part of the IM pathway, an inmate begins at the IM-0 privilege status, and may progress, successively, through the IM-1, IM-2, Security Level 6 IM Closed Phase I, and Security Level 6 IM Closed Phase II privilege statuses. Ex. 2, 2020 Step-Down Manual at -640. As an inmate progresses through these privilege levels, he gradually receives different privileges. *Id.*

45. An inmate assigned to the IM pathway may progress no further than the IM Closed Pod, Security Level 6. *Id.* at -517; *see also* Ex. 16, 2023 Cornelison Decl. ¶ 23 (“I was told that [the IM Closed Pod] was the end of the line for me and was a dead end.”).

46. The SM pathway has a similar privilege progression framework. After assignment to the SM pathway, an inmate begins at the SM-0 privilege status, and may progress, successively, through the SM-0, SM-1, SM-2, Security Level 6 Phase I & Level 6 Re-Entry, and Security Level 6 Phase II privilege statuses. Ex. 2, 2020 Step-Down Manual at -533. As with the IM pathway, an inmate receives more privileges as he advances within the SM pathway. *Id.*

[illegible]

██████████.” Ex. 6, VADOC-00003146 (O.P. 830.A) at -149.

48. Once an incarcerated person is assigned to the IM pathway, he may return to the general population only if he progresses through the Step-Down Program to Security Level 6 IM Closed Pod and is subsequently reclassified to the SM pathway. Ex. 18, Mathena Dep. at 609:5–17.

1. Length of Stay in Pathways

49. The Step-Down Program requires a minimum of nine months to progress through SM-0, SM-1 and SM-2, with at least three months required at each privilege level. The Step-Down Program requires a minimum of 18 months to progress through IM-0, IM-1, and IM-2, with at least six months required at each privilege level. Ex. 1, 2012 Step-Down Manual at -741; Ex. 2, 2020 Step-Down Manual at -529; Ex. 18, Mathena Dep. at 392:2–393:4 (“[A]n offender assigned to IM-0 must spend at least 18 months in the step-down program”), 396:17–397:2, 397:9–13 (“[A] 9-month period if you add up the periods of time at each level of the SM pathway”); Ex. 22, Collins Dep. at 145:22–146:7; 146:16–20; 148:5–10; Ex. 23, Kiser Dep. at 279:19–280:4, 286:5–8.

50. If a prisoner is sent back from SM-1 or SM-2 to SM-0, or IM-1 or IM-2 to IM-0, the clock restarts and he must spend an additional three or six months, respectively, at requisite SM or IM levels. Ex. 22, Collins Dep. at 147:17–148:4.

51. There is no maximum amount of time that an incarcerated person may remain in the SM or IM pathway. Ex. 23, Kiser Dep. at 279:19–280:4.

52. Certain incarcerated persons have spent over a decade at Level S in the Step-Down Program. *See* Ex. 22, Collins Dep. at 54:17–21 (prisoners spent more than 10 years); Ex. 20, Gallihar Dep. at 231:20–232:5 (many offenders spent 20 or more years); Ex. 14, Clarke Dep. at 316:18–321:4; Ex. 24, Clarke Dep. Ex. 20 (listing 16 prisoners who at the time had been housed in Level S at ROSP for at least 10 consecutive years). VDOC officials are aware of the lengths

of these individuals' stays in the Program. *See* Ex. 14, Clarke Dep. at 318:18–319:4; Ex. 22, Collins Dep. at 54:17–21; Ex. 20, Gallihar Dep. at 231:20–232:5.

53. Once an incarcerated person progresses to Level 6, there is no maximum amount of time that an inmate may remain in Level 6 pursuant to the Step-Down Manual, which provides only that “[REDACTED],” without any further criteria explaining what an inmate must do to demonstrate successful adjustment at Level 6. Ex. 2, 2020 Step-Down Manual at -512.

54. While in Level 6, an incarcerated person can be sent back to Level S as a result of a disciplinary charge, even if that charge that would not be sufficient to place the individual in Level S were he at some lower security level. *Compare* Ex. 4, Mathena 30(b)(6) Dep. at 217:1–220:12 (discussing segregation qualifiers) *with* Ex. 2, 2020 Step-Down Manual at -531, -535 and Ex. 26, VADOC-00053104 at -162, -168 (2017 Step-Down Manual) (noting that persons in Level 6 who commit serious disciplinary offenses resulting in assignment to restrictive housing or refuses over a period of time to meet standards for responsible behavior or program participation, their housing status may be lowered).

55. Incarcerated persons in Level S must satisfy all Step-Down Program requirements to progress out of Level S and eventually return to general population. Ex. 27, Mathena (*Reyes*) Dep. at 76:19–79:10; Ex. 28, Clarke (*Reyes*) Dep. at 76:19–78:21; Ex. 29, Raiford Dep. at 144:14–1454:5; Ex. 19, Malone 30(b)(6) Dep. at 207:17–208:6.

56. A belief by any or even all ROSP officials that an incarcerated person in Level S no longer poses a security risk justifying his ongoing segregation cannot justify making an exception to the requirement that incarcerated persons must satisfy all requirements of the Step-

Down Program to progress out of the Program. Ex. 27, Mathena (*Reyes*) Dep. at 76:19–79:10; Ex. 28, Clarke (*Reyes*) Dep. at 76:19–78:21.

2. Programming Requirements

57. The decision to progress a Level S inmate within the SM or IM pathway is made by the Building Management Committee (“BMC”),² which meets only once a month. Ex. 2, 2020 Step-Down Manual at -491; Ex. 4, Mathena 30(b)(6) Dep. at 301:11–14; Ex. 22, Collins Dep. at 178:3–8, 184:15–19. A prisoner who has met all requirements for progression within his pathway must wait for the next BMC meeting to progress. *Id.*

58. The DTT plays no role in evaluating an incarcerated person’s progress through the SM or IM pathways, except that the DTT approves a BMC recommendation to advance an incarcerated person from Level S to Level 6. Ex. 29, Gallihar (*Reyes*) Dep. at 91:16–92:14; Ex. 4, Mathena 30(b)(6) Dep. at 213:6–14, 255:9–257:18; Ex. 5, VADOC-00134589 at -603 (2021 O.P. 830.A).

59. The BMC also decides whether to regress an incarcerated person to a more restrictive privilege level “[REDACTED].” Ex. 2, 2020 Step-Down Manual at -491.

60. In determining whether an incarcerated person is eligible to progress through the SM or IM pathway, the BMC evaluates whether the incarcerated person has met certain behavioral goals (which, in turn, incorporate certain mandatory minimum periods of review), including personal hygiene, standing for the count, cell compliance, and respect / satisfactory rapport with staff and offenders. *Id.* at -525, -529–531, -534–535.

² The BMC is also known as the Building Management Team (“BMT”), and the BMC review is also known as the monthly status review. Ex. 29, Gallihar (*Reyes*) Dep. at 83:22–85:9, 90:6–11.

61. Incarcerated persons are not given formal notice regarding when their case will be discussed by the BMC. Ex. 22, Collins Dep. at 199:7–13; Ex. 11, Duncan Dep. at 272:15–273:1.

62. Incarcerated persons are not given formal notice of the BMC’s determination, except that during the subsequent ICA review, the ICA will tell the incarcerated person whether the BMC progressed him through the pathway or if the BMC kept him at the same privilege level or moved him backwards. *Id.* at 273:3–22.

63. VDOC policy does not require incarcerated persons to be present at BMC meetings, and incarcerated persons are not, in fact present for monthly BMC meetings. Ex. 2, 2020 Step-Down Manual at -491; Ex. 22, Collins Dep. at 197:21–198:1; Ex. 11, Duncan Dep. at 272:4–6.

64. As a matter of VDOC policy, an incarcerated person’s security level and housing assignment cannot be challenged through VDOC’s grievance process. Ex. 4, Mathena 30(b)(6) Dep. at 250:11–15; Ex. 30, VADOC-00004369 at -70 (Dec. 25, 2016 Cornelison Grievance); Ex. 31, Elam Dep. at 259:13–260:6. To the extent such grievances are entertained, VDOC staff consider only whether the proper procedures were followed. Ex. 31, Elam Dep. at 258:10–19; *see also* Ex. 15, 2023 Wall Decl. ¶¶ 17–18; Ex. 16, 2023 Cornelison Decl. ¶ 8.

a) Programming Requirements

65. All Level S inmates are required to engage in certain programming as part of the Step-Down Program, including completing a set of workbooks called the “Challenge Series.” Ex. 4, Mathena 30(b)(6) Dep. at 199:18–21; Ex. 19, Malone 30(b)(6) Dep. at 206:14–208:6. Ex. 2, 2020 Step-Down Manual at -500.

66. Level S inmates who do not participate in the Challenge Series “[REDACTED]
[REDACTED].” Ex. 32, Raiford Dep. at 144:14–145:5; *see also*

Ex. 23, Kiser Dep. at 231:21–232:4; Ex. 33, Turner Dep. at 228:21–229:4; Ex. 34, Mefford Dep. at 137:17–1384.

67. VDOC has never progressed an incarcerated person in the Step-Down Program who fails to complete the Challenge Series. Ex. 33, Turner Dep. at 229:12–17.

68. Incarcerated persons have thus been stuck at a certain privilege level for years due to a failure to complete the Challenge Series. *Id.* at 249:18–250:22; Ex. 35, VADOC-00158303 (Dec. 10, 2020 Email from D. Turner).

69. VDOC does not provide treatment officers with any criteria by which to grade incarcerated persons' Challenge Series workbooks. Ex. 36, VDOC Resps. and Objs. to Pls.' First Set of Admis., No. 24.

70. Incarcerated person Nicolas Reyes participated in the Step-Down Program from 2012 to 2019. Ex. 37, VADOC-00175822 (Internal Status Spreadsheet) (*see* lines 12564–12569).

71. In 2016, VDOC reviewed Mr. Reyes's progress in the Step-Down Program. As part of the review, VDOC personnel noted that Mr. Reyes "[r]equires translation, need[s] closer look." Ex. 38, Mathena 30(b)(6) (*Reyes*) Dep. at 281:14–282:9,

72. In early 2018, former Psychology Associate Senior Terrence Huff noted that there were "no violent charges in [Mr. Reyes's] record to indicate a continued need to remain in Level S," and that he [REDACTED]


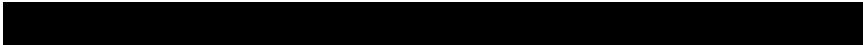
[REDACTED]
[REDACTED].” Ex. 39, VADOC-00014677 (Mathena 30(b)(6) (*Reyes*) Dep. Ex. 37).

73. Mr. Reyes was able to progress out of the Step-Down Program only after certain VDOC personnel worked with Mr. Reyes individually to complete the Challenge Series. Ex. 40, Collins

(Reyes) Dep. at 155:4–156:7; 219:14–220:18; 233:9–236:8; 237:18–239:1; 272:4–18; 303:20–304:4.

b) Behavioral Goals

74. VDOC policy requires VDOC personnel to rate incarcerated persons in the Step-Down Program on certain behavioral goals. Step-Down Program participants must maintain sufficient ratings on those behavioral goals in order to progress to a different privilege level within the Step-Down Program. Ex. 38, Mathena 30(b)(6) (Reyes) Dep. at 131:18–133:17; Ex. 4, Mathena 30(b)(6) Dep. at 292:9–293:17; Ex. 41, Fleming Dep. at 135:21–136:3; Ex. 42, VADOC-00162510 at -566 (Fleming Dep. Ex. 2). Failure to meet behavioral goals can result in demotion of incarcerated persons to lower privilege levels within the IM or SM pathway. Ex. 4, Mathena 30(b)(6) Dep. at 308:11–17; Ex. 18, Mathena Dep. at 409:5–410:17 (noting that people have been sent backwards within their pathway for kicking on doors, which is seen as disrespectful); *see also* Ex. 43, 2023 Riddick Decl. ¶ 25 (returned to SM-0 from SM-2 due to poor status ratings).

75. The behavioral goals on which Step-Down Program participants are rated include: “
” VDOC policy requires that Step-Down Program participants be graded once per week each by the unit manager, unit counselor, and frontline corrections officer on each goal, earning a grade of G (good), A (acceptable), or P (poor). Ex. 2, 2020 Step-Down Manual) at -529; Ex. 22, Collins Dep. at 167:14–17, 168:9–16, 169:19–171:5.

76. Incarcerated persons’ progress on behavioral goals is documented on status rating charts, which document the number of good, poor, or acceptable ratings that an incarcerated person receives. Ex. 44, Duncan (DePaola) Dep. at 103:17–108:7; Ex. 45, VADOC-00021251

(Mathena Dep. Ex. 13). These status rating charts are utilized by the BMC during its monthly meeting to determine if an incarcerated person has met the behavioral goals. Ex. 44, Duncan (*DePaola*) Dep. at 109:3–11; 113:7–23.

77. VDOC personnel admit that the ratings used to determine whether incarcerated persons are meeting behavior goals are “subjective,” “arbitrary,” and at least partially dependent on the VDOC employee who is rating the Step-Down Program participant. Ex. 4, Mathena 30(b)(6) Dep. at 296:10–297:4, 301:5–8; Ex. 46, Robinson Dep. at 303:21–304:5; Ex. 22, Collins Dep. at 171:20–172:14; Ex. 47, Younce Dep. at 174:8–20; Ex. 23, Kiser Dep. at 213:3–15; Ex. 20, Gallihar Dep. at 72:12–22, 73:1–3.

78. There is no formal training provided for staff to evaluate whether Step-Down Program participants are meeting behavioral goals. Ex. 4, Mathena 30(b)(6) Dep. at 298:6–299:18; Ex. 48, King Dep. at 56:21–58:12; Ex. 49, Reynolds Dep. at 209:8–21.

79. VDOC has no written policies, procedures, or guidance related to how to rate a Step-Down Program participant or distinguish between poor, acceptable, and good ratings. Ex. 4, Mathena 30(b)(6) Dep. at 298:6–299:18; Ex. 48, King Dep. at 56:21–58:12, 186:16–20; Ex. 20, Gallihar Dep. at 72:12–22, 73:1–3; Ex. 49, Reynolds Dep. at 209:8–21.

80. The Step-Down Manual specifies a minimum number of “Good” ratings a Step-Down Program participant must receive in order to progress to the next privilege level. The Step-Down Manual similarly specifies a maximum number of “Poor” ratings a Step-Down Program participant can receive to be allowed to progress to the next privilege level. Ex. 22, Collins Dep. at 168:9–21; Ex. 2, 2020 Step-Down Manual at -529, -534.

- a. To progress from IM-0 to IM-1 or SM-0 to SM-1, there may be: “[REDACTED]
[REDACTED]
[REDACTED]” Ex. 2, 2020 Step-Down Manual at -529, -534.
- b. To progress from IM-1 to IM-2 or SM-1 to SM-2, there may be: “[REDACTED]
[REDACTED]
[REDACTED]” *Id.*
- c. To progress from IM-2 or SM-2 to Security Level 6: “[REDACTED]
[REDACTED]
[REDACTED]” *Id.*

81. VDOC’s ratings of Step-Down Program participants are supposed to be recorded on status rating charts. Ex. 4, 30(b)(6) Mathena Dep. at 294:8-19; Ex. 45, VADOC-00021251 (Mathena Dep. Ex. 13). In practice, VDOC personnel sometimes fail to record participants’ ratings on their status rating charts. *See, e.g.*, Ex. 45, VADOC-00021251 (Mathena Dep. Ex. 13).

82. Although incarcerated persons receive an explanation of personal hygiene, cell compliance, and standing for count when they enter the Step-Down Program, they do not receive information about what qualifies as acceptable behavior as compared to poor behavior. Ex. 48, King Dep. at 185:20–186:15.

83. Incarcerated persons do not receive a copy of their ratings on responsible behavioral goals. Ex. 23, Kiser Dep. at 332:1–5; Ex. 4, Mathena 30(b)(6) Dep. at 305:14–16; Ex. 43, 2023 Riddick Decl. ¶ 24; Ex. 50, 2023 Cavitt Decl. ¶ 37.

84. VDOC’s ADA Coordinator Barry Marano testified that incarcerated persons with mental impairments may have difficulty maintaining proper hygiene, which is one of VDOC’s behavior goals. Ex. 51, Marano Dep. at 158:9–19.

85. Dr. McDuffie, a consultant psychiatrist at VDOC, testified that certain mental health conditions can affect a person's ability to cope with daily problems, including stress, ability to socialize, energy level, and hygiene. Ex. 52, McDuffie Dep. at 314:11–315:8.

c) Response to Disciplinary Infractions

86. The Step-Down Program sets limits on the number and type of disciplinary charges a Step-Down Program participant may receive within defined time periods at each privilege level before that participant is disqualified from proceeding to the next privilege level. Ex. 2, 2020 Step-Down Manual at -529, -534.

87. VDOC divides disciplinary charges into 100-series charges and 200-series charges, with 200-series charges considered less serious and, in some cases, eligible for informal resolution. Ex. 53, 2016 O.P. 861.1 at 2, 5–12 (Beard Dep. Ex. 7).

88. 200-series charges include such offenses as, disobeying an order (201); failing to follow facility count procedures (213); unauthorized possession of a lottery ticket or a negotiable instrument (217); vulgar or insolent language or gestures toward employees (222); accepting compensation for legal services (223); tattooing or piercing of self or others (236); intentionally discarding food, trash, body wastes/fluids, or other substances, except into an approved receptacle (237); failure to follow posted or written facility rules and regulations (243); consensual sexual acts (209); and lying or giving false information to an employee (206). *Id.* at 10–12.³

89. To progress from IM-0 to IM-1, there must be “[REDACTED]” and “[REDACTED]” within a continuous six-month

³ All VDOC disciplinary charges were removed from the most recent version of the publicly-available operating procedure on offender discipline, but these charges were all included in procedure through the version effective on June 1, 2023.

period. Ex. 2, 2020 Step-Down Manual at -529. To progress from SM-0 to SM-1, there must be “no serious assaultive weapons related 100 series charges” and “[REDACTED]” within a continuous three-month period. *Id.* at -534.

90. To progress from IM-1 to IM-2, there must be “[REDACTED]” within a continuous six-month period. *Id.* at -529. To progress from SM-1 to SM-2, there must be “[REDACTED]” and “no [REDACTED]” within a continuous three-month period. *Id.* at -534.

91. To progress from IM-2 to IM-Closed, the incarcerated person must remain charge-free for a continuous six-month period. *Id.* at -529. To progress from SM-2 to any of the SL-6 units, the incarcerated person must remain charge free for a continuous three-month period. *Id.* at -534.

92. Incarcerated persons’ receipt of disciplinary charges can block their progression through the Step-Down Program, even if those charges relate to minor rules violations. For example, Plaintiff Gary Wall was required to stay in IM-2 for at least six additional months after receiving a 200-level disciplinary infraction for allegedly blocking the vent in his cell. Ex. 15, 2023 Wall Decl. ¶ 43; Ex. 54, Pacholke Rebuttal Rep. ¶¶ 15–19 and accompanying footnotes. 200-level charges can lead to an incarcerated person’s demotion to an earlier privilege level. Ex. 18, Mathena Dep. at 402:9–415:3; Ex. 55, VADOC-00090616 at -620 (Mathena Ex. 14). For example, a 200-level disciplinary charge for lying result in a prisoner being sent back to an earlier privilege level. Plaintiff Kevin Snodgrass received such a 200-level charge and was moved from SM-2 back to SM-1. Ex. 18, Mathena Dep. at 402:9–415:3; Ex. 55, VADOC-00090616 at -620 (Mathena Ex. 14).

d) ICA Reviews

93. ICA hearings are inmate case reviews, which may be held for various reasons. Ex. 56, VADOC-00003090 at -092–93, -096–98 (2014 O.P. 830.1). Depending on the purpose of the ICA hearing, an incarcerated person may or may not receive formal process. *Id.* As a matter of VDOC policy, incarcerated persons receive formal process when ICA hearings relate to increasing an incarcerated person’s security level, removing an incarcerated person from general population, or transferring an incarcerated person to a higher security level institution. *Id.* at 6.

94. According to the Step-Down Manual, each Level S inmate is to be given an ICA hearing at least every 90 days (“90-Day ICA Hearing”) as part of the Step-Down Program. Ex. 2, 2020 Step-Down Manual at -492.

95. In the version of Operating Procedure 830.1 with an effective date of June 1, 2017 and amended on January 1, 2018, segregation review hearings were listed as an example of hearings that required formal process procedures. Ex. 57, VADOC-00107513 at -516 (2017 O.P. 830.1).

96. The current version of Operating Procedure 830.1 does not include restorative housing review hearings, or 90-Day ICA Hearings, as types of hearings that require formal process protections. *Id.* at -518.

97. The 90-Day ICA Hearing is a housing status review, meaning it determines only whether an inmate is eligible for general population or must remain in segregation. Ex. 44, Duncan (*DePaola*) Dep. at 190:2–4.

98. The ICA does not change an inmate’s housing status if the inmate has not met the Step-Down Program requirements. *Id.* at 193:20–22.

99. Pursuant to VDOC policy, there is no way for the ICA to accelerate the Step-Down Program timeline from its mandatory minimum number of months spent at each step of the SM or IM pathways. Ex. 22, Collins Dep. at 149:6–13.

100. Advance notice of an ICA review is provided to the incarcerated person via a DOC-11G form. The DOC-11G form does not indicate the evidence the ICA is considering or the decision VDOC contemplates based on that evidence. *See* Ex. 58, VADOC-00006446 (July 22, 2014 Hammer DOC-11G Form).

101. ICA reviews take place predominately at an offender’s cell door. Ex. 32, Raiford Dep. at 105:14–106:6. *See also* Ex. 15, 2023 Wall Decl. ¶ 20; Ex. 16, 2023 Cornelison Decl. ¶ 13; Ex. 43, 2023 Riddick Decl. ¶ 56; Ex. 50, 2023 Cavitt Decl. ¶ 31.

102. Incarcerated persons receive the results of an ICA review after the review, when they receive a copy of the DOC-11H form. The DOC-11H form is sometimes days or weeks after the ICA review. Ex. 15, 2023 Wall Decl. ¶ 20; Ex. 16, 2023 Cornelison Decl. ¶ 13; Ex. 43, 2023 Riddick Decl. ¶ 57.

103. ICA forms provided to incarcerated persons often refer to the need for a “longer period of stable adjustment” as the reasoning to keep an incarcerated person in his current housing assignment. *See, e.g.*, Ex. 59, VADOC-00010341 (Feb. 18, 2016 Mukuria DOC-11H Form); Ex. 33, Turner Dep. at 131:7–9 (testifying that at least one corrections officer repeatedly used this shorthand in completing ICA paperwork); Ex. 32, Raiford Dep. at 118:22–122:3 (testifying that this shorthand is used as a catch-all to mean that an inmate is “ [REDACTED] [REDACTED] ” or “ [REDACTED] ”); Ex. 29, Gallihar (*Reyes*) Dep. at 192:22–195:6 (noting that the phrase “stable adjustment” was used “a lot” in ICA forms and was

not defined anywhere in policies or guidance). The term “stable adjustment” is not defined anywhere in VDOC policies or guidance. Ex. 29, Gallihar (*Reyes*) Dep. at 194:8–10.

3. Reclassification to Level 6 Pods

104. Incarcerated persons who have advanced in the Step-Down Program may be eligible to progress from Level S to Level 6. For an incarcerated person to progress from Level S to Level 6, four separate reviews must take place. Ex. 4, Mathena 30(b)(6) Dep. at 264:11–14. First, the BMC must make a recommendation to the DTT to progress the inmate to Level 6. Second, the DTT must meet and recommend that the inmate be progressed to Level 6. Third, upon the DTT’s recommendation, the Warden must approve the security level reduction. Ex. 2, 2020 Step-Down Manual at -489–91; Ex. 4, Mathena 30(b)(6) Dep. at 261:12–264:14. And finally, once the Warden approves the security level reduction, the BMC must meet a second time to determine the Level 6 unit into which the inmate will be assigned. Ex. 4, Mathena 30(b)(6) Dep. at 262:2–6.

105. VDOC policy provides no time limits within which these four reviews must take place. *Id.* at 264:15–18; *see generally* Ex. 2, 2020 Step-Down Manual at -489–91. While an inmate waits for these four reviews to take place, he remains in Level S. Ex. 4, Mathena 30(b)(6) Dep. at 263:5–9.

106. If there is a lack of bed space in the Level 6 unit into which an incarcerated person is recommended to be transferred, the incarcerated person can remain in Level S for additional time until bed space opens. Ex. 50, 2023 Cavitt Decl. ¶ 47; Ex. 60, VADOC-00023965 (DTT Review recommending Peter Mukuria for IM-Closed on June 9, 2016); Ex. 61, VADOC-00010343 (ICA review dated 8/6/2016 continuing to keep Peter Mukuria in segregation in IM-2 because “Offender waiting bed space in IM Closed”); Ex. 62, VADOC-00175652 (ICA review noting

Gary Wall had been approved by the Dual Treatment to be released to IM Closed Pod “pending bed space”).

107. As a matter of VDOC policy, an incarcerated person is not interviewed in connection with a decision to move him from Level S to Level 6 (or from Level 6 to Level 5). Ex. 20, Gallihar Dep. at 143:14–21; *see also* Ex. 15, 2023 Wall Decl. ¶ 21.

4. ERT Reviews

108. The ERT is a group of VDOC employees who are not employed at ROSP or WRSP who perform bi-annual reviews of each inmate housed at ROSP and classified at Levels S or 6. Ex. 2, 2020 Step-Down Manual at -488.

109. According to VDOC, the purpose of the ERT review is to make sure that an incarcerated person is appropriately classified as Level S or 6 and is in the right pathway—IM versus SM. Ex. 18, Mathena Dep. at 478:20–479:9. For inmates in the IM pathway, a pathway change by the ERT is the only way to progress to Security Level 5. Ex. 2, 2020 Step-Down Manual at -507; Ex. 11, Duncan Dep. at 194:2–16; Ex. 33, Turner Dep. at 208:5–9.

110. Prior to 2018, the ERT did not interview incarcerated persons in connection with its review. Ex. 18, Mathena Dep. at 461:7–462:15.

111. While the ERT began interviewing incarcerated persons in 2018, the ERT did not begin interviewing incarcerated persons in sizeable numbers until 2019. Indeed, all but six ERT interviews of incarcerated persons were conducted on or after May 14, 2019. *Id.* at 471:9–472:4 (noting that all interviews have been recorded and all recordings are preserved); Ex. 63, May 9, 2023 Email from Meghan Podolny and accompanying attachment indicating that only 5 interview recordings were from 2018.

112. VDOC does not keep records that identify which inmates have been interviewed by the ERT, with the exception of records from certain interviews conducted in November 2021. *Id.* The ERT does not interview all incarcerated persons in the IM pathway. Ex. 18, Mathena Dep. at 457:2–4. Instead, the ERT only interviews incarcerated persons in the IM pathway who are being considered for a pathway change or who are considered “stuck” in the program. *Id.* at 459:2–12.

113. The ERT does not interview all incarcerated persons in the SM pathway. *Id.* at 456:13–18, 456:19–21 (SM inmates are interviewed less frequently than IM inmates). Indeed, the current chairman of the ERT does not “ever remember doing any interviews of SM-0s or SM-1s or SM-2s.” Ex. 4, Mathena 30(b)(6) Dep. at 227:5–6; Ex. 18, Mathena Dep. at 455:8–9.

114. The ERT has never adjusted the privilege level status of an inmate. Ex. 33, Turner Dep. at 172:2–11, 177:17–22.

115. The ERT is not involved in the decision to move an inmate from Level S to Level 6 or from Level 6 to Level 5. Ex. 18, Mathena Dep. at 482:18–21, 483:2–4.

116. The ERT does not document the rationale for its decisions. *Id.* at 496:4–497:19

117. While one could presumably interview the members of the ERT to try to learn the rationale for individual decisions, ERT members do not keep contemporaneous notes of their meetings. *Id.* at 497:20–498:6.

118. VDOC does not provide incarcerated persons documentation explaining the outcome of their ERT reviews. *Id.* at 497:8–19; Ex. 44, Duncan (*DePaola*) Dep. at 124:2–19; ECF No. 174-24 (Mukuria Aff.) ¶ 18; Ex. 64, Wall Dep. at 203:9–14; Ex. 50, 2023 Cavitt Decl. ¶ 51.

119. The outcome of an ERT review is not grievable. Ex. 4, Mathena 30(b)(6) Dep. at 254:22–255:3; Ex. 65, VADOC-00007200 at -02 (Mathena Dep. Ex. 12).

D. Conditions of Confinement

1. Privileges at Different Levels of the Program

a) IM Pathway

120. Incarcerated persons in the IM pathway have fewer privileges than incarcerated persons in general population. Ex. 33, Turner Dep. at 210:10–16.

121. IM-0 is the most restrictive level of the IM pathway. Currently, incarcerated persons at IM-0 are prohibited from holding jobs, are prohibited from having a TV or radio in their cell, and may borrow only two library books biweekly. They are prohibited from purchasing food from commissary and can spend only \$15 per week on non-food items. Ex. 2, 2020 Step-Down Manual at -528; Ex. 16, 2023 Cornelison Decl. ¶ 8. They are allotted only two phone calls per month. They are not permitted any in-person visitation, and video visits must be specifically approved. Ex. 2, 2020 Step-Down Manual at -528. They are permitted only three showers per week. *Id.* Ex. 1, 2012 Step-Down Manual at -740; Ex. 26, VADOC-00053104 at -158 (2017 Step-Down Manual).

122. Incarcerated persons at IM-0 are not eligible to earn good time credit. Ex. 11, Duncan Dep. at 94:9–16.

123. Incarcerated persons at IM-0 currently do not have access to programming other than the Challenge Series, which they must complete while in their cells. *Id.* at 106:16–19; Ex. 4, Mathena 30(b)(6) Dep. at 199:22–200:7, 56:9–20 (“there’s no security reason that I can think of” for exclusion of Level S prisoners from certain programming, such as the “Cognitive Stimulation program.”)

124. The current privilege restrictions at IM-1 are similar to those at IM-0, with some modest increases. Incarcerated persons at IM-1 are eligible to purchase \$15 per week of food from the

commissary as well as \$10 of non-food items. They are able to borrow 3 library books biweekly, are allowed three phone calls per month, and are allowed to have a TV and radio in their cells.

Ex. 2, 2020 Step-Down Manual at -528.

125. Incarcerated persons at IM-2 receive some additional privileges. At IM-2, incarcerated persons become eligible for employment as a shower sanitation worker. Incarcerated persons at IM-2 are allowed to spend up to \$30 per week at the commissary, receive up to four library books biweekly, and receive four phone calls per month. *Id.*

126. Once incarcerated persons reach the Level 6 IM Closed Pods, they are allowed to spend additional amounts at the commissary (\$35 per week at Phase I and \$45 per week at Phase II), receive additional library books (five bi-weekly), and receive additional phone calls (10 per month at Phase I and 15 per month at Phase II). *Id.* at -528; Ex. 26, VADOC-00053104 at -158 (2017 Step-Down Manual) .

127. Incarcerated persons in the general population receive a greater amount of commissary than Level S inmates, they can watch TV anytime, they can have contact visits, and they have more access to different jobs than incarcerated persons at Level S. Ex. 33, Turner Dep. at 210:18–211:14.

128. Although incarcerated persons in the Security Level 6 IM Closed Pod have greater privileges than those at IM-0 through IM-2, they lack privileges that are enjoyed by incarcerated persons in the general population. *See* Ex. 14, Clarke Dep. at 280:9–16.

b) SM Pathway

129. The privilege restrictions at SM-0 are identical to the privilege restrictions at IM-0. Ex 2, 2020 Step-Down Manual at -533; Ex. 26, VADOC-00053104 at -165 (2017 Step-Down Manual); Ex. 1, 2012 Step-Down Manual at -746; Ex. 17, 2023 Arrington Decl. ¶ 10.

130. At SM-1, incarcerated persons are eligible for employment as a barber, shower sanitation worker, or housekeeping worker. Otherwise, the privilege restrictions at SM-1 are identical to the privilege restrictions at IM-1. Ex. 2, 2020 Step-Down Manual at -533.

131. To the extent any out-of-cell programming is provided for incarcerated persons at Level S in the SM pathway, it is provided to them while they are in restraints. *Id.* at -501, -510.

132. Incarcerated persons in the SM pathway are not allowed contact visits and are limited to video visitation. Incarcerated persons in the general population are allowed contact visits. *Id.* at -533; Ex. 33, Turner Dep. at 209:13–18, 210:22.

E. Cells

133. Incarcerated persons in the Step-Down Program are housed in single cells that are roughly 7-by-10 feet. Ex. 22, Collins Dep. at 46:22–47:2; *see also* Ex., 66, Haney Rep. ¶ 133,

[REDACTED]
[REDACTED]; Ex. 17, 2023 Arrington Decl. ¶ 9 (“My cell in SM-0 is tiny, even compared to other prisons in VDOC”).

134. ROSP’s cells do not meet standards set by the American Corrections Association (“ACA”) for the size of segregation spaces. Ex. 48, King Dep. at 302:22–303:4.

135. Each cell has a steel door that is approximately two inches thick. Ex. 22, Collins Dep. at 48:13–14.

136. While prisoners “could at one time” close a flap over a cell door window so that guards could not see in, “those were removed” and “now you can always see in that window into the offender’s unit.” *Id.* at 52:10–53:2.

137. [REDACTED]
[REDACTED]

Ex. 66, Haney Rep. ¶ 133, Photograph 1; *see also* Ex. 67, Thorpe Dep. at 131:3–133:6 (the cell includes a bed, a table, a toilet, and a sink.); Ex. 17, 2023 Arrington Decl. ¶ 9.

138. “[REDACTED]” which “[REDACTED]”
 “[REDACTED]” Ex. 66, Haney Rep. ¶ 133, Photographs 2–4.

139. Cells have no mirrors. Ex. 17, 2023 Arrington Decl. ¶ 9.

140. “ [REDACTED] .” Ex. 66, Haney Rep. ¶ 133.

141. “[REDACTED].” *Id.*

1. Time Inside and Outside of Cell

142. Conditions of confinement in the Step-Down Program include limited out-of-cell time. *Id.* ¶ 134.

143. For Level S offenders, out-of-cell time consists of outdoor recreation, shower time, and kiosk time (e.g., for downloading music). Ex. 22, Collins Dep. at 68:19–21, 78:9–16; Ex. 34, Mefford Dep. at 73:18–74:1; Ex. 68, Manis Dep. at 210:11–15, 217:14–22. Time spent in programming also counts toward out-of-cell time totals. Ex. 11, Duncan Dep. at 96:21–97:3.

144. The amount of outdoor recreation time that incarcerated persons in the Step-Down Program are permitted has changed over the life of the Program. The 2012 Step-Down Manual provided that people at all levels of the Step-Down Program were permitted one hour per day of outside recreation. Ex. 1, 2012 Step-Down Manual at -740, -746; *see also* Ex. 15, 2023 Wall Decl. ¶¶ 10, 19. The 2017 Step-Down Manual provided that people at all levels of the Step-Down Program were permitted 2 hours per day of outside recreation. Ex. 26, VADOC-00053104 at -157, -165 (2017 Step-Down Manual); *see also* Ex. 66, Haney Rep. ¶ 136. The 2017 Step-Down Manual provided that individuals in Phase 1 and 2 of the Level 6 Step-Down Program should have outdoor recreation time for one hour, three times a week in one portion of

the manual, and in another portion of the manual that they should have two hours of outdoor recreation time per day. Ex. 10, VADOC-00002765 at -799, -818, -826 (2017 Step-Down Manual).

145. On September 14, 2018, VDOC issued a memo setting recreation times as follows:

[REDACTED]

Ex. 69, VADOC-00150626 (Mathena Ex. 2).

146. One VDOC employee testified that the increase in out-of-cell time mandated by the September 14, 2018 memo was the “first time since the step-down program became operational that the amount of hours out of cell were increased,” even though parts of the 2017 Step-Down Manual called for 2 hours of recreation time per day. Ex. 4, Mathena 30(b)(6) Dep. at 37:11–19; *but see* Ex. 10, VADOC-00002765 at -818, -826.

147. After Plaintiffs filed suit, in August 2019, VDOC purported to begin to offer prisoners in restrictive housing three hours of out-of-cell time seven days per week pursuant to a directive by now-former VDOC Director Clarke. Ex. 14, Clarke Dep. at 245:9–20.

148. A memo issued in September 2019 and effective in January, 2020, “changed the policy to give everyone in level S four hours out of cell.” Ex. 4, Mathena 30(b)(6) Dep. at 47:5–8; Ex. 70, VADOC-00118556 (Mathena Ex. 3); *see also* Ex. 66, Haney Rep. ¶ 136. There have not “been

any subsequent policy changes to the number of hours people in Level S are allowed out of cell” since the September 2019 memo. Ex. 4, Mathena 30(b)(6) Dep. at 47:17–20.

149. Today, the amount of out-of-cell time allotted by VDOC policy for incarcerated persons at Level S and Level 6 depends on security and privilege level, and ranges from four to six hours per day. Ex. 22, Collins Dep. at 94:20–95:15.

150. In practice, however, many prisoners often spend less than four hours out-of-cell per day. In February 2021, “none of the units in Level S or Level 6 were getting out of cell for the full amount of time that they were entitled to under policy.” Ex. 4, Mathena 30(b)(6) Dep. at 85:12–17. “Each of the units in Level S were getting 2.8 hours ... max hours per day.” *Id.* at 85:21–86:2; *see also* Ex. 66, Haney Rep. ¶ 136 (citing Mathena Dep. Ex. 5) [REDACTED]

[REDACTED]”); Ex. 17, 2023 Arrington Decl. ¶ 12 (“The amount of time we are allowed to take for recreation varies.”).

151. Unit Manager Larry Collins receives a daily report of out-of-cell hours offered to inmates. Ex. 22, Collins Dep. at 92:22–93:9; 93:17–94:4.

152. Around April 2021, Collins noticed that documentation on out-of-cell time showed that, “offenders who were in Level S were, on average, being offered less than four hours of out-of-cell time per day.” *Id.* at 122:22–123:5; *see also* Ex. 66, Haney Rep. ¶ 136 (citing Ex. 22, Collins Dep. at 121:4–12, 122:22–123:5, 129:10–18) (“[REDACTED]

[REDACTED]”).

153. On April 5, 2021, Collins emailed his staff, “[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]” Ex. 71, VADOC-00158348 (Collins Ex. 47).

154. VDOC employees and officials acknowledge that incarcerated persons have been denied out-of-cell time, including because of prison-wide quarterly shake-downs, holidays, and inclement weather. *See, e.g.*, Ex. 33, Turner Dep. at 272:9–276:11. Certain of these events can result in the denial of out-of-cell time for significant periods of times. For example, during regular shakedown, incarcerated persons in the Step-Down Program may be entirely confined to their cells for 7–10 days at a time. Ex. 22, Collins Dep. at 110:8–9; 111:7–11.

155. Out-of-cell time can be denied or limited for various reasons. For example, because there are no restrooms in the recreation cages, if an incarcerated person needs to use the restroom during his recreation time, an officer will take him back to his cell and the incarcerated person will forfeit the rest of his recreation time. *See* Ex. 47, Younce Dep. at 236:17–237:2; Ex. 72, Snodgrass Dep. at 108:7–9 (“[REDACTED]
[REDACTED].”). The length of recreation time could also be affected by the number of incarcerated persons who want recreation that day, [REDACTED] Ex. 11, Duncan Dep. at 233:15, 19–21.

156. When incarcerated persons in the Step-Down Program are provided with recreation time, they are placed in a recreation cage. Ex. 66, Haney Rep. ¶ 138. The recreation cage is about

eight by ten feet, made out of chain link fence with Plexiglas around it. Ex. 22, Collins Dep. at 63:2–17, 63:18–64:5. The recreation cages are empty and prisoners are not provided any recreational equipment or toilet facilities. Ex. 16, 2023 Cornelison Decl. ¶ 21; Ex. 50, 2023 Cavitt Decl. ¶ 27; Ex. 66, Haney Rep. ¶ 138.

157. An ACA inspection found that the recreation cages at ROSP were smaller than the cage size recommended by the ACA. Ex. 48, King Dep. at 301:9–14.

158. Dogs are stationed near the recreation cages, and there have been instances in which incarcerated persons have been attacked or bitten while engaging in recreation. Ex. 66, Haney Rep. ¶ 140; ECF No. 174-28 ¶ 4 (Wall Aff.).

159. Out-of-cell programing other than recreation time is limited. Ex. 66, Haney Rep. ¶ 142. Programming at IM-0 and SM-0 is conducted entirely in-cell. Ex. 4, Mathena 30(b)(6) Dep. at 199:22–200:7 (“people at the lowest level of Level S, meaning SM-0 or IM-0, don’t have access to programming other than the challenge series.”). When out-of-cell programming occurs at other privilege levels, “[REDACTED]

[REDACTED]” Ex. 66, Haney Rep. ¶ 142, Photographs 8–9.

Programming may also take place in what VDOC refers to as “[REDACTED],” in which incarcerated persons are also restrained. Ex. 66, Haney Report ¶ 142, Photograph 7.

2. Security Restrictions

160. Incarcerated persons in Level S are subject to additional security restrictions, as compared to incarcerated persons housed in the prison’s general population. Ex. 117, VDOC O.P. 801.4 (effective Dec. 1, 2022) at 4, <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-801-4.pdf>; Ex. 33, Turner Dep. at 210:10–16, 213:1–3.

161. Incarcerated persons in Security Level S receive meals in their cell; those in the general population typically eat communally. Complaint ¶ 98; Answer ¶ 98.

162. Incarcerated persons in Security Level S are all assigned to individual cells; those in the general population usually have a cell partner. Ex. 33, Turner Dep. at 188:17–18, 189:3–5.

163. Incarcerated persons in Security Level S recreate alone in recreation cages as described above; those in the general population have outside recreation with a group of inmates, and can play basketball or go to the gym. *Id.* at 189:6–10, 191:12–13, 211:7–8.

164. Incarcerated persons in Security Level S begin programming alone in their cells. Ex. 2, 2020 Step-Down Manual at -499. People in the IM pathway will continue to program in their cells “ [REDACTED] [REDACTED] .” *Id.* at -501.

165. Out-of-cell programming in Level S is conducted while restrained in “ [REDACTED] ” or “ [REDACTED] ”; those in the general population do not need to conduct programming in program chairs or therapeutic modules. Ex. 33, Turner Dep. at 188:15–17, 211:3–5. People in IM-0 conduct programming alone in their cells. *Id.*

166. Incarcerated persons in Security Level S undergo strip searches every time they are brought out of their cells; there are many times a general population inmate does not need to be strip searched when leaving his cell. *Id.* at 189:13–20; Complaint ¶ 108; Answer ¶ 108; Ex. 66, Haney Rep. ¶ 135 (prisoners in the Step-Down Program “ [REDACTED] [REDACTED] .”).

167. Incarcerated persons in Security Level S are typically restrained using handcuffs and leg irons while outside of their cell; those in the general population can come out of their cell

unrestrained. Ex. 33, Turner Dep. at 188:12–14, 190:12–13, 210:18–19; Ex. 2, 2020 Step-Down Manual at -492–93.

3. VDOC’s Awareness of the Conditions of Confinement

168. VDOC officials are aware of the above stated and other conditions of confinement in the Step-Down Program through direct observation and prisoner’s grievances about these conditions. Ex. 14, Clarke Dep. at 116:6–8.

169. Larry Collins, an ROSP Unit Manager, testified that he receives a daily report of out-of-cell hours offered to inmates and that he has for “at least probably the last three years.” Ex. 22, Collins Dep. at 92:22–93:9; 93:17–94:4.

170. Randall Mathena, VDOC’s Director of Security and Correctional Enforcement, testified that he takes “steps to monitor the concerns that offenders in level S or 6 are raising.” Ex. 18, Mathena Dep. at 379:2–12.

171. Dr. Everett McDuffie, a consultant psychiatrist who works at ROSP, testified that he’s been on “[REDACTED]” to discuss prisoner litigation, hunger strikes, and housing. Ex. 52, McDuffie Dep. at 43:4–15; 44:2–45:3.

172. Michael Younce, a former Unit Manager at ROSP, testified that he would make rounds by cells in his unit every day. Ex. 47, Younce Dep. at 32:5–8; 33:2–3; 57:5–6.

173. Similarly, Carl Manis, VDOC’s Regional Administrator for the Central Region, testified that he would make rounds at WRSP when he was the Warden there, including through the D building, which “had some of your restorative housing, and then they also had D3, which was the SMI program, the HSDTP program,” and he would sometimes do these rounds with the unit manager or the major. Ex. 68, Manis Dep. at 65:1–11; 66:13–16; 67:6–10.

174. VDOC employees also expressed concerns over the mental health of inmates in segregation. A February 2, 2012 email exchange among VDOC mental health staff discussed whether “[REDACTED].” Ex. 73, Lee Dep. at 150:6–20; Ex. 74, VADOC-00044033 (Lee Ex. 22).

175. As of 2018, Dr. Denise Malone, VDOC’s Chief of Mental Health and Wellness, and Dr. William Lee, a former mental health supervisor, would receive a notification when “[REDACTED]” Ex. 73, Lee Dep. at 180:18–181:5.

III. Mental Healthcare Within the Step-Down Program

A. VDOC Does Not Screen Mentally Ill Persons Out of the Step-Down Program.

176. Until 2017, the VDOC policies governing the intake process at ROSP did not provide for a mental health evaluation. Ex. 1, 2012 Step-Down Manual at -704; Ex. 10, VADOC-00002765 at -783 (2017 Step-Down Manual).

177. There is no formal health screening that takes place prior to classifying an incarcerated person as Level S. Ex. 48, King Dep. at 170:10–14.

178. No mental health evaluation is conducted as part of the decision to classify an incarcerated person as Level S. Ex. 11, Duncan Dep. at 69:8–15; Ex. 15, 2023 Wall Decl. ¶ 8.

179. No formal health screening takes place prior to assigning an incarcerated person to either the IM or SM pathway. Ex. 48, King Dep. at 170:15–19.

180. An incarcerated person deemed at risk of deterioration in restorative housing can still be placed in the Step-Down Program. Ex. 19, Malone 30(b)(6) Dep. at 151:4–8.

181. The absence of a present mental health complaint during an incarcerated person's intake screening at ROSP does not mean the absence of a mental health condition. Ex. 52, McDuffie Dep. at 254:6–9.

182. About half of the annual acts of self-injurious behavior among people in VDOC custody “ [REDACTED] ” and with “ [REDACTED] ” Ex. 73, Lee Dep. at 189:14–190:20; Ex. 75, VADOC-00131129 at -134 (Lee Dep. Ex. 31) at slides 2, 4.

183. 149 out of 186 incarcerated persons with mental health codes at ROSP were housed in restrictive housing in February 2012. Ex. 75, VADOC-00161495 at -497 (Lee Dep. Ex. 36); *see also* Ex. 18, Mathena Dep. at 527:12–528:20.

184. More than one hundred incarcerated persons in restrictive housing at ROSP have been prescribed SSRIs, a medication used to treat depression, PTSD, and anxiety. Ex. 52, McDuffie Dep. at 309:4–13.

185. In 2018, Dr. Lee was notified when “ [REDACTED] ”
[REDACTED] ” Ex. 73, Lee Dep. at 180:18–181:5.

B. VDOC's Mental Healthcare System is Inadequate.

186. Mental health staff providing services to prisoners in the Step-Down Program at ROSP include a psychiatrist and persons in a role called “psychology associate” or “qualified mental health professionals” (“QMHP”). Ex. 76, VADOC-00002882 at -884 (2018 O.P. 730.1); *see also* Ex. 52, McDuffie Dep. at 16:19–17:11 (recognizing QMHP “ [REDACTED] ” to a Psych Associate I).

187. Dr. Everett McDuffie, VDOC's licensed contract psychiatrist, is tasked with “ [REDACTED] ”
[REDACTED] .”
Ex. 52, McDuffie Dep. at 7:22–8:2, 77:13–15, 82:10–13.

188. Dr. McDuffie spends no more than 16 hours over two days per week at ROSP. *Id.* at 86:21–87:5, 102:6–103:5.

189. Neither psychology associates nor QMHPs are required to be licensed mental health providers. Ex. 76, VADOC-00002882 at -884 (2018 O.P. 730.1); Ex. 77, VADOC-00107259 at -261 (2020 O.P. 720.10). Psychology associates are not qualified to diagnose mental illness. Ex. 73, Lee Dep. at 44:12–16.

190. Psychology associates make referrals to the psychiatrist for psychiatric treatment. Ex. 77, VADOC-00107259 at -261 (2020 O.P. 720.10); Ex. 73, Lee Dep. at 45:9–19.

191. In some circumstances, patients may “ [REDACTED] ” psychology associates get the psychiatrist involved. Ex. 52, McDuffie Dep. at 200:6–9. As a result, Dr. McDuffie has had patients he “ [REDACTED] [REDACTED] .” *Id.* at 201:16–202:3.

192. VDOC uses a mental health classification system to indicate “the inmate’s current mental status and services needs.” Ex. 78, VADOC-00002925 at -933 (2019 O.P. 730.2).

193. Mental health codes are assigned and changed by psychology associates. Ex. 52, McDuffie Dep. at 263:21–264:4.

194. VDOC defines Serious Mental Illness as: “Psychotic Disorder, Bipolar Disorder, and Major Depressive Disorder ... any diagnosed mental disorder (excluding substance use disorders) currently associated with serious impairment in psychological, cognitive, or behavioral functioning that substantially interferes with the person’s ability to meet the ordinary demands of living and requires an individualized treatment plan by a qualified mental health clinician.” Ex. 118, VDOC O.P. 730.1 (effective April 1, 2021) at 3, <https://vadoc.virginia.gov/files/operating-procedures/700/vadoc-op-730-1.pdf>.

195. Incarcerated persons determined to have a Serious Mental Illness are given the mental health code MH-2S. Ex. 78, VADOC-00002925 at -934 (2019 O.P. 730.2).

196. Incarcerated persons are given a mental health classification code of MH-2 if they both have a diagnosis from the psychiatrist and are prescribed medication to treat their symptoms. Ex. 33, Trent Dep. at 197:5–11; Ex. 52, McDuffie Dep. at 286:21–287:8; Ex. 19, Malone 30(b)(6) Dep. at 168:4–9.

197. Individual psychotherapy is not offered at ROSP. Ex. 52, McDuffie Dep. at 124:3–10 (“
[REDACTED]
[REDACTED]
[REDACTED]”).

198. Dr. McDuffie believes that individual therapy could and should be available to prisoners at ROSP. *Id.* at 127:9–14 (“
[REDACTED]
[REDACTED]
[REDACTED]”).

C. VDOC Is Aware that Restrictive Housing Harms People with Mental Illnesses.

199. Dr. William Lee testified that [REDACTED]
[REDACTED] Ex.
73, Lee Dep. at 112:13–17.

200. Clarke conceded that it was “important” to divert mental health populations out of restrictive housing “because they are potentially at risk. And in our estimation, individuals with mental health diagnoses are individuals who, when placed in those conditions, those restrictive conditions, may respond in a manner that is not appropriate. It may have a -- may be injurious to them, ultimately.” Ex. 14, Clarke Dep. at 265:8–266:1.

201. Dr. McDuffie has “[REDACTED]
[REDACTED]
[REDACTED].” Ex. 52, McDuffie Dep. at 140:14–18.

202. Grievance data produced by VDOC contains numerous examples of grievances submitted by prisoners in the Step-Down Program complaining of mental health symptoms including depression, anxiety, hallucinations, and suicidal ideation. Ex. 79, VADOC-00174671 (Internal Status Spreadsheet) (*see, e.g.*, lines 36, 1365, 1674, 3430, 4490, 4822, 6894, 10642, 12005, 12191, 13957, 15267, 15415, 17966, 25228, 27373).

D. There Is a Lack of Evidence in Support of Defendants’ Affirmative Defenses.

1. VDOC and Red Onion Budgets Have Increased Year-over-Year and Include Discretionary Line Items.

203. VDOC is subject to the requirements of the Americans with Disabilities Act (“ADA”) and the Rehabilitation Act (“RA”). Answer ¶¶ 252, 261.

204. VDOC receives federal funding within the meaning of the RA. Answer ¶ 261.

205. VDOC adduced no evidence of its annual budgets between Fiscal Year 2012 and Fiscal Year 2022 with the exception of Fiscal Year 2016. In Fiscal Year 2016, VDOC [REDACTED]

[REDACTED] Ex. 80, VADOC-00167941 at -991 (VDOC Academy for Staff Development, Instructor Manual 2019); *see generally*, Ex. 81, Vare Report; Ex. 82, Vare Dep.

206. ROSP’s budget increased from \$25.9 million in Fiscal Year 2012 to \$38.5 million in Fiscal Year 2022. Ex. 83, VADOC-00140551 at -553, -592 (Red Onion Fiscal Year 2012-22 Budgets).

207. ROSP’s budget does not include clinical, dental, hospital, medical, x-ray and laboratory, and pharmaceutical expenses. *Id.* at -554.

208. WRSP's budget increased from \$26.1 million in Fiscal Year 2012 to \$40.2 million in Fiscal Year 2022. Ex. 84, VADOC-00140508 at -510, -549 (Wallens Ridge Fiscal Year 2012-22 Budgets).

209. Neither ROSP's nor WRSP's budget identifies an ADA-related or accommodation-related line item. *See generally*, Ex. 83, VADOC-00140551 (Red Onion Fiscal Year 2012-22 Budgets); Ex. 84, VADOC-00140508 (Wallens Ridge Fiscal Year 2012-22 Budgets).

210. VDOC's Former Director Harold Clarke is able to direct approximately 40% of VDOC's budget as he sees fit. Ex. 14, Clarke Dep. at 127:4-13.

2. VDOC Has Not Adduced Evidence in Support of Its Fundamental Alteration and Undue Burden Defenses.

211. Plaintiffs' ADA expert, Richard Wells, has proposed more than 17 changes to the policies, procedures, and practices underlying the Step-Down Program based on his experience working on ADA compliance issues in state and federal prisons. *See, e.g.*, Ex. 85, Wells Rep. ¶¶ 195-223. Those proposed changes, which are not exhaustive, are:

- a. a change in housing assignment or in housing conditions (single cell, change in cell mate, etc.);
- b. assistance with activities as necessary;
- c. modified work or program schedules;
- d. prompting or coaching by staff;
- e. additional monitoring;
- f. counseling and/or therapy (group or individual);
- g. instituting effective communication practices (e.g., using respectful language, active listening, open body language, creating time and space for communication, etc.), repeating or rephrasing instructions, and effective communication that

maximize an incarcerated person's ability to comprehend and understand the information;

- h. additional assistance to navigate programs and procedures, etc.
- i. greater guidance for staff to provide effective communication during health care encounters, due process events, or other high stakes or significant events;
- j. adequate training for staff on effective communication, on where and how to document communication, on identification of disabled incarcerated persons, on their accommodation and communication needs, and on coordination among staff in different departments for referrals and identification of disabilities.
- k. effective, ADA-specific training for staff in the context of their employment at VDOC with attention to provision for ADA-related concerns across the medical and mental health disciplines;
- l. comprehensive, real-time, network tracking system to identify the incarcerated person's documented disability, communication accommodations or assistance needed, and the assessment applied to determine whether the information communicated was understood;
- m. informing incarcerated persons of their right to nondiscrimination under the ADA;
- n. identifying mental impairments, disabilities, and accommodation information at intake;
- o. providing an effective accommodation request process and a dedicated grievance procedure;
- p. inclusion of mental health professionals in DTT, BMC, and ERT hearings; and

q. appropriate, reasonable accommodations and modifications to the Step-Down Program, including the Challenge Series.

Id.

212. Defendants have not adduced any evidence related to the monetary cost of implementing any of Mr. Wells's proposed changes. *See generally*, Ex. 81, Vare Rep.; Ex. 82, Vare Dep.

213. Defendants have not adduced any evidence related to the monetary cost of implementing any change to the Step-Down Program. *See generally, id.*

214. Defendants have not adduced any evidence related to the administrative burden of implementing any of Mr. Wells's proposed changes. *See generally, id.*

215. Defendants have not adduced any evidence related to the monetary cost of implementing any change to the Step-Down Program. *See generally, id.*

216. Defendants have not adduced evidence demonstrating that Mr. Wells's proposed changes would result in a "fundamental alteration" of the Step-Down Program. *See generally, id.*

217. Defendants have not adduced evidence demonstrating that any change to the Step-Down Program would result in a "fundamental alteration" of the Program. *See generally, id.*

218. Other penological institutions have implemented certain of the changes proposed to VDOC by Mr. Wells in his Report. Ex. 86, Wells Rebuttal Rep. ¶ 86; Ex. 87, Wells Dep. at 106:9–12, 106:15–17, 108:11–12, 115:3–6.

219. The California Department of Corrections and Rehabilitation ("CDCR"), the Michigan Department of Corrections ("Michigan DOC"), Alameda County jail system, Orange County jail system, and Monterey County jail system employ or are in the process of implementing real-time, networked tracking systems. Ex. 87, Wells Dep. at 106:9–12, 106:15–17, 108:11–12, 115:3–6.

220. A real-time networked tracking system includes: disability-related information, such as type of disability; reasonable accommodation requirements; adaptive support services needed; and techniques for effective communication. Such a system should support the user's ability to identify the disabled incarcerated person, their housing, and their programming assignments/schedules; allow for staff to review related disability and programming information; and allow for staff to enter information, such as documentation verifying effective communication was provided and achieved for significant encounters or events. Ex. 85, Wells Rep. ¶ 111.

IV. The Step-Down Program Poses a Significant Risk of Harm, and Plaintiffs Have Been Harmed by Defendants' Policies.

A. There Is Scientific Consensus that Restrictive Housing Is Harmful.

221. There is a large body of research regarding the harms caused by restrictive housing and solitary confinement. Ex. 66, Haney Rep. ¶¶ 40, 46; Ex. 88, Morgan Dep. at 101:4–11.

222. Social isolation and social exclusion have been studied by scientific researchers and determined to be harmful to mental and physical health. Ex. 66, Haney Rep. ¶ 37.

223. Scientific studies of persons housed in solitary confinement have identified the following symptoms from which such persons disproportionately suffer: appetite and sleep disturbances, headaches, anxiety, panic, a sense of impending emotional breakdown, lethargy, hypersensitivity to stimuli, irritability, aggression, rage, loss of control, ruminations, paranoia, nightmares, perceptual distortions, cognitive dysfunction, hallucinations, depression, self-mutilation, suicidal ideation and behavior, and social withdrawal. *Id.* ¶ 53; Ex. 88, Morgan Dep. at 107:1–3.

224. Scientific studies have identified correlations between time spent in solitary confinement and certain cardiac conditions, including hypertension, arrhythmia, and tricuspid insufficiency.

Ex. 89, Hendricks Rep. ¶ 54. Scientific studies have also found correlations between time spent in solitary-type confinement and lower life expectancies. Ex. 66, Haney Rep. ¶¶ 98–99.

225. Scientific studies have identified correlations between housing type and various kinds of incident reports in prison. For example, studies show that self-mutilation and suicide are more prevalent in isolated housing units. Ex. 66, Haney Rep. ¶ 54; Ex. 88, Morgan Dep. at 109:16–110:3. Scientific studies have also found that, for incarcerated persons who had prior mental health diagnoses, time spent solitary confinement resulted in worsening symptom expression, with exacerbating lasting beyond the time spent in solitary confinement. Ex. 89, Hendricks Rep. 24.

B. Defendants’ Experts Agree that Restrictive Housing Causes Harm.

226. Defendants’ correctional mental health expert, Robert D. Morgan, testified that segregation poses a universal risk of harm. Ex. 88, Morgan Dep. at 96:14–22.

227. Dr. Morgan does not disagree with the body of scientific literature that identifies “[REDACTED]
[REDACTED]
[REDACTED]” *Id.* at 101:4–11.

228. Dr. Morgan does not disagree that “[REDACTED]
[REDACTED]” *Id.* at 101:9–11.

229. Dr. Morgan testified that the following physical effects may be exacerbated by segregation: [REDACTED] *Id.* at 107:1–8.

230. Dr. Morgan agrees that [REDACTED]
[REDACTED] *Id.* at 108:7–11,
108:14–16 [REDACTED]
[REDACTED]

231. Dr. Morgan agrees that [REDACTED]

[REDACTED] *Id.* at 109:22–110:3.

232. Dr. Morgan agrees that certain psychological and physical effects of restrictive housing—including feelings of loneliness, hypersensitivity, depressed mood, feelings of anxiety, and social withdrawal—can be permanent. Ex. 88, Morgan Dep. at 116:1–14.

233. Dr. Gregory Saathoff, a licensed contract psychiatrist who treats patients at several VDOC facilities and who was retained by Defendants as an expert psychiatric consultant, also agrees that carceral conditions that impose significant social isolation can create a significant risk of mental and physical harm to those who are housed in such conditions. Ex. 90, Saathoff Dep. at 27:18–22, 74:7–19, 133:5–15.

234. Dr. Saathoff agrees with that persons with mental illness are particularly vulnerable to the harms of solitary confinement. *Id.* at 137:17–138:2.

235. Dr. Saathoff further agrees that prolonged segregation of adult inmates with serious mental illness should be avoided due to the potential for harm to so such inmates. *Id.* at 146:5–20.

C. Plaintiffs Have Been Harmed by Defendants’ Policies.

236. Class members also report suffering physical and psychological harms during and after being placed in the Step-Down Program’s restrictive housing units.

1. Derek Cornelison

237. Derek Cornelison was reclassified as Level S on June 7, 2016, and was assigned to the IM pathway at ROSP. He was reclassified as Level 6 on March 26, 2018 and entered the IM Closed Pod on March 27, 2018. He was reclassified as Level 5 on August 26, 2019 and entered general population on August 29, 2019. Ex. 79, VADOC-00175822 (Internal Status

Spreadsheet). He spent a total of three years, two months, and twenty-three consecutive days in the Step-Down Program.

238. Mr. Cornelison testified that he experienced symptoms of anxiety, depression, mood swings, anger, disorientation, and an inability to concentrate during his time in the Step-Down Program. Ex. 16, 2023 Cornelison Decl. ¶¶ 35–36; Ex. 91, Cornelison Dep. at 247:6–248:12, 250:8–19, 251:15–252:13.

239. Mr. Cornelison has been diagnosed with [REDACTED]. Hendricks Report ¶ 54. This diagnosis “ [REDACTED] [REDACTED] ” Ex. 89, Hendricks Rep. ¶ 54.

240. Over the course of Cornelison’s first ten weeks in the Step-Down Program, he lost more than 20 pounds. Ex. 91, Cornelison Dep. at 137:15–138:9.

241. After returning to general population, Cornelison was diagnosed with pulmonary hypertension. *Id.* at 239:13–240:4; Ex. 16, 2023 Cornelison Decl. ¶ 40.

242. Cornelison testified that he currently suffers from digestive issues, insomnia, and body aches. *Id.* ¶ 41.

2. Brian Cavitt

243. Brian Cavitt was transferred to ROSP in 2016 from the Massachusetts Department of Corrections under the Interstate Corrections Compact. Ex. 50, 2023 Cavitt Decl. ¶ 3. He was placed in the IM pathway on November 29, 2016 and classified as Level S on December 7, 2016. He was reclassified as Level 6 on August 29, 2018 and placed in the IM Closed Pod. On November 9, 2020, he was reassigned to the SM pathway and was placed in the SM Phase I pod November 30, 2020. He was reclassified as Level 5 on April 9, 2021 and placed in general

population on that same date. Ex. 79, VADOC-00175822 (Internal Status Spreadsheet). He spent four years, four months, and twelve consecutive days in the Step-Down Program.

244. Mr. Cavitt testified that he experienced feelings of anxiety, paranoia, sensitivity to loud noises during his time in the Step-Down Program. Ex. 50, 2023 Cavitt Decl. ¶ 76. Mr. Cavitt also testified that he experienced [REDACTED] [REDACTED] while in the Step-Down Program. Ex. 92, Cavitt Dep. at 50:18–4

3. Peter Mukuria

245. Peter Mukuria was classified as Level S on February 17, 2013 and assigned to the IM pathway. Ex. 79, VADOC-00175822 (Internal Status Spreadsheet). He was reclassified as Level 6 on August 24, 2016 and placed in the IM Closed Pod on August 30, 2016. *Id.* He was reclassified as Level S on August 15, 2019 and placed in the SM pathway. *Id.* He was reclassified as Level 6 on March 9, 2020. *Id.* He was reclassified as Level 5 on September 7, 2020 and entered general population the next day. *Id.* He spent seven years, six months, and twenty-three consecutive days in the Step-Down Program at ROSP.

246. Mr. Mukuria testified that he experienced anxiety, for which he was prescribed medication during his time in the Step-Down Program. Ex. 93, Mukuria Dep. at 173:15–17. Mr. Mukuria also experienced difficulty concentrating. Ex. 79, VADOC-00175822 (Internal Status Spreadsheet) at 173:7–13.

247. Mr. Mukuria has been diagnosed with persistent depressive disorder. Ex. 89, Hendricks Rep. ¶ 77. Testing also indicates that Mukuria suffers from short-term memory problems “[REDACTED] [REDACTED]” the Step-Down Program and that meet the diagnostic criteria for mild neurocognitive disorder. *Id.*

4. Vernon Brooks

248. Vernon Brooks was classified as Level S on August 5, 2015 and placed in the IM pathway on September 3, 2015. Ex. 79, VADOC-00175822 (Internal Status Spreadsheet). He was reclassified as Level 6 on August 1, 2017 and placed in the IM Closed Pod. *Id.* He was reclassified as Level S on February 16, 2018 and restarted the IM pathway at IM-0. *Id.* He was reclassified as Level 6 on August 30, 2019 and placed in the IM Closed Pod. *Id.* He was reclassified as Level 5 on March 9, 2020 and returned to general population two days later. *Id.* He spent four years, seven months, and seven consecutive days in the Step-Down Program.

249. During his time in the Step-Down Program, Mr. Brooks experienced depression, agitation, inability to concentrate, insomnia, short-term memory lapses, and paranoia. ECF No. 174-19 ¶ 42 (Brooks Decl.); Ex. 94, Brooks Dep. at 149:6–19.

250. Mr. Brooks has been diagnosed with [REDACTED] [REDACTED]. Ex. 89, Hendricks Rep. ¶ 38. Mr. Brooks began taking medication for his mental health issues in around October 2021. ECF No. 174-19 ¶ 42 (Brooks Decl.).

5. William Thorpe

251. William Thorpe was classified as Level S and held in long-term solitary confinement prior to the implementation of the Step-Down Program. ECF No. 174-27 ¶ 3 (Thorpe Decl.); Ex. 79, VADOC-00175822 (Internal Status Spreadsheet) (*see* lines 3636–3650). He was reclassified as Level 6 on September 4, 2013. *Id.* He was briefly classified as Level 5 from January 1–26, 2016. *Id.* He was then reclassified as Level S on January 26, 2016, and remained at that classification until he was transferred to the Texas Department of Criminal Justice under the Interstate Corrections Compact on May 29, 2019. *Id.*; ECF No. 174-27 ¶ 3 (Thorpe Decl.).

Thorpe spent over 24 years in long-term solitary confinement while in VDOC custody, including almost seven years in the Step-Down Program at ROSP. ECF No. 174-27 ¶ 10 (Thorpe Decl.).

252. Mr. Thorpe claims to suffer from the following impairments: non-mobility, high blood pressure, glaucoma, restlessness, agitation, anxiety, irregular bowel movements, loss of hair, kidney disease, tingling in his right hand, and hearing loss. *See generally* Ex. 67, Thorpe Dep. at 58:9–64:12. Mr. Thorpe claims he is restless and experiences racing thoughts. *Id.* at 100:12–15.

253. Psychological testing indicates that Thorpe meets the diagnostic criteria for [REDACTED] [REDACTED] Ex. 89, Hendricks Rep. ¶ 116.

6. Gary Wall

254. Gary Wall was classified as Level S prior to the implementation of the Step-Down Program in 2012. Ex. 79, VADOC-00175822 (Internal Status Spreadsheet) (*see* lines 12278–12326). He was reclassified as Level 6 on August 30, 2013. *Id.* He was then reclassified as Level S on September 24, 2013 and placed in the SM pathway at ROSP. *Id.* He was reclassified as Level 6 on September 23, 2014, and as Level 5 on May 5, 2015. *Id.* From the start of the Class Period (August 1, 2012) until his reclassification as Level 5, Mr. Wall spent two years, nine months and five consecutive days in the Step-Down Program. He was then reclassified as Level S on September 3, 2015 and placed in the IM pathway. *Id.* He was reclassified as Level 6 on May, 29, 2019. *Id.* He was reclassified as Level 5 on June 1, 2020 and placed in general population the next day. Ex. 79, VADOC-00175822 (Internal Status Spreadsheet). Mr. Wall's second placement in the Step-Down Program lasted four years, eight months, and thirty consecutive days.

255. Mr. Wall testified that he was diagnosed by VDOC mental health providers with PTSD in 2014 after suffering a dog bite while housed in the Step-Down Program at ROSP. Ex. 15, 2023

Wall Decl. ¶¶ 15–16. His symptoms included heart palpitations, sweaty hands, insomnia, night sweats, nightmares, and anxiety. *Id.* ¶ 15. He was prescribed medication for his symptoms, and his mental health code was increased to MH-2. *Id.* ¶ 16.

256. Subsequent psychological testing confirmed that Mr. Wall exhibits the symptoms of [REDACTED] Ex. 89, Hendricks Rep. ¶ 100.

257. While in the IM pathway in 2016, he began to have thoughts of suicide. Ex. 15, 2023 Wall Decl. ¶ 29.

258. Since returning to general population, Mr. Wall continues to have a hard time sleeping, feels anxious and paranoid around other people, and has panic attacks. *Id.* ¶ 52. VADOC documents show that Mr. Wall lost weight while in the Step Down program. Ex. 95, VADOC-00001279 (Wall Medical Records) at -358 (Wall weighed 154 pounds on December 18, 2012), -309 (“[REDACTED]”), -307 (Wall weighed 135.8 pounds on July 7, 2017, his height was 6 foot, 1 inches, and he was prescribed Boost, a supplement for weight gain), -298 (On November 18, 2018, Wall was 6 feet and 1 inch tall, weighed 140.2 pounds, and was deemed “[REDACTED]” and prescribed a Boost supplement). VDOC documents also show that Mr. Wall’s mental health deteriorated while he was in the Step-Down Program and he suffered from depression. Ex. 96, VADOC-00148900 (July 22, 2017 Wall Mental Health Coding Classification Review/Update) (Wall’s mental health code was changed from MH-1 “[REDACTED]” to MH-2 “[REDACTED]” on July 22, 2017 without explanation); Ex. 7, VADOC-00149015 (July 22, 2017 Wall Mental Health Screen: Special Housing Assignment) (In a July 22, 2017 Mental Health Screening, Mr. Wall is diagnosed with depression and prescribed Prozac).

7. Frederick Hammer

259. Frederick Hammer was classified as Level S on April 4, 2012 and assigned to the IM pathway. Ex. 79, VADOC-00175822 (*See* Rows 24852–24866). He was reclassified as Level 6 on August 28, 2013 and placed in the IM Closed Pod on September 23, 2013. *Id.* He was reclassified as Level S on July 31, 2014 and placed in the IM pathway. *Id.* He was reclassified as Level 6 on July 25, 2016 and placed in the IM Closed Pod. *Id.* He was reclassified as Level 5 on March 9, 2020 and returned to the general population two days later. *Id.* He spent seven years, eleven months, and six consecutive days in the Step-Down Program.

260. Mr. Hammer testified that he suffers the following ailments: anxiety, depression, agitation, anger, mood swings, bouts of disorientation, inability to concentrate, thoughts of suicide and other self-harm, shortness of breath, headaches, migraines, restlessness, and insomnia. He also now suffers from physical ailments such as type 2 diabetes, acid reflux, and arthritis. Ex. 98, Hammer Decl. ¶ 44.

8. Steven Riddick

261. Steven Riddick was classified as Level S prior to the implementation of the Step-Down Program, and was reclassified as Level 6 on August 30, 2013, after which he was housed primarily in the Level 6 Secure Integration Pod at ROSP. Ex. 79, VADOC-00175822 (*see* lines 506-534). He was reclassified as Level S on September 12, 2014 and placed in the SM pathway. *Id.* He was reclassified as Level 6 on September 22, 2017, but on October 2, 2017 was again classified as Level S and restarted the SM pathway. *Id.* He was reclassified as Level 6 on October 28, 2021. *Id.* He was reclassified as Level 5 and returned to general population on March 17, 2023. *Id.* After being removed from the SIP Pod and before returning to general

population, Mr. Riddick spent eight years, six months and six consecutive days in the Step-Down Program.

262. While in the Step-Down Program, Mr. Riddick testified that he experienced paranoia, trouble sleeping, nightmares, mood swings, difficulty concentrating, lack of focus, racing thoughts, and hallucinations. Ex. 43, 2023 Riddick Decl. ¶ 30. He also heard voices. *Id.*

263. Mr. Riddick was eventually diagnosed by VDOC mental health staff with [REDACTED] [REDACTED] and was prescribed medications. *Id.* ¶ 51.

Psychological testing confirmed a diagnosis of [REDACTED]

[REDACTED] Ex. 89, Hendricks Rep. ¶ 85.

Dated: September 11, 2023

Respectfully submitted,

/s/ Megan A. Crowley

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2023, 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.

By: /s/ Megan Crowley
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