

**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

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION FOR PROTECTIVE ORDER**

As Plaintiffs have shown in their summary judgment briefing, currently under advisement by the Court, the conditions of confinement in the Step-Down Program operated by the Defendants at Red Onion State Prison are unconstitutional, in part because they pose a significant risk of physical and mental harm to those subjected to those conditions. These unconstitutional conditions are unchanged, and Defendants are now threatening the integrity and proper functioning of this case. After several prisoners at Red Onion State Prison—who may not have been in the Step-Down Program—attempted to set themselves on fire, Defendants responded with coercive and punitive measures directed at everyone in the Step-Down Program regardless of their individual circumstances. These measures include coercing prisoners into signing a “Safety Agreement,” which requires signees to affirm the truth of several statements of fact. If prisoners refuse to sign, they lose electric power in their cells. Critically, some of these statements are demonstrably false and may conflict with evidence that some class members have provided or may provide in this case.

Defendants' actions not only independently violate named Plaintiffs' and class members' (collectively, "Plaintiffs") rights, but also exacerbate the already unconstitutional conditions they have been subject to for years. Moreover, Defendants' actions interfere with Plaintiffs' ability to fully participate in this case, threatening the proper functioning of the litigation.

As set out below, this Court has the authority to enter an order protecting Plaintiffs who choose to exercise their First Amendment right to refuse to sign the Safety Agreement, at least in part in order to participate in the lawsuit. Because Defendants are unlawfully burdening that right and have refused to take any action to remedy the situation, or even to respond to Plaintiffs' counsel's good faith efforts to resolve this matter short of seeking relief from this Court, judicial action is necessary to protect Plaintiffs' right of access to the courts and the integrity of this litigation.

I. BACKGROUND

This case raises serious allegations regarding the conditions of confinement in the Step-Down Program at Red Onion State Prison. In April 2023, this Court certified both injunctive relief and damages classes as to Plaintiffs' constitutional and disability claims. Op. and Order, ECF No. 299. The Court subsequently reconsidered its class definition on Plaintiffs' disability claims, which led Plaintiffs to voluntarily move for decertification of those classes. Op. and Order, ECF No. 358; Pls.' Mot. to Exclude the Test. of Lenard Vare, ECF No. 476. On April 19, 2024, Plaintiffs submitted a Revised Statement designating proposed class representatives, a class notice, and a plan for distribution of the class notice for the Court's approval, which remains pending. Pls.' Revised Statement Regarding New Proposed Class Representatives and Am. Notice, ECF No. 471.

Despite many years of evidence that the Step-Down Program is both unconstitutional and poses a serious risk of harm to those subject to it, Defendants continue to operate the program in

much the same manner as alleged in Plaintiffs' Complaint filed nearly six years ago, and as established by the evidence submitted in support of Plaintiffs' pending Motions for Summary Judgment. Pls.' Am. Mot. For Partial Summ. J., ECF No. 380; Am. Mem. Of Law in Supp. of Pls.' Am. Mot. For Summ. J., ECF No. 383. As of June 30, 2024, there were nearly 100 people confined in Level S phases of the Step-Down Program.¹

Beginning around October 2024, news reports began to emerge from Red Onion State Prison that several prisoners had attempted to set themselves on fire and had suffered burns as a result. One media report, after interviewing one such prisoner, related that "the racism and abuses, the hard and inhumane conditions at Red Onion, was so intolerable that he and others were setting themselves on fire in desperate attempts to be transferred away from the prison. These were not protests, he made clear, but acts of desperation, hoping to get out of an insufferable situation."² Another prisoner reportedly set himself on fire "in response to desperate attempts to receive needed care for multiple chronic life-threatening heart diseases," for which he had "suffered repeated physical, verbal and psychological abuse and [been] denied treatment by Red Onion guards and medical staff."³ At least six different men at Red Onion intentionally burned themselves late last year.⁴ At least some of these men were so badly injured they required treatment in hospital burn units.⁵

¹ Chadwick S. Dotson, Virginia Dept. of Corrections, Restorative Housing in the Virginia Department of Corrections: FY2024 Report at 10, <https://rga.lis.virginia.gov/Published/2024/RD579/PDF>. This number does not include those confined in Level 6 units of the Step-Down Program, such as IM Closed or SM-2.

² Kevin Rashid Johnson, Prison Radio, Self Immolation in Virginia Prisons, <https://www.prisonradio.org/commentary/self-immolation-in-virginia-prisons/>; *see also* Elizabeth Weill-Greenberg, The Appeal, Prisoners Burned Themselves. So Staff Proposed "Making them Pay Money," <https://theappeal.org/red-onion-virginia-prison-self-immolated/>; The New York Times, Virginia Lawmakers Want to Know Why 6 Inmates Have Burned Themselves, <https://www.nytimes.com/2024/12/01/us/virginia-prisoners-burns-protest.html>;

³ Kevin Rashid Johnson, Prison Radio, Self Immolation in Virginia Prisons, <https://www.prisonradio.org/commentary/self-immolation-in-virginia-prisons/>.

⁴ Steven Mangual, Virginia Mercury, Fires of desperation at Red Onion are a call for dignity and justice, <https://virginiamercury.com/2025/02/26/fires-of-desperation-at-red-onion-are-a-call-for-dignity-and-justice/>.

⁵ Elizabeth Weill-Greenberg, The Appeal, Prisoners Burned Themselves. So Staff Proposed "Making them Pay Money," <https://theappeal.org/red-onion-virginia-prison-self-immolated/>.

These incidents called attention to the draconian and inhumane conditions the men endured at Red Onion and attracted significant attention from both the media and Virginia’s legislators. On November 26, 2024, Virginia’s Legislative Black Caucus issued a statement calling for an independent investigation into the conditions and staff abuses at Red Onion.⁶ The next day, VDOC released a statement confirming that six people had burned themselves but claiming that “[t]he recent round of stories about Red Onion are nothing more than bad-faith efforts to try to score cheap political points by advocacy groups who pursue prison abolition and policies that would make Virginians less safe.”⁷ On December 6, 2024, Delegate Holly Seibold wrote a letter to Director Dotson disputing this statement and noting that “[t]he widespread and indiscriminate use of solitary confinement at Red Onion is a practice that demands urgent scrutiny.”⁸

On December 16, 2024, Virginia’s House of Delegates’ Public Safety Committee held an oversight hearing about conditions at Red Onion, taking testimony and public comment.⁹ At the conclusion of the hearing, the Committee Chair asked the recently hired Corrections Ombudsman to prioritize an inspection and investigation of the conditions at Red Onion that led to these incidents of severe self-harm. Following that hearing, at least one legislator visited Red Onion to view the facility and speak to prisoners to hear first-hand about the conditions at the prison.¹⁰

⁶ Virginia Legislative Black Caucus, Press Release, The VLBC Condemns Inhumane Conditions at Red Onion State Prison, Calls for Immediate Action to Prevent Further Self-Immolation and Protect Human Rights, https://drive.google.com/file/d/1wAmysuA44UmBd3agBDGj_uO48RKjRhvZ/view.

⁷ Chad Dotson, Virginia Department of Corrections, VADOC Director Releases Statement on Red Onion State Prison, <https://wcyb.com/resources/pdf/eea7c291-23dc-4717-a732-29b6ee4a396d-VADOCDirectorStatement11.27.24.pdf>.

⁸ Holly Seibold, Justice Forward Virginia, Dear Director Dotson: A Letter from Delegate Holly Seibold, <https://justiceforwardva.com/blog/2024/12/10/dear-director-dotson-a-letter-from-delegate-holly-seibold>.

⁹ Virginia House of Delegates Video Streaming, House Public Safety Committee Meeting, (December 16, 2024), <https://sg001-harmony.sliq.net/00304/Harmony/en/PowerBrowser/PowerBrowserV2/20250306/-1/20427>.

¹⁰ Jeff Lester, Cardinal News, Del. Jones makes unannounced visit to Red Onion following reports of inmate mistreatment and self-immolation, <https://cardinalnews.org/2024/12/31/del-jones-makes-unannounced-visit-to-red-onion-following-reports-of-inmate-mistreatment-and-self-immolation/>.

Rather than taking steps to ameliorate the harmful conditions at Red Onion, VDOC's apparent response was to present everyone housed in the Step-Down Program with a Safety Agreement, attached as Exhibit A, with consequences to inmates who refused to sign the agreement. This agreement purports to offer incentives to people who refrain from acts of self-harm, while requiring signees to affirm several statements of fact—some of which are demonstrably false and may conflict with evidence that some prisoners have provided or may provide in this case. *See infra* at 11. These false statements include that the inmates signed the agreement voluntarily, that they agree that “facility staff is committed to [their] well-being,” that they “have access to mental health and other local resources, including multiple forms of support,” and that “there are alternative coping strategies available to [the prisoner], including but not limited to stress management techniques, communication with support staff, and engaging in recreational or vocational activities.” The agreement also contains vague provisions threatening unspecified consequences for undefined violations of the agreement.

Prisoners were told by Red Onion staff that if they refused to sign the agreement, the power to the outlets in their cells would be cut off. *See* Declaration of Sidney Bowman, March 21, 2025 (hereinafter “Bowman Decl.”), attached as Exhibit B. Unsurprisingly, in the face of this threat, many people signed the agreement. As for those who refused, Defendants made good on their threat: the power to their cells was shut off within a day.

This punishment is significant; individuals who are already locked in their cells for at least 20 hours a day now cannot watch television, listen to the radio, or use their tablet. Because prisoners in the Step-Down Program do not have access to out-of-cell programming (including educational programming and religious services), they access these programs through their electronic devices. Further, because their access to phone calls and visitation is so restricted,

emailing with loved ones through their tablets is their primary method of communication with the outside world. And because people in the Step-Down Program have little, if any, access to programming, library materials, or employment, their electronic devices provide critical stimulation to alleviate the stress, trauma and boredom of life in long-term solitary confinement. By denying people the ability to use their property simply for resisting compelled speech, Defendants' actions have made already intolerable living conditions materially worse.

In response to a media inquiry about the agreement, VDOC asserted that those people whose cells were powered down present "an immediate risk of self-harm."¹¹ But the facts belie this justification: VDOC has taken no action to assess or evaluate the mental health status of these individuals, has not provided any additional mental health treatment or support for them, and has not instituted any other precautions that would prevent incidents of self-harm. *See* Bowman Decl. ¶ 14.

At least one person has filed grievances alleging the unconstitutionality of VDOC's actions, but those grievances have been deemed "unfounded." Bowman Decl. ¶ 11. Plaintiffs' counsel has attempted to confer with Defendants' counsel about this issue for weeks with no response. Meanwhile, those who continue to refuse to sign the agreement remain without power to their cells, now going on over two months.

This consequence effectively places a substantial burden on individuals who refuse to sign the agreement because they believe the statements contained in it are false and may conflict with their past or future testimony in this case. Similarly, those who signed the agreement to avoid this burden face the possibility that the agreement could be used to chill, impeach, or undermine their past or future testimony, even though they did not sign the agreement freely.

¹¹ Elizabeth Weill-Greenberg, *The Appeal*, Virginia Prison Uses Threats, Bribes to Address Self-Harm, <https://theappeal.org/red-onion-prison-inmate-safety-agreement/>.

Importantly, this is not the first time Plaintiffs have been burdened or faced consequences for their participation in this litigation. Red Onion staff has, on multiple occasions over a sustained period of time, attempted to thwart the ability of Plaintiffs to communicate with counsel by interfering with legal visits, phone calls and legal mail, even after being alerted (through counsel) to Plaintiffs' serious allegations of retaliation. Plaintiffs' counsel have raised this issues multiple times in the past.¹² See Letters dated May 18, 2022 and October 5, 2022, and email dated December 22, 2023, collectively attached as Exhibit C ("Exhibit C").

II. LEGAL STANDARD

Incarcerated individuals "have a constitutional right of meaningful access to the courts which a state may not abridge nor impair; nor may it impermissibly burden its exercise." *Hudspeth v. Figgins*, 584 F.2d 1345, 1347 (4th Cir. 1978). "[P]rison officials cannot retaliate against inmates for exercising a constitutional right," including "for exercising their right to access the courts[.]" *Booker v. South Carolina Dep't of Corrections*, 855 F.3d 533, 544 (4th Cir. 2017) (citing *Hudspeth, supra* at 1348, and *Hudson v. Palmer*, 468 U.S. 517, 523 (1984)).¹³

Courts have inherent equitable powers to prohibit and "prevent abuses, oppression, and injustices" in order to protect the integrity of the judicial process. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 (1984) (internal quotations and citations omitted). In addition, Fed. R. Civ. P.

¹² That there is a culture of retaliation within VDOC is underscored by several lawsuits that have credibly alleged that Red Onion staff retaliate against individuals who file lawsuits or otherwise exercise their First Amendment Rights. See, e.g., *Jordan v. Large*, 27 F.4th 308 (4th Cir. 2022) (reversing district court's decision to vacate jury verdict in favor of plaintiff on retaliation claim and reinstating \$25,000 award, where plaintiff alleged that defendant searched plaintiff's cell, broke his personal property, and physically assaulted him in retaliation for filing grievances and lawsuits); *Thompson v. Clarke*, 2019 WL 3771777 (W.D. Va. June 28, 2019) (holding that grievance procedure was not reasonably available to plaintiff at Red Onion, and permitting claims, including retaliation claim, to proceed to trial).

¹³ Even threatening harm to someone in response to their pursuit of judicial relief imposes an impermissible burden on the exercise of this right, even if the threat ultimately fails to reach the desired result. "It is enough that the threat was intended to impose a limitation upon the prisoner's right of access to the court and was reasonably calculated to have that effect." *Hudspeth*, 584 F.2d at 1348.

26(c) permits a party to file a motion for a protective order “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Plaintiffs need not establish that constitutional violations have occurred or that the conduct at issue has actually prevented them from participating in the case in order for this Court to enter a protective order. Rather, “[t]he findings necessary to support such a protective order are simply that the plaintiffs reasonably fear retaliation and that the court’s fact-finding may be materially impaired unless there is provided the tangible protection of a suitable court order.” *Ben David v. Trivisono*, 495 F.2d 562, 564 (1st Cir. 1974).

Additionally, Fed. R. Civ. P. 23(d) allows a court significant leeway to manage a class action, including the power to enter protective orders or case management orders to prevent class opponents from engaging in conduct or communication that chills or interferes with participation in the case. In order to justify more general restrictions on Defendants’ communications with putative class members under Rule 23(d), the Court must find that “a particular form of communication has occurred or is threatened to occur” and that “the particular form of communication is abusive in that it threatens the proper functioning of the litigation.” *Adair v. EQT Prod. Co.*, No. 1:10CV00037, 2011 WL 4501048, at *5 (W.D. Va. Sept. 28, 2011) (citing *Cox Nuclear Med. v. Gold Cup Coffee Servs.*, 214 F.R.D. 696 (S.D. Ala. 2003)). Conduct or communication toward prospective class members threatens the proper functioning of the litigation when it “coerce[s] prospective class members into excluding themselves from the litigation,” misleads prospective class members, or “undermine[s] cooperation with or confidence in class counsel.” *Cox Nuclear Med.*, 214 F.R.D. at 698 (collecting cases) (internal citations and footnotes omitted). *See also Weckesser v. Knight Enters. S.E., LLC*, 392 F. Supp. 3d 631, 634 (D.S.C. 2019) (same) (citing *Randolph v. PowerComm Constr., Inc.*, 41 F. Supp. 3d 461, 465 (D. Md. 2014)).

Because these concerns are so significant, a court can both redress past actions as well as “enter prophylactic orders designed to prevent harm before it happens.” *Kleiner v. First Nat. Bank of Atlanta*, 751 F.2d 1193, 1206 (11th Cir. 1985).

III. ARGUMENT

Defendants have threatened the proper functioning of this litigation by compelling Plaintiffs to make untrue statements that implicate facts relevant to this litigation and to face punishment if they refuse. Defendants’ actions are unconstitutional in their own right, but also place a special burden on Plaintiffs who refuse to make statements that could implicate their past or future testimony in this case.

A. Defendants’ actions are unconstitutional and interfere with Plaintiffs’ participation in this case.

This use of coercion and punishment to force prisoners to sign the Safety Agreement is blatantly unconstitutional. It violates prisoners’ First Amendment right to freedom of speech by compelling them to espouse views they find objectionable or believe are false. *See, e.g., Janus v. Am. Fed’n of State, Cnty. & Mun. Employees, Council 31*, 585 U.S. 878, 891-93 (2018) (“Compelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command [.]”). Retaliating against people for exercising their First Amendment right to refuse to sign the agreement is also impermissible under the First Amendment. *See, e.g., Whitfield v. Spiller*, 76 F.4th 698 (7th Cir. 2023) (prisoner’s refusal to sign a supervised release agreement was protected speech and punishment for refusing to sign constituted actionable retaliation).

In addition, Defendants’ actions violate the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) and the Free Exercise Clause of the First Amendment, because they impose substantial burdens on the religious exercise of prisoners, like Sidney Bowman, who rely

entirely on their in-cell televisions and tablets to access religious services, *see* Bowman Decl. ¶¶ 12-13. *See* 42 U.S.C. § 2000cc-1(a); *Greenhill v. Clarke*, 944 F.3d 243, 248–253 (4th Cir. 2019) (denial of television to prisoners in segregation and limitation on prisoners’ beard length impose substantial burdens on Muslim prisoner’s religious exercise); *Robertson v. Biby*, 647 Fed. Appx. 893, 896-97 (10th Cir. 2016) (denying prisoner access to audio bible substantially burdened religious exercise of prisoner whose faith required him to hear the Bible read aloud, because proposed alternatives of phone calls or televisions/radios were costly or unrealistic). While the Free Exercise Clause prohibits regulations that substantially burden the religious exercise of prisoners when they are not reasonably related to legitimate penological interests, RLUIPA prohibits imposing such burdens unless they are the least restrictive means of furthering a compelling government interest. *Greenhill*, 944 F.3d at 249-50, 253. Arbitrarily denying prisoners the ability to participate in religious study and observance without any attempt to accommodate those practices not only fails to satisfy RLUIPA’s exacting scrutiny, it runs counter to any notion of reasonable or legitimate governmental action.

This unconstitutional action is highly concerning in its own right. But it also directly impedes Plaintiffs’ free and full participation in this lawsuit, because the statements they are being pressured to affirm are facts that are directly relevant to the claims they are prosecuting in this case. For example, an important allegation in this case is that Defendants have provided grossly inadequate mental health care to people in the Step-Down Program. The evidence in this case shows that even though a high percentage of the population in Level S have a diagnosed mental illness, the mental health care provided at Red Onion is wholly inadequate to mitigate the serious risks of harm posed by the conditions of confinement in the Step-Down Program. Am. Mem. Of Law in Supp. of Pls.’ Am. Mot. For Summ. J., ECF No. 383 at 17-19; Pls.’ Mem. of Law in Opp’n

to Def.'s Mot. for Summ. J., ECF No. 400 at 27-29; Report of Michael L. Hendricks, Ph.D., ABPP, ECF No. 400-55; Pls.' Reply Mem. Of Law in Supp. of their Mot. for Partial Summ. J., ECF No. 419 at 20. The prison has inadequate staffing to allow individualized treatment by licensed mental health providers, and prisoners often face extensive delays in being seen by mental health staff. When they finally are seen, medication management is the only mental health treatment available, and other types of treatment, such as individual therapy, are simply not provided, even where medication management is ineffective or insufficient. *See generally* Report of Michael L. Hendricks, Ph.D., ABPP, ECF 400-55. Defendants' failure to provide adequate mental health care contributes to the serious risk of mental harm from placement in the Step-Down Program and demonstrates Defendants' deliberate indifference to that risk.

Several Plaintiffs have already submitted declarations in this case describing the emotional, psychological, and physical harms they suffered in the Step-Down Program, and the lack of adequate mental (and other) healthcare provided. *See, e.g.*, Bowman Decl., ECF 400-14 ¶ 33; Arrington Decl., ECF No. 383-17 ¶ 23; Wall Decl., ECF No. 383-15 ¶ 15. At trial, Plaintiffs will likely present further evidence on this issue, including by people currently or formerly in the Step-Down Program who may have signed or refused to sign the Safety Agreement.

Defendants have been on notice of these allegations—and the significant evidence Plaintiffs adduced at summary judgment—for years. Whether a deliberate attempt to bolster their own litigation position or simply a misguided (and unconstitutional) attempt to diffuse growing controversy over the conditions at Red Onion, Defendants' Safety Agreement contains several statements requiring signees to affirm that there is adequate mental health care and support for people with mental illness, including those who might have thoughts of self-harm. *See* Exhibit A. Plaintiffs who disagree with these statements, and who have testified or might testify in a way that

contradicts them, must either compromise their integrity by falsely affirming these statements, or suffer severe consequences—including further isolation from the outside world and institutional programming. This impossible choice necessarily burdens and interferes with Plaintiffs’ participation in and the proper functioning of this litigation.

B. Relief is appropriate and necessary.

The standard that Plaintiffs must meet in order to justify a protective or case management order prohibiting retaliation is a relatively low bar. *Adair, supra; Ben David v. Trivisono*, 495 F.2d 562, 564 (1st Cir. 1974). In the class action context, the Court “has both the duty and the broad authority to exercise control over a class action and to enter appropriate orders governing the conduct of counsel and the parties.” *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 99-100 (1981).

In this case, Plaintiffs are fully at the mercy of Defendants for not only each measure of comfort or humanity that they are afforded, but for their basic survival needs. And Plaintiffs have established more than enough justification for the Court to enter such an order: they have already suffered and are currently suffering the harm of either compelled speech or the loss of power to their cells. They have been given no reason to believe that this harm will abate absent the intervention of this Court, or that additional harms will not occur in the future.

Plaintiffs’ counsel has tried diligently to resolve this issue with Defendants without Court intervention. On February 26, 2025, Plaintiffs sent, via email to Defendants’ counsel, a letter expressing concerns with the Safety Agreement and requesting that Defendants take specific action to address those concerns. *See* Declaration of Geri Greenspan dated March 26, 2025 (hereinafter “Greenspan Decl.”), attached as Exhibit D. Plaintiffs’ counsel sent additional follow-up emails on March 6, 2025, and March 17, 2025, and made follow up phone calls on March 17, 2025 and

March 21, 2025. *Id.* Plaintiffs' counsel have not received any response whatsoever from Defendants' counsel. In the meantime, Plaintiffs are continuing to suffer retaliation by Defendants.

Under these circumstances, including the history of retaliatory action taken by Defendants throughout this litigation, *see supra* at 6 and Exhibit C, it is both appropriate and necessary for the Court to intervene to protect Plaintiffs, ensure the proper functioning of this litigation, and prohibit Defendants from future retaliatory actions.

IV. CONCLUSION

Because the ability of Plaintiffs to vindicate their claims depends on the willingness and ability of those who have been placed in the Step-Down Program to share information about their experiences and provide testimony to the Court, it is critical that the Court protect that relationship and Plaintiffs' liberty to testify truthfully without fear of punishment. Plaintiffs respectfully request that this Court enter a protective order in accordance with their Motion.

Dated: March 27, 2025

Respectfully Submitted,

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Counsel for Class Plaintiffs

Exhibit A

Safety Agreement for Inmates

This agreement is made between the undersigned inmate and the facility staff, with the purpose of ensuring your well-being and promoting your safety during your time in custody. The goal is to establish a clear understanding of the expectations and resources available to prevent self-harm and other risky behaviors. By signing this agreement, you are committing to your mental and emotional health while incarcerated and agreeing to actively engage in the safety protocols set forth by the facility.

1. Acknowledgment of the Agreement:

I, the undersigned, acknowledge that I have read, understand, and voluntarily agree to the following terms:

1. Commitment to Safety:

- I commit to refraining from any form of risky behavior, including but not limited to self-harm or any actions that could cause injury to myself or others.
- I understand that self-harm is dangerous, harmful, and not an acceptable method of coping with stress or difficult emotions.

2. Access to Support Services:

- I recognize that I have access to mental health and other local resources, including multiple forms of support, and I agree to utilize these services if I feel overwhelmed or in distress.
- I understand that I can reach out to facility staff for assistance or to request mental health services at any time.

3. Immediate Reporting of Concerns:

- I agree to immediately inform facility staff if I experience any thoughts or urges related to self-harm or if I feel unsafe in any way.
- I understand that the facility staff is committed to my well-being and will provide assistance to address any concerns I may have.

4. Review Process:

- This agreement will be reviewed every 30 days, at which time I will have the opportunity to discuss any concerns or adjustments related to my safety and mental health.
- If necessary, the agreement may be revised or updated during the review process to reflect changes in my mental health needs.

5. Good Behavior Incentives:

- I understand that if I remain free from self-harm and other risky behaviors for a continuous period, I will be eligible for an incentive for maintaining my commitment to safety and good behavior.

- 7 Day incentives (example: new movies and episodes of exclusive TV series)
- 30 Day incentives (example: opportunities for group rec and activities, sports)
- 45 Day incentives (example: free commissary bags)
- 90 Day incentives (example: special meals, fish fry)
- These incentives will be awarded only if I consistently demonstrate adherence to the terms of this agreement and exhibit positive behavior.

6. Consequences of Violations:

- I understand that if I violate this agreement by engaging in self-harm, other risky behaviors, or refusing to cooperate with the safety protocols, the facility may take appropriate actions to ensure my safety, including additional monitoring or interventions.
- I further understand that repeated violations of this agreement may result in the loss of privileges, such as access to television, recreation time, or other amenities, as deemed necessary by facility staff to maintain safety and promote positive behavior.

7. Acknowledgment of Alternatives:

- I am aware that there are alternative coping strategies available to me, including but not limited to stress management techniques, communication with support staff, and engaging in recreational or vocational activities.

2. Inmate's Declaration:

By signing below, I confirm that I voluntarily agree to this Safety Agreement. I understand the importance of this agreement and will make a good faith effort to follow the outlined guidelines. I also acknowledge that I have been informed of my right to seek mental health and other services at any time.

Inmate Name/Number (Printed): _____

Inmate Signature: _____ **Date:** _____

3. Facility Staff Acknowledgment:

By signing below, I acknowledge that I have explained the terms of this agreement to the inmate, and I will ensure that the inmate receives the necessary resources and support outlined in this document.

Staff Name/Position (Printed): _____

Staff Signature: _____ **Date:** _____

4. Review Date:

The next review of this agreement will take place on:

Next Review Date: _____

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

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Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
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Defendants.

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

DECLARATION OF SIDNEY BOWMAN

I, Sidney Bowman, declare the following under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. My name is Sidney Bowman. I am over the age of 21, and I am competent to give this declaration and to testify regarding the matters in this declaration.

2. I am currently housed at Red Onion State Prison in the custody of the Virginia Department of Corrections (“VDOC”). I am currently in Level 6 in the IM Closed pod.

3. On January 15, 2025, my unit manager, Mr. Cornett brought a document titled “Safety Agreement” to me in my cell. He told me to sign it, but I refused, because I had questions about what it meant. I thought the agreement was too vague – it didn’t explain what “risky behavior” or “safety protocols” meant, or what the consequences would be for violating the agreement. Unit Manager Cornett told me that if I wanted to come into the office to talk about it I could. I said I would like to come into the office. After he finished going around to everyone’s cell with the same agreement, he came back and brought me into the C1 pod office.

4. In the office were Chief of Housing & Programming Amee Duncan, Assistant Warden Turner, Unit Manager Cornett, Lt. Keller, Mr. Creech from mental health, and one other woman. I asked them what the consequences were that were named in the agreement. The

response from Assistant Warden Turner was that they were just worried about us harming ourselves, and not to worry about the consequences. They just tried to focus on the commissary and food incentives in order to get me to sign.

5. I also don't agree with the statements in the agreement about the mental health care that's available to me. The only mental health care available is medication. There is no therapy, no groups, no counseling, or any other kind of treatment for mental illness. I do not believe that there is adequate mental health care here, and I did not want to sign an agreement saying I thought there was.

6. Because the agreement is so vague, I believe that prison staff would use this agreement to retaliate against me in any way they wanted, so I refused to sign.

7. Once I decided not to sign the agreement, I turned and tried to walk out of the office. They stopped me to confirm I wasn't going to sign the agreement. I said no again. Then Assistant Warden Turner told the officers with me to take my TV out of my cell and turn the power off. Several officers and Mr. Creech took me back to my cell. They stopped me on the walk back, and asked me one more time to sign the agreement. I asked if signing the agreement was voluntary, and Mr. Creech said yes. So I refused again. They did take my TV away for about five hours before bringing it back. By that time, my power to my cell was off.

8. During the night shift that night, still January 15th, I asked prison staff to turn my power on. They did, but an hour later, they cut it off again. It has not been turned back on since.

9. The next day, Unit Manager Cornett came back and told me that if I signed the agreement, my power would be turned back on. I still refused to sign.

10. During the first week of February, Unit Manager Cornett asked me again to sign the agreement, and told me that my power would come back on if I did. I still refused.

11. I filed a grievance about this because I believe it violates my rights, but all the responses have come back unfounded. I have continued to appeal this response.

12. Without power in my cell, I cannot watch my TV, listen to the radio, or charge my tablet. I access all religious programming through my TV and tablet in my cell because I am not able to leave my cell for religious services. Using my tablet for email is also the main way I keep in touch with my loved ones outside of prison, but now I am not able to do that. I also listen to the radio and read the newspaper through my tablet, which I am currently unable to do. Not being able to use my property has made the conditions here even harder and more isolating than before.

13. I have spoken to mental health staff several times about the hardship that having my power cut off has caused me, especially with not being able to access religious services. At one point, mental health staff told me that the prison was going to start providing an accommodation for religious services, but that hasn't happened yet. Mr. Monihan, one of the mental health staff, told me to write to K. Sykes in programming and P. Sykes in operations about this issue. I talked to K. Sykes face to face, who told me that there is nothing he could do to get my power back on because that decision was above his head. I wrote P. Sykes a letter, and I'm still waiting for a response.

14. Since first bringing the safety agreement to me, no mental health staff has done any evaluation or assessment of my mental health. I have written a letter to mental health requesting that they do one to prove that I'm not at risk of harming myself. The prison has not done anything else that would prevent me from harming myself, or provided any additional mental health care. This shows me that they are not really concerned about my mental health, but just want to punish me for not going along and signing the agreement.

15. On March 21, 2025, my attorney read this declaration to me over the phone, and I confirmed that it is true and accurate to the best of my knowledge.

I declare under penalty of perjury that the statements in this Declaration are true and correct to the best of my knowledge.

/s/ Sidney Bowman

3/21/25

Exhibit C

May 18, 2022

VIA E-MAIL

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RE: Thorpe et al. v. VDOC et al., No. 2:20-cv-00007-JPJ-PMS (W.D. Va.)

Dear Counsel:

We write to inform you of VDOC conduct clearly designed to discourage named class plaintiffs and putative class members from participating in this litigation. In addition to the repeated, multiple instances of obstruction, intimidation, and retaliation reported by our clients and putative class members, we have observed this pattern of wrongful conduct firsthand. For example:

(1) One of the interviewees during our December 2021 visit to Red Onion and Wallens Ridge informed us that, while being stripped searched before his meeting with us, officers had asked him why he wanted to speak to us and told him that if he did, he would suffer the consequences. They also tightened his shackles, making it difficult for him to walk. He later informed us that after he returned to his cell, he discovered it had been shaken down and ransacked and that his JP5 tablet had been confiscated. He also explained that in the weeks after speaking to us in December, officers told him not to help Plaintiffs' counsel with their case and threatened to keep him in long-term segregation if he continued to speak to us.

(2) A second interviewee informed us that a correctional officer told him before meeting with us that if he met with us, officers would shake down his cell. He also reported that Unit Manager Collins had explicitly told him not to say anything to Plaintiffs' counsel. When we later followed-up with that interviewee, he confirmed that the guards had followed through on their threats by denying recreation, denying food or providing cold or smaller portions than usual, and denying access to showers.

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The same interviewee also explained that individuals being held in visitation-room boxes for interviews during the December 2021 visit to Red Onion had witnessed VDOC officers position themselves next to a vent on the other side of the supposedly confidential interview room we were provided, such that they could hear the conversations occurring inside. He described the officers as spying on the interviews, which Defendants' counsel had guaranteed would be confidential in their December 9, 2021 email to Plaintiffs' counsel regarding the December 2021 visit.

(3) A third interviewee told us that he was afraid to speak for fear of retaliation. He also reported that Unit Manager Collins had warned him and others that anyone who agreed to speak to Plaintiffs' counsel would have their cells shaken down while they were gone for the interview. When we returned to visit Red Onion and Wallens Ridge in April 2022, we were told that this individual declined to speak with us.

(4) We also interviewed Anwar Phillips in December 2021. Mr. Phillips began the interview by informing us that he was cursed out just before his interview for being willing to speak to us and that more than one correctional officer stated that they would bring him behind the cages and physically harm him. We understand from public media reports that Mr. Phillips was found dead in his cell 12 days after his interview, and that the circumstances of his death are being investigated.

(5) A fifth interviewee informed us that when VDOC officers collected him to meet with us, they threatened him with disciplinary charges and regression in the Step-Down Program. He also explained that when he had spoken to Plaintiffs' counsel several years earlier, he had received similar threats, ultimately received a fabricated charge—which was later dismissed—and was sent to a strip cell for several days soon after meeting with Plaintiffs' counsel.

(6) A sixth interviewee began his interview by informing us that VDOC officers were threatening him before the interview and that he was preparing for immediate retaliation following his interview. He also reported that Unit Manager Collins had told prisoners that the guards would shake down the cells of those who agreed to be interviewed.

(7) These reports were generally consistent with what we observed during our visit as well. As you will recall, our expert (Dan Pacholke) introduced himself to named plaintiffs and putative class members through their cell doors during the facility tour, and asked if they would like to speak with him about their experiences in segregation. Over our repeated objections, VDOC officials (sometimes up to four correctional officers) stood in close proximity to Mr. Pacholke and were clearly visible to the named plaintiffs and putative class members during Mr. Pacholke's cell-side introductions. Upon the conclusion of each introduction, Unit Manager Collins—whose name was mentioned by multiple interviewees as set forth above—remained at the cell door and spoke to each named plaintiff or putative class member. A notable number of prisoners declined to speak further with Mr. Pacholke, suggesting that the prisoners in VDOC's care have a significant fear that they will experience retaliation as a result of speaking with lawyers or experts working on cases against VDOC or its personnel.

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(8) During the individual interviews at Red Onion, VDOC officials seated Mr. Pacholke, counsel, and each named plaintiff or putative-class-member interviewee in a small room with four chairs and a combination seat-and-table that was bolted to the floor. The interviewees were fully shackled and chained to the combination seat. Nonetheless, correctional officers stood closely outside the room and we could frequently hear the jingling of an officer's keys immediately outside the door, which suggested that the officers could overhear the interviews and were attempting to intimidate the interviewees. When we requested that the officers move back, they explained that they needed to maintain visibility for safety reasons. Only after we questioned the potential safety concerns and discussed that the officers could maintain a sight line through the window of the door while still being farther away from the door, did the officers agree to maintain a distance of ten feet (though this distance still was not consistently kept). Meanwhile, the other prisoners awaiting their interview times were held in small visitation-room boxes, sometimes for hours.

(9) Such threatening and retaliatory conduct has not been limited to our visit in December 2021. When we visited Red Onion in April 2022, one interviewee told us that Sgt. Richardson had told him that he should not be going to see Plaintiffs' counsel as Sgt. Richardson was escorting him to the interview. The interviewee explained to us that he interpreted Sgt. Richardson's actions that day as trying to dissuade him from talking to us and suggesting that the interviewee would face negative consequences for speaking with us.

(10) A second interviewee reported that an officer had told him not to visit with Plaintiffs' counsel or try to help Plaintiffs' counsel with the case. The interviewee also reported that he had been told at other times that if he spoke with lawyers, he would be kept in long-term segregation.

(11) We also met with Dmitry Khavkin in person at Wallens Ridge on April 14, 2022. After Mr. Khavkin finished his meeting with us and went to work, he returned to his cell to find that it was a mess, and that his prescription glasses and two durags were missing. Multiple prisoners told Mr. Khavkin that two officers had searched his cell while he was gone, and Mr. Khavkin does not have a cellmate. Thus, VDOC officials must have messed up his cell and taken his property.

During a scheduled legal call between Mr. Khavkin and Plaintiffs' counsel on May 2, 2022, four VDOC officials attempted to remain in the room with Mr. Khavkin and listen in on the call. When we asked Mr. Khavkin to tell the officers that they must leave the room, Mr. Khavkin reported that the officers looked angry and that he feared repercussions from the request. The officers continued to enter and exit the room, making Mr. Khavkin very uncomfortable and preventing him from speaking candidly with us, such that we had to cut the call short. Following the call, Mr. Khavkin found that his glasses and durags had been placed under his mattress.

The next day, Mr. Khavkin became very sick. During pod recreation, he had a short call with his family, but then showered and went back to his cell because he was not feeling well. At about 10:49 pm, Sgt. Cope woke him up and forced him to go to the SHU. After Sgt. Cope turned off his body camera, he told Mr. Khavkin that video footage showed Mr. Khavkin had drugs next

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to his foot during pod recreation—even though Mr. Khavkin was not on the pod when drug searches were being performed that day. Mr. Khavkin was denied his property, including stamps, paper, and his sneakers while in the SHU. He was finally released back to the honor pod on May 11, with no charges. However, he is still missing some of his property. Mr. Khavkin believes these incidents were retaliation for talking with us in April and for his broader participation in the *Thorpe* class action litigation.

(12) On April 13, 2022—the day before our pre-arranged in-person legal meeting with Steven Riddick on April 14—Red Onion officers did a shakedown of Mr. Riddick’s unit despite having done a quarterly shake-down a couple of weeks earlier. As part of the shakedown, they took Mr. Riddick’s watch and rechargeable batteries. When Mr. Riddick was brought out to see his us the next day, Officer Brinkley adjusted his leg shackles very tightly and Officer Jones called him slurs, including the N-word.

(13) Another named class plaintiff, William Thorpe, who had been incarcerated in VDOC facilities since the 1980s and whose only family lives in proximity to Red Onion, was transferred to Texas for “security” reasons fewer than three weeks after filing this action, despite not having incurred any recent disciplinary offenses that would merit a transfer. In the months before his transfer, he had been told by Unit Manager Collins that he would be shipped out of state if he did not stop talking to outsiders.

(14) Derek Cornelison was denied recreation several times after meeting with Plaintiffs’ counsel in August 2018. When he asked VDOC officials, including Unit Manager Swiney, about this, Unit Manager Swiney responded by asking Mr. Cornelison about his meetings with his lawyers and threatening to send him back to the C building to restart the Step-Down Program.

(15) VDOC facilities have also made privileged communications with named plaintiffs difficult or impossible. During our November 2021 visit to Wallens Ridge, our clients were seated in an open room mere feet from an officer who could hear the conversations and reacted to the conversations with a variety of facial expressions. During the December 2021 visit to Wallens Ridge, we requested a private room in advance of the visit, but upon arrival were told that the open visitation room would be sufficient and that the conversations would not be monitored. However, we noticed speakers and signs stating that everything is monitored and recorded. Only after appealing to increasingly higher-ranking VDOC officials were we permitted to use a confidential room.

(16) Since November 2021, we have set up approximately 40 legal phone calls with named plaintiffs at Red Onion or Wallens Ridge. In about 15 instances, the named plaintiffs were not released from their cells to make the legal calls. In about four instances, guards were in the room for the duration of the legal call, despite the call being pre-approved as a confidential legal call. In another two instances, the guards left but remained just outside the room with the door open. In other instances, the guards left the room, but were upset to do so or repeatedly told the named plaintiff their call time was almost up, which limited our clients’ ability to talk for fear of retaliation. In one instance, our client was forced to take a confidential legal call on speakerphone. When scheduling calls, VDOC secretaries have provided conflicting information about who is able

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to schedule the calls and when those calls may be scheduled. Sometimes, the secretaries are extremely delayed in responding to our requests to set up calls or ignore us altogether, unless we repeatedly follow-up via email and/or phone; in fact, it took VDOC 10 days to respond to one of our latest, repeated requests for legal calls that were first submitted on April 29.

(17) We have also faced significant hurdles trying to correspond with named plaintiffs through the mail at VDOC facilities. Our clients have not received some letters that we sent and confirmed were delivered via USPS, and some of our clients' letters to us have never been delivered. When overnighting mail, some named plaintiffs have not receive their mail for 10 days or more. On multiple occasions, VDOC officials delivered legal mail to named plaintiffs already opened—despite the fact that the mail was taped and labeled as legal mail. In other instances, named plaintiffs received legal mail packets with certain pages removed, including signature pages to draft interrogatory responses. We can confirm that such pages were sent, because we began scanning packets before mailing them in response to the facilities' practice of removing pages. VDOC Operating Procedure 803.1 states that all incoming legal correspondence is to be “search[ed] for contraband *in the presence of the inmate . . . to whom the correspondence is addressed, only.*” O.P. 803.1, at III.C.4 (emphasis added). The continual disregard for such rules impedes our ability to correspond confidentially with class members and further violates their rights. These practices are even more egregious given that the plaintiffs are engaged in litigation against Defendants and, thus, the legal correspondence likely could involve confidential matters directly pertaining to this lawsuit.

This pattern of VDOC conduct undermines the integrity of the ongoing litigation by preventing us from being able to reliably conduct privileged conversations with our clients and by discouraging putative class members from cooperating with Plaintiffs' counsel and coercing them into excluding themselves from the litigation. They are akin to practices that courts have considered sufficient to warrant a court-issued protective order. *See, e.g., Order, Harvard v. Inch*, Case No. 4:19-cv-00212, ECF No. 240 (N.D. Fla. Feb. 8, 2021). As such, we request that Defendants take steps to ensure the behaviors outlined in this letter—and all other obstructive, threatening, retaliatory, or harassing conduct—will cease. Specifically, we request Defendants take the following actions:

- (1) Issue a notice to officials and staff at Red Onion and Wallens Ridge that no VDOC employee may discourage or prevent participation in this lawsuit, communications with Plaintiffs' counsel or experts, or the filing of grievances or complaints relating to the same.
- (2) Issue a notice to officials and staff at Red Onion and Wallens Ridge that threatening, retaliatory, or harassing behavior relating to filing grievances or complaints, speaking with an attorney, or a person's participation in ongoing litigation—including this lawsuit in particular—will not be tolerated. Such behavior includes, but is not limited to, physical or verbal abuse; retaliatory cell searches; retaliatory denial of any necessities, privileges, or programming opportunities; or retaliatory disciplinary charges.

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- (3) Direct all VDOC facilities to ensure that Plaintiffs' counsel are afforded confidential phone calls and confidential in-person interviews with all named plaintiffs and putative class members about the subject of this lawsuit. In the case of phone calls, the prisoner must be given an unmonitored, confidential phone line on a headset, in a private room, with the door closed, and all VDOC personnel must be out of earshot of the phone call. In the case of in-person interviews, Plaintiffs' counsel shall be allowed to use the private rooms at Wallens Ridge and Red Onion that they were allowed to use during their visits in December 2021 and April 2022. The door to each room shall be closed during interviews and all VDOC personnel shall be out of earshot—at least 10 feet from the door. No VDOC personnel shall be listening to the phone calls or in-person interviews through vents, intercoms, or otherwise.
- (4) Direct all VDOC facilities to promptly respond to and schedule call requests with named plaintiffs and putative class members.
- (5) Direct all VDOC facilities to ensure that legal mail is promptly delivered and not read, copied, or tampered with, in compliance with VDOC Operating Procedure 803.1.

We welcome the opportunity to discuss these issues and these proposed steps. Absent satisfactory resolution of these issues, we will be left with no choice but to raise these issues with the Court.

Best regards,

/s/ Michelle Letourneau-Belock

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October 5, 2022

By Electronic Mail

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RE: *Thorpe et al. v. VDOC et al.*, No. 2:20-cv-00007-JPJ-PMS (W.D. Va.)

Dear Counsel:

We write on behalf of plaintiffs in the above-captioned matter and as a follow-up to the May 18, 2022 letter from our co-counsel at White & Case LLP (“White & Case”). That letter summarized prior conduct by VDOC designed to discourage named plaintiffs and putative class members from participating in this litigation and/or impede plaintiffs’ counsel from effectively representing our clients’ interests.

To date, VDOC has not responded to that letter, or offered any other response to the extensive documentation we provided of retaliatory conduct by VDOC officials. Unfortunately, since we sent our letter in May, VDOC’s pattern of obstruction, intimidation, and retaliation against named plaintiffs and putative class members has continued. Counsel for plaintiffs in this lawsuit have observed some of these instances firsthand. These actions include obstruction of legal calls and visits, arbitrary and last-minute changes to rules regarding legal mail, and intimidation of plaintiffs and putative class members. For example, in just the four months since our May 18, 2022 letter, the following incidents have occurred:

(1) On May 19, 2022, Mr. Gary Wall, a named plaintiff currently incarcerated at Wallens Ridge State Prison (“WRSP”), was required to take his legal call with plaintiffs’ counsel on speakerphone, rather than in a confidential setting and with a recording block, as is standard for legal phone calls between VDOC inmates and their counsel. When plaintiffs’ counsel asked the VDOC guard in the room to take the call off speakerphone, the guard refused. Plaintiffs’ counsel then asked what policy was guiding the guard’s decision. In response, the guard said something to the effect of “you can ask anyone on the mountain,” suggesting that VDOC staff routinely disregards inmates’ confidentiality during their legal calls.

On the same day, Mr. Dmitry Khavkin, a named plaintiff also currently incarcerated at WRSP, was likewise required to take his legal call with plaintiffs’ counsel on speakerphone as a guard remained in the room with Mr. Khavkin. Mr. Khavkin

explicitly stated that he did not feel comfortable having conversations with plaintiffs' counsel because of the guard's presence. Given the consistent mistreatment that Mr. Khavkin has received from staff at Red Onion State Prison ("ROSP"), where Mr. Khavkin was previously incarcerated, and WRSP, including but not limited to the incidents detailed in White & Case's May 18, 2022 letter, plaintiffs' counsel grew concerned that this particular guard would take action against Mr. Khavkin if plaintiffs' counsel pushed the issue further, and therefore plaintiffs' counsel continued the conversation with Mr. Khavkin while the guard remained present. However, the guard's presence prevented plaintiffs' counsel from discussing substantive updates with Mr. Khavkin related to his incarceration and this litigation.

In both instances, plaintiffs' counsel was prevented from discussing confidential matters with our clients. These interferences occurred at a critical stage of the litigation just weeks before plaintiffs' class certification brief was due.



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(2) On May 23, 2022, counsel received a letter from named plaintiff Frederick Hammer, currently incarcerated at ROSP, attaching a VDOC memorandum announcing that, starting July 1, 2022, legal mail would go through a centralized distribution center, rather than being sent directly to the particular facility at which an inmate is incarcerated. *See* May 23, 2022 Memorandum from A. David Robinson to Inmate Population (attached as "Exhibit 1"). On July 8, 2022, plaintiffs' counsel sent an email requesting further details on this new process:

"Furthermore, we would like some clarification on how legal mail is now being treated given the memorandum from May 23, 2022. We understand legal mail is now going through a central distribution center. We want to understand how the mail is being reviewed at the distribution center and how it is getting to the facility. For example, will the legal mail still be opened only in the presence of the inmate."

See July 8, 2022 Email from R. Hoak to M. O'Shea, D. Fairbanks, M. Eckstein, and T. Cox (attached as "Exhibit 2"). VDOC has yet to respond to this inquiry, leaving plaintiffs' counsel unsure whether any mail we send to our clients is being kept confidential.

(3) Named plaintiffs Vernon Brooks, Kevin Snodgrass, and Derek Cornelison, all currently or recently incarcerated at the Sussex I and II State Prisons, have had their legal calls abruptly canceled and rescheduled without warning. These erratic changes have frustrated one of the only means these plaintiffs have to communicate with plaintiffs' counsel.

For instance, on May 24, 2022, plaintiffs' counsel was not allowed to have our scheduled legal call with Mr. Brooks. The facility instead rescheduled the call for a full week later.

On June 22, 2022, plaintiffs' counsel requested legal calls with Mr. Brooks and Mr. Snodgrass to be conducted on June 28, 2022. The calls were confirmed by the Sussex I staff on June 24, 2022. However, plaintiffs' counsel did not receive either call at the times for which they were scheduled. When plaintiffs' counsel called the facility to inquire about the calls, plaintiffs' counsel was told there were no records

of the scheduled calls and that the call recipient could not locate the Sergeant. Plaintiffs' counsel attempted to call again, and this time was required to leave a voicemail with the facility's operations department. Plaintiffs' counsel then rescheduled these calls for June 30, 2022. Although plaintiffs' counsel was able to speak with Mr. Brooks on June 29, the call with Mr. Snodgrass was delayed until July, at which time Mr. Snodgrass informed plaintiffs' counsel that Sussex staff prevented him from leaving his cell to take his legal call on June 28.

Similarly, plaintiffs' counsel requested a legal call with Mr. Cornelison on June 22, 2022 with the Sussex II staff, to be conducted on June 28, 2022. The facility confirmed the call on June 23, 2022, however, plaintiffs' counsel never received a call at the scheduled time on June 28, 2022. *See* June 23, 2022 Email from M. Vandermark to M. Engels (attached as "Exhibit 3"). When plaintiffs' counsel called the facility to inquire about the call, a Sergeant indicated that there was no record of the call and that it would need to be rescheduled. Plaintiffs' counsel was ultimately able to speak with Mr. Cornelison on July 1, at which time Mr. Cornelison informed plaintiffs' counsel that he was not told about the June 28, 2022 legal call until the next day.

Each of these incidents demonstrates the persistent challenges VDOC has created for the named plaintiffs that prevent them from effectively communicating with their counsel about their interests in this litigation, in violation of their protected constitutional rights.¹

(4) On August 5, 2022, a legal call with Mr. Wall was delayed yet again. Plaintiffs' counsel's call with Mr. Wall was scheduled for 11 AM, but no call occurred at that time. When plaintiffs' counsel called the WRSP facility to inquire about the call status, plaintiffs' counsel was told that Mr. Wall would be able to make the call. After no call came through, plaintiffs' counsel again called the facility and were given a myriad of dead-end responses, including transfer to the voicemail of the watch office that presented no option to leave a message, and a call to Ms. Kimberley Williams, from whom plaintiffs' counsel received no response. Eventually, plaintiffs' counsel was forced to reschedule this legal call with Mr. Wall.

(5) Upon being transferred from ROSP to Jessup Correctional Institution in Maryland in May 2022, Mr. Peter Mukuria was informed that all of his legal materials, including those related to this litigation, had been lost or damaged. VDOC's inability to preserve these critical materials has hindered Mr. Mukuria's ability to effectively litigate his claims, track updates in this litigation, and communicate with plaintiffs' counsel about those updates.

(6) In August 2022, Mr. Brooks was transferred from Sussex I to Buckingham Correctional Center, without any notice or explanation as to why VDOC was

¹ These barriers are in addition to the ever-present inconveniences and frustrations of attempting to meet with clients in VDOC facilities. For example, on August 3, 2022, plaintiffs' counsel attempted a legal visit to Mr. Cornelison at Sussex II. The visit was both scheduled and confirmed, yet upon arrival, the visit was delayed by more than two and a half hours, leaving plaintiffs' counsel—all of whom had traveled significant distances for the visit—uncertain whether the meeting would proceed, limiting the amount of time counsel could spend with Mr. Cornelison, and impeding certain of Mr. Cornelison's counsel from attending the meeting at all.



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transferring him. As part of this move, VDOC failed to transfer most of Mr. Brooks' belongings and legal files, including his materials for this litigation and other matters, thereby significantly disrupting Mr. Brooks' ability to effectively litigate his claims, track updates in his case, and communicate with plaintiffs' counsel about those updates. Since arriving at Buckingham, VDOC's mistreatment of Mr. Brooks has continued. Recently, his cell was searched a without explanation, which resulted in his player being taken away. VDOC has also significantly interfered with Mr. Brooks' ability to communicate with others, including plaintiffs' counsel. For instance, his emails and contacts are no longer on his JPay tablet, impeding his ability to communicate with anyone outside of the facility. Furthermore, Mr. Brooks no longer has any more commissary privileges.

VDOC's unanticipated, unexplained decision to transfer Mr. Brooks, as well as the misplacement of his legal files and the interference with his ability to communicate outside of the prison, once again demonstrates the challenges that VDOC has created for the named plaintiffs in litigating this case, in violation of their constitutional rights.

(7) On September 23, 2022, a VDOC guard abruptly interrupted a legal call between named plaintiff Mr. Steven Riddick, who is currently incarcerated at ROSP, and plaintiffs' counsel. Given that ROSP guards have frequently mistreated Mr. Riddick in the past, plaintiffs' counsel was forced to end their discussion with Mr. Riddick early to avoid him suffering any further mistreatment at that time. However, later that day, while being taken to medical for ongoing issues, two officers threw Mr. Riddick—who was restrained at the time—to the ground and beat him, causing him leg injuries and other bruises and cuts. He was subsequently detained to a strip cell until September 28. Mr. Riddick has reported that the strip cell smelled strongly of urine, and that during that period of detention he was initially not provided a blanket or sheets; his toilet did not flush and his lights did not turn on; and he was provided a very limited amount of his belongings. Mr. Riddick believes this treatment is due to his participation in the lawsuit, and he fears being subjected to future assaults by VDOC staff.

(8) The May 18 letter explained how named plaintiff William Thorpe, who had been incarcerated in VDOC facilities since the 1980s and whose only family lives in proximity to Red Onion, was transferred to Texas for "security" reasons fewer than three weeks after filing this action, despite not having incurred any recent disciplinary offenses that would merit a transfer. Specifically, a February 28, 2019, Institutional Classification Authority (ICA) hearing form recommending his transfer noted that the reason for his transfer was, "due to being a security issue." *See* February 28, 2019 ICA Hearing DOC11-H for William Thorpe (attached as "Exhibit 4"). The ICA never provided Mr. Thorpe with any clarification on the nature of the "security issue," and Mr. Thorpe has not been advised of the basis for VDOC's determination in 2019 that he posed a security risk justifying an out-of-state transfer.

Defendants' Brief in Opposition to Plaintiffs' Motion for Class Certification suggests that Mr. Thorpe was transferred not as retaliation for his participation in this litigation nor due to security concerns, but because his wife, Stacey (Denise) Thorpe, is a former corrections officer at ROSP. *See* Dkt. No. 195 at 22. As support, Defendants attach a March 19, 2019 request under the Interstate Corrections Compact citing Mr. Thorpe's marriage as a basis for his transfer. *See* Dkt. No. 195-



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32 (attached as “Exhibit 5”). That explanation is belied by the fact that Mr. Thorpe and his wife married in June 2003—sixteen years before VDOC’s March 2019 transfer request. In addition, Ms. Thorpe has not worked for VDOC for a number of years, further undercutting any suggestion that her employment could be linked to his transfer. Moreover, in response to her repeated pleas to return her husband to a Virginia facility and out of solitary confinement, Ms. Thorpe was informed by a VDOC official that VDOC transferred Mr. Thorpe because (i) he “refused” to participate in the Step-Down Program; (ii) had a history of institutional infractions and “unstable adjustment”; and (iii) that VDOC’s hope was that Mr. Thorpe would benefit from a new environment and the opportunity for a “fresh start.” At no point has VDOC informed Ms. Thorpe that their marriage was the purported basis for Mr. Thorpe’s interstate transfer.



These inconsistencies underscore our concerns that Mr. Thorpe’s transfer was motivated by retaliation for his participation in this litigation. Mr. Thorpe has faced significant foreseeable negative consequences from being transferred more than a thousand miles away from his spouse and only family, as well as plaintiffs’ counsel, who are based in Virginia, Washington, D.C., and New York.

* * * * *

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As you know, it is indisputable that “prison officials cannot retaliate against inmates for exercising a constitutional right,” nor may prison officials “retaliate against prisoners for exercising their right to access the courts.” *Booker v. South Carolina Dep’t of Corrections*, 855 F.3d 533, 544 (4th Cir. 2017) (citing *Hudspeth v. Figgins*, 584 F.2d 1345, 1348 (4th Cir. 1978)). Despite that precedent, each of the aforementioned incidents—like those detailed in the May 18 letter—demonstrates a continued pattern of interference with named plaintiffs’ and putative class members’ ability to participate in this litigation and to effectively communicate with plaintiffs’ counsel. It is disappointing that VDOC has neither responded to that earlier letter nor taken any steps to address the alarming conduct detailed in it. Defendants must provide their availability for a meet-and-confer to discuss these issues immediately. Plaintiffs’ counsel reserves all rights to raise these issues with the Court and to take any other appropriate action necessary to remedy these past violations and prevent any further violations.

Best regards,

A handwritten signature in black ink, appearing to read "Vishal Agraharkar".

Vishal Agraharkar
ACLU of Virginia

CC: Katie Ali, Ali & Lockwood LLP
Tara Lee, White & Case LLP
Michelle Letourneau-Belock, White & Case LLP

From: [Hipkins, Jack](#)
To: [Eckstein, Maya](#); [O'Shea, Margaret A.](#); [Fairbanks, R. Dennis](#); [Podolny, Meghan A.](#)
Cc: [Vishal Agraharkar](#); [Katie Ali](#); [Max Kalmann](#); [Thorpe Team](#); [Geri Greenspan](#)
Subject: Treatment of Kevin Snodgrass by VDOC Staff
Date: Friday, December 22, 2023 3:52:26 PM
Attachments: [image001.png](#)

Counsel,

We write to inform you that we received a concerning report from one of our clients regarding his recent treatment by VDOC staff.

Mr. Kevin Snodgrass informed us that during his transfer from Sussex and intake at Wallens Ridge on November 2, 2023, he was harassed by VDOC officers, one of whom referenced his participation in lawsuits against VDOC and VDOC officials. When Mr. Snodgrass ultimately received his belongings, he found that his sealed legal mail had been opened and certain contents had been removed. In addition, our understanding is that a number of Mr. Snodgrass's personal property have not been transferred. While we understand that Mr. Snodgrass filled out a written complaint regarding his personal property, we understand that the complaint has not been logged. Further, we have been informed that Mr. Snodgrass has not been receiving his full recreation time and that, while Mr. Snodgrass has requested the necessary forms to file a formal complaint, access to those forms has been denied.

This is not the first time we have heard from our clients that VDOC officers have singled them out based on their participation in this and other lawsuits against VDOC and VDOC personnel.

We trust that VDOC will investigate these issues and take the necessary actions to make sure they do not continue, and will ensure that Mr. Snodgrass's access to written complaint and grievance forms is not impeded.

Regards,

Jack Hipkins

Law Clerk*

Covington & Burling LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5523 | jhipkins@cov.com
www.cov.com

*Member of the California Bar, but not admitted to practice in the District of Columbia.

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Exhibit D

**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

DECLARATION OF GERI GREENSPAN

I, Geri Greenspan, declare the following under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. My name is Geri Greenspan. I am over the age of 21, and I am competent to give this declaration and to testify regarding the matters in this declaration. I am an attorney with the ACLU of Virginia and have entered an appearance on behalf of the Plaintiffs in this litigation.

2. On February 26, 2025, I sent the email attached as Exhibit 1 to this Declaration, which is a true and accurate copy of the email.

3. On March 6, 2025, I sent the email attached as Exhibit 2 to this Declaration, which is a true and accurate copy of the email.

4. On March 17, 2025, I sent the email attached as Exhibit 3 to this Declaration, which is a true and accurate copy of the email.

5. On March 17, 2025, I attempted to reach Margaret O'Shea, Assistant Attorney General, by phone, both at her office and via her cell phone. The voice mail box on her cell phone was full and would not accept a message, but I left a voicemail on her office phone requesting a response to my emails dated February 26 and March 6 and requesting an opportunity to meet and confer regarding the issue of the Safety Agreement.

6. On March 21, 2025, I attempted to reach Maya Eckstein of Hunton, Andrews, Kurth LLP by phone. I left a voicemail on her office phone requesting a response to my previous emails and the opportunity to meet and confer on the issue of the Safety Agreement.

7. I have not received any response from any of Defendants' counsel to any of my communications.

I declare under penalty of perjury that the statements in this Declaration are true and correct to the best of my knowledge.



Geri Greenspan

3/26/25

From: [Geri Greenspan](#)
To: [O'Shea, Margaret A.](#)
Cc: [Eckstein, Maya](#); [Fairbanks, R. Dennis](#); [Podolny, Meghan A.](#); [Vishal Agraharkar](#); [Katie Ali](#); [Max Kalmann](#); [Thorpe Team](#)
Subject: Red Onion State Prison - Safety Agreement
Date: Wednesday, February 26, 2025 3:03:00 PM
Attachments: [image001.png](#)
[2025-02-26 Ltr to VDOC re Safety Agreement.pdf](#)

Dear Margaret:

Please see the attached correspondence addressed to Director Dotson related to a "Safety Agreement" that VDOC is requiring prisoners in restorative housing at Red Onion to sign. Because this population includes at least one named plaintiff and many class members in *Thorpe v. VDOC*, and implicates the conditions of their confinement in the Step-Down Program, we felt it most appropriate to communicate with Director Dotson through counsel. We therefore ask you to transmit this letter to him.

We are aware that several of our class members have refused to sign the agreement and have had the power to their cells shut off as a result. We are concerned that the punishment they are experiencing for refusing to sign this agreement is not only violating their rights but is also burdening or interfering with their participation in the litigation, as it is forcing class members to sign statements with which they disagree.

Please let us know your availability for a meeting to discuss the various requests contained in the attached letter, in particular to ensure that class members remain free to participate in the litigation without fear of retaliation.

Sincerely,
Geri Greenspan (she/her)
Senior Staff Attorney
ACLU of Virginia
P.O. Box 26464
Richmond, VA 23261
804.491.8584
ggreenspan@acluva.org



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February 26, 2025

Chadwick S. Dotson, Director
Virginia Department of Corrections
P.O. Box 26963
Richmond, VA 23261

Re: Red Onion State Prison

Dear Director Dotson:

We write to express serious concerns regarding the attached “Safety Agreement,” which we understand the Virginia Department of Corrections (“VDOC”) is requiring people incarcerated in certain units at Red Onion State Prison to sign. VDOC’s requirement that prisoners sign the agreement violates their constitutional and statutory rights, including their right to free expression, religious free exercise, and the Americans with Disabilities Act, in addition to being wholly counterproductive and contrary to appropriate correctional and mental health treatment practices.

As such, we demand that VDOC immediately revoke any punishments that have been meted out for violations of the agreement, restore power to the cells of individuals who have refused to sign the agreement, and refrain from any further retaliatory action against individuals for refusing to sign the agreement or against individuals who exhibit symptoms of mental illness.

Background

We understand that in mid-January, Red Onion staff presented the Safety Agreement to all people in the Step-Down Program and other restorative housing units at Red Onion. Staff told prisoners that if they did not sign the agreement, the power to their cell outlets would be turned off. While many prisoners did sign the agreement, some did not, and shortly thereafter, the prison cut power to the cells of those who did not sign. For those who continue to refuse to sign the agreement, the power remains off in their cells to the present. This prevents these men from accessing educational, religious, and entertainment programming and materials through their televisions and tablets, and from being able to communicate with their loved ones through email.

VDOC has coerced incarcerated persons to agree with factually inaccurate statements in the agreement, including that they signed the agreement voluntarily, that they “have access to mental health and other local resources, including multiple forms of support,” that “facility staff is committed to [their] well-being,” and that “there are alternative coping strategies available to [the prisoner], including but not limited to stress management techniques, communication with support staff, and engaging in recreational or vocational activities.”

Even more concerning are the threats that if signees “violate this agreement by engaging in self-harm, or other risky behaviors, or refusing to cooperate with the safety protocols,” they may be subject to “additional monitoring and interventions.” The agreement does not specify what those interventions might be.



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The agreement further states that repeated violations can result in punitive consequences, including “loss of privileges, such as access to television, recreation time, or other amenities, as deemed necessary by facility staff to maintain safety and promote positive behavior.”

The terms of the agreement are so vague that they provide little guidance to prisoners regarding what behaviors violate the agreement and what consequences will ensue. As a result, it appears that people subject to this agreement could be found in violation and face consequences outside of the regular disciplinary process set out in agency operating procedures, presumably without affording prisoners the minimal due process protections that attach to formal disciplinary charges.

VDOC’s response to a media inquiry about the agreement was to assert that those people whose cells were powered down present “an immediate risk of self-harm.” But the facts belie this justification: VDOC has taken no action to assess or evaluate the mental health status of these individuals, has not provided any additional mental health treatment or support for them, and has not instituted any other precautions that would prevent incidents of self-harm. This allegation, then, can only be a pretext for coercing prisoners into signing the agreement by punishing those who refuse to sign it.

VDOC’s actions are unlawful

VDOC’s use of coercion and punishment to force prisoners to sign the Safety Agreement violates prisoners’ First Amendment right to freedom of speech by compelling them to espouse views they find objectionable or believe are false. *See, e.g., Janus v. Am. Fed’n of State, Cnty. & Mun. Employees, Council 31*, 585 U.S. 878, 891-93 (2018) (“Compelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command.”).

Retaliating against people for exercising their First Amendment right to refuse to sign the agreement is also impermissible under the First Amendment. *See, e.g., Whitfield v. Spiller*, 76 F. 4th 698 (7th Cir. 2023) (prisoner’s refusal to sign a supervised release agreement was protected speech and punishment for refusing to sign constituted actionable retaliation).

And because prisoners in restorative housing do not have access to congregate religious services, and instead access religious programming on their in-cell televisions or tablets, shutting off power to their cells impermissibly burdens their free exercise of religion. 42 U.S.C. § 2000cc-1(a); *see Turner v. Safley*, 482 U.S. 78, 89 (1987).

Further, the failure to adequately treat prisoners exhibiting self-harming behavior as a result of mental illness, including threatening to punish or actually punishing them, likely violates the Eighth Amendment and the Americans with Disabilities Act. *See, e.g., Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1221 (M.D. Ala. 2017); *Roberts v. Khounphixay*, No. C18-746 MJP, 2020 WL 6270822, at *5 (W.D. Wash. Oct. 26, 2020); *Brown v. Washington Dep’t of Corr.*, No. C13-5367 RBL-JRC, 2015 WL 4039322, at *11 (W.D. Wash. May 13, 2015), report and



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recommendation adopted, No. C13-05367 RBL, 2015 WL 4039270 (W.D. Wash. July 2, 2015).

Finally, VDOC's use of long-term solitary confinement in the Step-Down Program at Red Onion is already the subject of litigation, because the conditions prisoners are subjected to in that program violate their Eighth Amendment and Due Process rights. *See Thorpe et al. v. Virginia Dep't of Corrections et al.*, No. 2:20-cv-00007-JPJ-PMS (W.D. Va). VDOC is amplifying these violations by making these conditions harsher and more isolating for prisoners who simply refuse to sign a vague and coercive agreement.

VDOC's actions create additional mental health risks

VDOC's actions around the Safety Agreement are not only illegal, but profoundly counterproductive and harmful. The scientific consensus among mental health professionals is that safety contracts are ineffective at preventing self-harm, and often do more harm than good. *See, e.g.,* Craig J. Bryan, Jim Mintz, et al., *Effect of crisis response planning vs. contracts for safety on suicide risk in U.S. Army Soldiers: A randomized clinical trial*, *Journal of Affective Disorders* 212 (2017) 64–72; David C. Rozek, Hannah Tyler, et al. (2022): *Suicide Intervention Practices: What Is Being Used by Mental Health Clinicians and Mental Health Allies?* *Archives of Suicide Research*, DOI: 10.1080/13811118.2022.2106923.

When such contracts include threats of punitive consequences, people become fearful of seeking treatment for mental health symptoms – including thoughts of self-harm – which leads to worsening mental health. This is especially true in this case, where the Safety Agreement is so vague regarding what constitutes a violation, or what consequences might be imposed. Even if people do seek mental health treatment, when they do so under the shadow of a safety contract, their relationship with mental health staff becomes transactional. Eroded trust makes effective treatment difficult or impossible.

These concerns are underscored by the fact that VDOC has responded to past incidents of self-harm with punitive measures, including disciplinary charges, imposing restitution obligations related to costs of medical care, and referral for criminal charges. This reflects a misguided and discriminatory belief that incidents of self-harm at Red Onion are not related to mental illness and should be addressed through punishment rather than treatment.

It is beyond dispute that the conditions of extreme social isolation present in the Step-Down Program and other restorative housing units pose a risk of psychological and emotional harm. Indeed, VDOC's own statistics reflect that nearly 80 percent of people in Level S and over 50 percent of people in restorative housing status have a diagnosed mental illness that requires treatment. Virginia Dept. Of Corrections, *Restorative Housing in the Virginia Department of Corrections: FY2024 Report* at 11. Thoughts of self-harm, as well as actual incidents of self-harm, occur much more frequently among people housed in these conditions. *See, e.g.,* Terry A. Kupers, M.D., M.S.P., *Repetitive Self-Harm in Solitary Confinement*, *Correctional Health Care Report*, Vol. 24, No. 3 (Summer 2023) 53-76.



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The most effective way to prevent incidents of self-harm among people living in intolerable conditions is to ameliorate the harshest conditions of confinement that result in extreme social isolation, and to provide adequate mental health care to the people in those units. Any incentives offered should be tied to the successful completion of classes, programs, and activities facilitated by trained and qualified staff.

But based on conversations with dozens of prisoners at Red Onion and VDOC personnel over the past several years, it is clear that there is insufficient staff to facilitate group or individual mental health and psycho-social programming, including therapy or counseling, and most people in restorative housing are not afforded the opportunity to participate in such treatment or programs.

Because VDOC appears unable or unwilling to provide adequate medical and mental health services for a population that has a disproportionately high rate of mental illness, while simultaneously subjecting that population to conditions known to negatively impact mental health, its decision to punish those who inevitably exhibit symptoms of severe mental distress is compounding harm upon harm.

VDOC must take immediate steps to address ongoing and future harm

Because the continued punishment of people who have refused to sign the Safety Agreement, and the past or future punishment of those whose mental health disabilities lead to thoughts or behaviors involving self-harm, are unlawful, we demand that VDOC immediately take the following actions:

- 1) Issue a written communication to Red Onion staff and everyone housed at Red Onion that incidents of self-harm will be treated as mental health crises, not disciplinary infractions, and will not result in the loss of privileges or other punishment.
- 2) Restore power to the cells of all individuals who have refused to sign the Safety Agreement.
- 3) Expunge any disciplinary charges and penalties imposed for any violations of the Safety Agreement.
- 4) Refrain from any form of retaliation against any person for refusing to sign the Safety Agreement, for communicating with counsel or the media about the Safety Agreement, or for exhibiting symptoms of mental illness.
- 5) Review its policies, procedures, and training to ensure that people in VDOC custody are not punished for exhibiting symptoms of mental illness, including expressing suicidal ideation and self-harming behavior.

We look forward to your response.

Sincerely,

/s/

Vishal Agraharkar, Senior Supervising Attorney
Geri Greenspan, Senior Staff Attorney



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Richmond, VA 23261
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Safety Agreement for Inmates

This agreement is made between the undersigned inmate and the facility staff, with the purpose of ensuring your well-being and promoting your safety during your time in custody. The goal is to establish a clear understanding of the expectations and resources available to prevent self-harm and other risky behaviors. By signing this agreement, you are committing to your mental and emotional health while incarcerated and agreeing to actively engage in the safety protocols set forth by the facility.

1. Acknowledgment of the Agreement:

I, the undersigned, acknowledge that I have read, understand, and voluntarily agree to the following terms:

1. Commitment to Safety:

- I commit to refraining from any form of risky behavior, including but not limited to self-harm or any actions that could cause injury to myself or others.
- I understand that self-harm is dangerous, harmful, and not an acceptable method of coping with stress or difficult emotions.

2. Access to Support Services:

- I recognize that I have access to mental health and other local resources, including multiple forms of support, and I agree to utilize these services if I feel overwhelmed or in distress.
- I understand that I can reach out to facility staff for assistance or to request mental health services at any time.

3. Immediate Reporting of Concerns:

- I agree to immediately inform facility staff if I experience any thoughts or urges related to self-harm or if I feel unsafe in any way.
- I understand that the facility staff is committed to my well-being and will provide assistance to address any concerns I may have.

4. Review Process:

- This agreement will be reviewed every 30 days, at which time I will have the opportunity to discuss any concerns or adjustments related to my safety and mental health.
- If necessary, the agreement may be revised or updated during the review process to reflect changes in my mental health needs.

5. Good Behavior Incentives:

- I understand that if I remain free from self-harm and other risky behaviors for a continuous period, I will be eligible for an incentive for maintaining my commitment to safety and good behavior.

- 7 Day incentives (example: new movies and episodes of exclusive TV series)
- 30 Day incentives (example: opportunities for group rec and activities, sports)
- 45 Day incentives (example: free commissary bags)
- 90 Day incentives (example: special meals, fish fry)
- These incentives will be awarded only if I consistently demonstrate adherence to the terms of this agreement and exhibit positive behavior.

6. Consequences of Violations:

- I understand that if I violate this agreement by engaging in self-harm, other risky behaviors, or refusing to cooperate with the safety protocols, the facility may take appropriate actions to ensure my safety, including additional monitoring or interventions.
- I further understand that repeated violations of this agreement may result in the loss of privileges, such as access to television, recreation time, or other amenities, as deemed necessary by facility staff to maintain safety and promote positive behavior.

7. Acknowledgment of Alternatives:

- I am aware that there are alternative coping strategies available to me, including but not limited to stress management techniques, communication with support staff, and engaging in recreational or vocational activities.

2. Inmate's Declaration:

By signing below, I confirm that I voluntarily agree to this Safety Agreement. I understand the importance of this agreement and will make a good faith effort to follow the outlined guidelines. I also acknowledge that I have been informed of my right to seek mental health and other services at any time.

Inmate Name/Number (Printed): _____

Inmate Signature: _____ **Date:** _____

3. Facility Staff Acknowledgment:

By signing below, I acknowledge that I have explained the terms of this agreement to the inmate, and I will ensure that the inmate receives the necessary resources and support outlined in this document.

Staff Name/Position (Printed): _____

Staff Signature: _____ **Date:** _____

4. Review Date:

The next review of this agreement will take place on:

Next Review Date: _____

From: [Geri Greenspan](#)
To: [O'Shea, Margaret A.](#)
Cc: [Eckstein, Maya](#); [Fairbanks, R. Dennis](#); [Podolny, Meghan A.](#); [Vishal Agraharkar](#); [Katie Ali](#); [Max Kalmann](#); [Thorpe Team](#)
Subject: RE: Red Onion State Prison - Safety Agreement
Date: Thursday, March 6, 2025 4:05:00 PM
Attachments: [image001.png](#)

Dear Margaret,

I write to follow up on our below email and letter. We confirmed today that the power remains off to the cells of people who have refused to sign the safety agreement, and no accommodations have been made for religious observance or otherwise. Please let us know your earliest availability to meet and confer on this issue, specifically with regard to the impact on our plaintiffs and class members in *Thorpe v. VDOC*. We remain concerned that they are experiencing punishment or retaliation for refusing to affirm statements with which they disagree, and which may contradict statements they have made or may make in the course of this litigation. We look forward to hearing from you and hope that we can work towards a resolution of this issue without the involvement of the court.

Sincerely,
Geri Greenspan (she/her)
Senior Staff Attorney
ACLU of Virginia
P.O. Box 26464
Richmond, VA 23261
804.491.8584
ggreenspan@acluva.org



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From: Geri Greenspan
Sent: Wednesday, February 26, 2025 3:03 PM
To: O'Shea, Margaret A. <MOShea@oag.state.va.us>
Cc: Eckstein, Maya <meckstein@hunton.com>; Fairbanks, R. Dennis <dfairbanks@hunton.com>; Podolny, Meghan A. <mpodolny@hunton.com>; Vishal Agraharkar <vagraharkar@acluva.org>; Katie Ali <katie.ali@alilockwood.com>; Max Kalmann <maxkalmann@meta.com>; Thorpe Team <ThorpeTeam@cov.com>
Subject: Red Onion State Prison - Safety Agreement

Dear Margaret:

Please see the attached correspondence addressed to Director Dotson related to a “Safety Agreement” that VDOC is requiring prisoners in restorative housing at Red Onion to sign. Because this population includes at least one named plaintiff and many class members in *Thorpe v. VDOC*, and implicates the conditions of their confinement in the Step-Down Program, we felt it most appropriate to communicate with Director Dotson through counsel. We therefore ask you to transmit this letter to him.

We are aware that several of our class members have refused to sign the agreement and have had the power to their cells shut off as a result. We are concerned that the punishment they are experiencing for refusing to sign this agreement is not only violating their rights but is also burdening or interfering with their participation in the litigation, as it is forcing class members to sign statements with which they disagree.

Please let us know your availability for a meeting to discuss the various requests contained in the attached letter, in particular to ensure that class members remain free to participate in the litigation without fear of retaliation.

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Cc: ["Eckstein, Maya"](#); ["Fairbanks, R. Dennis"](#); ["Podolny, Meghan A."](#); [Vishal Agraharkar](#); ["Katie Ali"](#); ["Max Kalmann"](#); ["Thorpe Team"](#)
Subject: RE: Red Onion State Prison - Safety Agreement
Date: Monday, March 17, 2025 3:39:00 PM
Attachments: [2025-02-26 Ltr to VDOC re Safety Agreement.pdf](#)
[image001.png](#)

Dear Margaret –

I left you a voicemail on your office phone today (your cell phone voice mail box was full) to follow up on the below, having learned recently that your email system was down for a period of time. If you could confirm receipt of the attached, and let us know your availability for a call, I would appreciate it.

Best,
Geri

From: Geri Greenspan
Sent: Thursday, March 6, 2025 4:05 PM
To: O'Shea, Margaret A. <MOShea@oag.state.va.us>
Cc: Eckstein, Maya <meckstein@hunton.com>; Fairbanks, R. Dennis <dfairbanks@hunton.com>; Podolny, Meghan A. <mpodolny@hunton.com>; Vishal Agraharkar <vagraharkar@acluva.org>; Katie Ali <katie.ali@alilockwood.com>; Max Kalmann <maxkalmann@meta.com>; Thorpe Team <ThorpeTeam@cov.com>
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Sent: Wednesday, February 26, 2025 3:03 PM

To: O'Shea, Margaret A. <MOShea@oag.state.va.us>

Cc: Eckstein, Maya <meckstein@hunton.com>; Fairbanks, R. Dennis <dfairbanks@hunton.com>; Podolny, Meghan A. <mpodolny@hunton.com>; Vishal Agraharkar <vagraharkar@acluva.org>; Katie Ali <katie.ali@alilockwood.com>; Max Kalmann <maxkalmann@meta.com>; Thorpe Team <ThorpeTeam@cov.com>

Subject: Red Onion State Prison - Safety Agreement

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