

**U.S. District Court
Eastern District of Virginia – (Richmond)
CIVIL DOCKET FOR CASE #: 3:19-cv-00332-REP**

Thorpe et al v. Virginia Department Of Corrections et al
Assigned to: District Judge Robert E. Payne
Cause: 42:1983 Violation of Due Process and Equal Protection

Date Filed: 05/06/2019
Date Terminated: 04/21/2020
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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| Date Filed | # | Docket Text |
|------------|----------|---|
| 05/06/2019 | <u>1</u> | Complaint (Filing Fee: \$400, Receipt Number: 0422-6625497), filed by Steven Riddick, Brian Cavitt, Frederick Hammer, William Thorpe, Vernon Brooks, Dmitry Khavkin, Christopher Cottrell, Kevin Snodgrass, Derek Cornelison, Gerald McNabb, Peter Mukuria, and Gary Wall. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Exhibit 1-A, # <u>3</u> Exhibit 1-B, # <u>4</u> Exhibit 1-C, # <u>5</u> Exhibit 2, # <u>6</u> Exhibit 3, # <u>7</u> Exhibit 4, # <u>8</u> Exhibit 5, # <u>9</u> Exhibit 6, # <u>10</u> Exhibit 7, # <u>11</u> Exhibit 8, # <u>12</u> Exhibit 9, # <u>13</u> Exhibit 10, # <u>14</u> Exhibit 11) (Cox, Alyson) (Entered: 05/06/2019) |
| 05/06/2019 | <u>2</u> | Proposed Summons re <u>1</u> Complaint,, by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) (Entered: 05/06/2019) |
| 05/07/2019 | <u>3</u> | Summons Issued as to Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson, Virginia Department Of Corrections. NOTICE TO ATTORNEY: REMOVE HEADERS and print out two electronically issued summons and one copy of the attachments for each defendant to be served with the complaint. (smej,) (Entered: 05/07/2019) |
| 05/07/2019 | <u>1</u> | Initial Case Assignment to District Judge Robert E. Payne. (smej,) (Entered: 05/07/2019) |
| 05/14/2019 | <u>4</u> | Motion to appear Pro Hac Vice by Maxwell Kalmann and Certification of Local Counsel Alyson Cox Filing fee \$ 75, receipt number 0422-6639863. by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) (Entered: 05/14/2019) |
| 05/14/2019 | <u>5</u> | Motion to appear Pro Hac Vice by Daniel Levin and Certification of Local Counsel Alyson Cox Filing fee \$ 75, receipt number 0422-6639888. by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) (Entered: 05/14/2019) |
| 05/14/2019 | <u>6</u> | Motion to appear Pro Hac Vice by Owen Pell and Certification of Local Counsel Alyson Cox Filing fee \$ 75, receipt number 0422-6639895. by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) (Entered: 05/14/2019) |
| 05/14/2019 | <u>7</u> | Motion to appear Pro Hac Vice by Kristen McAhren and Certification of Local Counsel Alyson Cox Filing fee \$ 75, receipt number 0422-6639911. by Vernon Brooks, Brian Cavitt, Derek |

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| | | Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) (Entered: 05/14/2019) |
| 05/14/2019 | <u>8</u> | Motion to appear Pro Hac Vice by Timothy Wilson and Certification of Local Counsel Alyson Cox Filing fee \$ 75, receipt number 0422-6639914. by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) (Entered: 05/14/2019) |
| 05/16/2019 | <u>14</u> | SUMMONS Returned Executed as to Harold Clarke, Steve Herrick, Denise Malone, Randall C. Mathena, Tori Raiford, H. Scott Richeson, A. David Robinson, and Virginia Department Of Corrections served on 5/10/2019, answer due 5/31/2019. (jsau,) (Entered: 05/17/2019) |
| 05/17/2019 | <u>9</u> | ORDER GRANTING <u>4</u> Motion for Maxwell Jacob Kalmann to appear Pro hac vice for Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, and Gary Wall. Signed by District Judge Robert E. Payne on 5/15/19. (jsau,) (Entered: 05/17/2019) |
| 05/17/2019 | <u>10</u> | ORDER GRANTING <u>5</u> Motion for Daniel Bernard Levin to appear Pro hac vice for Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, and Gary Wall. Signed by District Judge Robert E. Payne on 5/15/19. (jsau,) (Entered: 05/17/2019) |
| 05/17/2019 | <u>11</u> | ORDER GRANTING <u>6</u> Motion for Owen Cary Pell to appear Pro hac vice for Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, and Gary Wall. Signed by District Judge Robert E. Payne on 5/15/19. (jsau,) (Entered: 05/17/2019) |
| 05/17/2019 | <u>12</u> | ORDER GRANTING <u>7</u> Motion for Kristen Jentsch McAhren to appear Pro hac vice for Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, and Gary Wall. Signed by District Judge Robert E. Payne on 5/15/19. (jsau,) (Entered: 05/17/2019) |
| 05/17/2019 | <u>13</u> | ORDER GRANTING <u>8</u> Motion for Timothy Lawrence Wilson, Jr. to appear Pro hac vice for Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, and Gary Wall. Signed by District Judge Robert E. Payne on 5/15/19. (jsau,) (Entered: 05/17/2019) |
| 05/23/2019 | <u>15</u> | SUMMONS Returned Executed as to: Marcus Elam served on 5/14/2019, answer due 6/4/2019; Jeffrey Kiser served on 5/16/2019, answer due 6/6/2019; Carl Manis served on 5/15/2019, answer due 6/5/2019; Henry J. Ponton served on 5/14/2019, answer due 6/4/2019. (jsau,) (Entered: 05/23/2019) |
| 05/30/2019 | <u>16</u> | NOTICE of Appearance by Margaret Hoehl O'Shea on behalf of Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson, Virginia Department Of Corrections (O'Shea, Margaret) (Entered: 05/30/2019) |
| 05/31/2019 | <u>17</u> | Joint MOTION for Extension of Time to File Response/Reply as to <u>1</u> Complaint,, <i>and for Entry of a Consent Briefing Order</i> by Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson. (Attachments: # <u>1</u> Proposed Order)(O'Shea, Margaret) (Entered: 05/31/2019) |
| 05/31/2019 | <u>18</u> | MOTION to Dismiss for Failure to State a Claim <i>and for Lack of Jurisdiction</i> by Virginia Department Of Corrections. (O'Shea, Margaret) (Entered: 05/31/2019) |
| 05/31/2019 | <u>19</u> | |

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| | | Memorandum in Support re <u>18</u> MOTION to Dismiss for Failure to State a Claim <i>and for Lack of Jurisdiction</i> filed by Virginia Department Of Corrections. (Attachments: # <u>1</u> Exhibit 1 – 1997 Court Order, # <u>2</u> Exhibit 2 – 1981 Complaint, # <u>3</u> Exhibit 3 – 1982 Amended Complaint, # <u>4</u> Exhibit 4 – 1983 Settlement Agreement, # <u>5</u> Exhibit 5 – April 1983 Court Order, # <u>6</u> Exhibit 6 – August 1983 Court Order, # <u>7</u> Exhibit 7 – 1983 Memorandum Opinion, # <u>8</u> Exhibit 8 – 1985 Order and Settlement Agreement, # <u>9</u> Exhibit 9 – Mem in Support Entry of Modified Decree, # <u>10</u> Exhibit 10 – 1984 Show Cause Motion, # <u>11</u> Exhibit 11 – Special Grand Jury Report)(O'Shea, Margaret) (Entered: 05/31/2019) |
| 06/04/2019 | <u>20</u> | ORDER that the <u>17</u> Joint Motion for Enlargement of Time to File Initial Responsive Pleadings and for Entry of a Consent Briefing Order is granted. It is further ORDERED that: All individual defendants shall file their Answers and any other motions with respect to the Complaint by June 14, 2019; the plaintiffs shall file their responses to any filed motions by July 9, 2019; and, the individual defendants shall file their replies in support of any filed motions by July 15, 2019. It is SO ORDERED. Signed by Magistrate Judge David J. Novak on 6/4/19. (jsau,) (Entered: 06/04/2019) |
| 06/14/2019 | <u>21</u> | MOTION to Dismiss for Failure to State a Claim <i>and for Lack of Jurisdiction</i> by Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson. (O'Shea, Margaret) (Entered: 06/14/2019) |
| 06/14/2019 | <u>22</u> | Memorandum in Support re <u>21</u> MOTION to Dismiss for Failure to State a Claim <i>and for Lack of Jurisdiction</i> filed by Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson. (Attachments: # <u>1</u> Exhibit 1 – OP 830.2, # <u>2</u> Exhibit 2 – OP 841.4, # <u>3</u> Exhibit 3 – OP 830.1, # <u>4</u> Exhibit 4 – OP 730.3)(O'Shea, Margaret) (Entered: 06/14/2019) |
| 06/14/2019 | <u>23</u> | Opposition to <u>18</u> MOTION to Dismiss for Failure to State a Claim <i>and for Lack of Jurisdiction</i> filed by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Attachments: # <u>1</u> Exhibit A)(Cox, Alyson) (Entered: 06/14/2019) |
| 06/14/2019 | <u>24</u> | ANSWER to Complaint by Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson.(O'Shea, Margaret) (Entered: 06/14/2019) |
| 06/20/2019 | <u>25</u> | REPLY to Response to Motion re <u>18</u> MOTION to Dismiss for Failure to State a Claim <i>and for Lack of Jurisdiction</i> filed by Virginia Department Of Corrections. (O'Shea, Margaret) (Entered: 06/20/2019) |
| 07/09/2019 | <u>26</u> | Memorandum in Opposition to <u>21</u> MOTION to Dismiss for Failure to State a Claim and for Lack of Jurisdiction filed by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) Modified docket text on 7/10/2019 (jsau,). (Entered: 07/09/2019) |
| 07/15/2019 | <u>27</u> | REPLY to Response to Motion re <u>21</u> MOTION to Dismiss for Failure to State a Claim <i>and for Lack of Jurisdiction</i> filed by Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson. (O'Shea, Margaret) (Entered: 07/15/2019) |
| 07/30/2019 | <u>28</u> | MOTION for Leave to File <i>Notice of Supplemental Authority</i> by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Attachments: # <u>1</u> Exhibit A)(Cox, Alyson) (Entered: 07/30/2019) |

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| 10/11/2019 | <u>29</u> | JOINT REPORT of Rule 26(f) Planning Meeting by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall (Cox, Alyson). Modified docket text on 10/11/2019 (sbea,). (Entered: 10/11/2019) |
| 10/21/2019 | <u>30</u> | ORDER 1) By November 4, 2019, the Plaintiffs shall file a Statement of Position addressing why this action should not be transferred to the United States District Court for the Western District of Virginia and, in so doing, shall consider the decision in <u>Nicolas Reyes v. Harold Clarke, et al.</u> , Civil Action No. 3:18cv611; and 2) By November 15, 2019, the Defendants shall file a Responsive Statement of Position; and 3) By November 21, 2019, the Plaintiffs shall file a Reply Statement of Position. It is so ORDERED. Signed by Senior United States District Judge Robert E. Payne on 10/21/2019. (sbea,) (Entered: 10/21/2019) |
| 11/04/2019 | <u>31</u> | Plaintiffs' Statement of Position in Support of Venue and Opposing Discretionary Transfer Responding re: <u>30</u> Order, filed by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall (Cox, Alyson). Clerk modified docket text on 11/5/2019 (sbea,). (Entered: 11/04/2019) |
| 11/15/2019 | <u>32</u> | Response to <u>30</u> Order., <i>Statement of Position</i> filed by Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson, Virginia Department Of Corrections. (Attachments: # <u>1</u> Affidavit Affidavit of Mr. Ponton)(Eckstein, Maya) (Entered: 11/15/2019) |
| 11/15/2019 | <u>33</u> | NOTICE of Appearance by Maya Miriam Eckstein on behalf of Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson, Virginia Department Of Corrections (Eckstein, Maya) (Entered: 11/15/2019) |
| 11/16/2019 | <u>34</u> | NOTICE of Appearance by Trevor Stephen Cox on behalf of Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson, Virginia Department Of Corrections (Cox, Trevor) (Entered: 11/16/2019) |
| 11/21/2019 | <u>35</u> | Reply to <u>32</u> Response, <i>In Support of Class Plaintiffs' Statement of Position in Support of Venue and Opposing Discretionary Transfer</i> filed by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) (Entered: 11/21/2019) |
| 11/26/2019 | <u>36</u> | MOTION for Leave to File <i>Notice of Supplemental Authority</i> by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Attachments: # <u>1</u> Exhibit 1)(Cox, Alyson) (Entered: 11/26/2019) |
| 12/05/2019 | <u>37</u> | RESPONSE in Opposition re <u>36</u> MOTION for Leave to File <i>Notice of Supplemental Authority</i> filed by Harold Clarke, Marcus Elam, Steve Herrick, Jeffrey Kiser, Denise Malone, Carl Manis, Randall C. Mathena, Henry J. Ponton, Tori Raiford, H. Scott Richeson, A. David Robinson, Virginia Department Of Corrections. (Eckstein, Maya) (Entered: 12/05/2019) |
| 12/06/2019 | <u>38</u> | REPLY to Response to Motion re <u>36</u> MOTION for Leave to File <i>Notice of Supplemental Authority</i> filed by Vernon Brooks, Brian Cavitt, Derek Cornelison, Christopher Cottrell, Frederick Hammer, Dmitry Khavkin, Gerald McNabb, Peter Mukuria, Steven Riddick, Kevin Snodgrass, William Thorpe, Gary Wall. (Cox, Alyson) (Entered: 12/06/2019) |
| 04/08/2020 | <u>39</u> | ORDER that the CLASS PLAINTIFFS' MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY (ECF No. <u>28</u>) is granted. It is so ORDERED. Signed by Senior United States District Judge Robert E. Payne on 4/8/2020. (sbea,) (Entered: 04/08/2020) |

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| 04/21/2020 | <u>40</u> | MEMORANDUM OPINION. See Opinion for details. It is so ORDERED. Signed by Senior United States District Judge Robert E. Payne on 4/20/2020. (sbea,) (Entered: 04/21/2020) |
| 04/21/2020 | <u>41</u> | ORDER that the Defendants' Motion to Transfer (ECF No. <u>32</u>) is granted. It is further ORDERED that the Clerk shall transfer this action to the Western District of Virginia. It is so ORDERED. Signed by Senior United States District Judge Robert E. Payne on 4/20/2020. (sbea,) (Entered: 04/21/2020) |
| 04/21/2020 | <u>I</u> | Case transferred to District of Western District of Virginia. Original file, Copy of Transfer Order, and Docket Report sent. (sbea,) (Entered: 04/21/2020) |