IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

WILLIAM THORPE, *et al*., *Plaintiffs*, v. VIRGINIA DEPARTMENT OF CORRECTIONS, *et al*., *Defendants*.	CASE NO. 3:19-cv-332-REP

CLASS PLAINTIFFS' STATEMENT OF POSITION
IN SUPPORT OF VENUE AND OPPOSING DISCRETIONARY TRANSFER

On October 21, 2019, this Court ordered the parties to submit statements regarding why this action should not be transferred to the United States District Court for the Western District of Virginia. Specifically, the Court directed the parties to address this question in the context of its recent decision in *Reyes v. Clarke*, No. 3:18-cv-611, 2019 U.S. Dist. LEXIS 150854 (E.D. Va. Sept. 4, 2019) (hereinafter "*Reyes*"). As set forth below, Class Plaintiffs submit that this action was properly brought in this District, and it would be inappropriate and unfair to override Class Plaintiffs' valid choice of venue by transferring this case to the Western District. Unlike *Reyes*—which involves an individual plaintiff making an as-applied challenge to *his* solitary confinement review decisions and to *his* conditions in confinement relating to specific misconduct of Red Onion staff—this putative class action mounts a predominantly facial challenge to VDOC policies that apply to multiple prisons and names VDOC's leadership in Richmond as the primary defendants.

Significantly, and apparently in light of this difference, Defendants have not challenged venue in this class action as they did in *Reyes*. Thus, the Court should not transfer this matter to the Western District absent a formidable showing of inconvenience and unfairness sufficient to

overcome the substantial weight due to Class Plaintiffs' choice of venue. Because the Western District is not a more convenient forum for litigating this putative class action, transfer is inappropriate.

PRELIMINARY STATEMENT

This case was properly brought in the Eastern District of Virginia, Richmond Division, because the operative factual nucleus lies here and all but four of the Defendants reside in Richmond. This class action challenges how the Richmond Defendants—VDOC and officials who are responsible for running VDOC—devised, formulated, implemented, and oversaw the solitary confinement system imposed upon the Class Plaintiffs. As such, venue is proper in this District, and Defendants never challenged venue in either of their two motions to dismiss the Class Action Complaint.

The Class Action Complaint pleads facts establishing why Class Plaintiffs' choice of venue is entitled to substantial weight and deference. Richmond is where eight of the twelve Defendants reside. Richmond is where the policies subject to this predominantly facial challenge were devised, implemented, and overseen, and, accordingly, where most of the key evidence and witnesses relevant to Class Plaintiffs' claims will be located. This District also considered a case brought by a class of prisoners (in *Brown v. Landon*, No. 81-0853-R (E.D. Va.)) asserting similar claims against Defendants' predecessors in office that arose from solitary confinement conditions at VDOC's previous solitary-confinement facility—Mecklenburg Correctional Center ("MCC")—and a so-called rehabilitative Phase Program that was the forerunner of the Step-Down Program now used by VDOC. CAC ¶ 72. After VDOC in Richmond agreed to settle the *Brown* case on a *department-wide* basis, this Court supervised VDOC's compliance with the *Brown* Settlement Agreement through a consent decree. The first count of the Class Action Complaint alleges that

VDOC and the Individual Defendants have essentially resumed the previously discredited solitary confinement regime and re-enacted the Phase Program—which they said they would abolish—under a different name. In so doing, Defendants breached the *Brown* Settlement Agreement and committed remarkably similar violations of the Eighth and the Fourteenth Amendments, as well as other federal laws.

Thus, Class Plaintiffs' Complaint focuses on decisions and policies adopted by VDOC's upper management in Richmond for governing the administration of VDOC's supermax prisons and the impact of those decisions on a class of prisoners. This case is markedly different from *Reyes* because it does not consider the capacity or characteristics of an *individual* inmate in a single facility, or the application of policy to an individual. Indeed, as discussed below, this Court went to great lengths to analyze the individualized factual allegations in *Reyes*, which "rel[y] extensively upon the specific misconduct of Defendants and other individuals in the Western District of Virginia." *Reyes*, at *29. Because this class action does not concern individualized incidents of misconduct or application of VDOC policies, it is distinguished from *Reyes*. Accordingly, Class Plaintiffs' choice of venue is entitled to respect. The Western District, which has not considered the unique claims or evidence that will be adduced here, is not a more convenient forum for litigating this matter. Respectfully, this Court should defer to Class Plaintiffs' choice of forum.

I. FACTUAL BACKGROUND

The Class Action Complaint is markedly different from the *Reyes* complaint, and those differences drive the transfer analysis.

A. The Class Action Complaint Has Substantial Connections to this District.

Class Plaintiffs are prisoners who have been isolated in long-term solitary confinement at Virginia's two maximum-security prisons, Red Onion and Wallens Ridge, for between two and

twenty-three years. *See* CAC ¶ 1. Class Plaintiffs are being subjected to prolonged confinement because of the Step-Down Program created and overseen by VDOC as a so-called behavioral modification program. *See id.* ¶¶ 15-16. Since November 2018, VDOC has expanded this program to every male correctional institution operated in Virginia.[1] This class action challenges VDOC's historic pattern of abusing administrative segregation under the guise of so-called "behavioral modification" programming, which began when VDOC opened MCC in the 1970s. *See id*. ¶ 50 & Ex. 1-A at 46. MCC's capacity, however, far exceeded Virginia's population of dangerous prisoners. *Id.* ¶ 52. Despite the dearth of prisoners, VDOC failed to operate MCC in accord with minimum standards of human decency and only exacerbated the inhumane conditions there by imposing its Phase Program, which served to ensure that prisoners remained in solitary confinement indefinitely—and even permanently in some cases—without a valid penological purpose. *Id.* ¶¶ 7, 52-54, 56, 72.

In 1981, a class of prisoners brought the *Brown* case in this District against several of the Defendants' predecessors in office. *Id.* ¶ 74 & Ex. 3 at 1. The class plaintiffs alleged that, in the absence of objective criteria for returning prisoners to the general population, the Phase Program led VDOC to place prisoners in solitary confinement without sufficient penological justification or retain them there for unnecessarily long periods of time. *Id.* ¶ 72. Contemporaneous reports published by a body of the Virginia Board of Corrections suggest that VDOC committed these abuses because it was financially motivated to fill empty prison beds at MCC. *Id.* ¶ 54.

[1] *See* Va. Dep't of Corrs., *The Reduction of Restrictive Housing in the Virginia Department of Corrections: FY2019 Report*, at 2 (Oct. 1, 2019), https://vadoc.virginia.gov/media/1452/vadoc-research-restrictive-housing-report-2019.pdf (stating that VDOC has "expanded" the Step-Down Program "to all male facilities by November 2018"). Given VDOC's recent transfers of certain Class Plaintiffs to other institutions, both within and without of Virginia, and VDOC's expansion of the Step-Down Program state-wide, Class Plaintiffs may amend their Complaint to cover every VDOC correctional institution.

VDOC settled *Brown* by agreeing that it would abolish the Phase Program, never again implement any future program that resembled the Phase Program, and abolish the SMU—VDOC's permanent solitary confinement unit. *See* CAC ¶¶ 9-10, 75-76 & Ex. 3 at 2. However, soon after undertaking these obligations, VDOC set out to open two new maximum-security facilities, Red Onion and Wallens Ridge, and faced the same need to fill beds to justify these new, costly endeavors. *Id.* ¶ 90. VDOC then implemented the Step-Down Program, which, like the MCC Phase Program before it, allows staff to place and retain prisoners in solitary confinement without a valid penological purpose. *See id.* ¶¶ 81-84, 154-87. VDOC even imports prisoners from other states to fill solitary-confinement beds in these prisons. *Id.* ¶ 93.

Moreover, unlike *Reyes*, described below, the Class Action Complaint does not assert that VDOC reviews of a particular inmate failed to observe constitutional requirements or adhere to policy. Instead, it alleges that Step-Down Program reviews fail constitutional muster because the VDOC reviews are procedurally inadequate *as designed* and do not actually evaluate whether any prisoner's solitary confinement serves any of the valid purposes of administrative segregation. *See, e.g.*, CAC ¶¶ 165-67, 183, 189. Finally, Class Plaintiffs' Equal Protection claim alleges that the Step-Down Program and its associated policies intentionally require (1) that prisoners who do not pose a current institutional risk are treated the same as those who do, and (2) that prisoners with limitations preventing their participation in the Program are treated the same as prisoners with no such limitations. *Id.* ¶¶ 139-45, 236-45. Class Plaintiffs' constitutional claims are bolstered by sworn testimony of VDOC's own Rule 30(b)(6) witness regarding how the Step-Down Program is applied. Where the Complaint alleges conduct of staff at Red Onion or Wallens Ridge, it is only to illustrate that VDOC's vague, overbroad, and inadequate policies cause the expected or intended harms to the entire class. *Id*. ¶¶ 166, 173, 178, 185, 193-94.

Thus, the Class Action Complaint challenges how VDOC uses its solitary confinement regime, as formulated and then implemented across a class of prisoners. This regulatory regime violates not only the Settlement Agreement, but also Class Plaintiffs' Eighth Amendment right to be free from cruel and unusual punishment and Fourteenth Amendment rights to due process and equal protection. *See, e.g.*, CAC ¶¶ 134-67 (alleging that the Step-Down Program's vague and irrelevant standards allow retaining prisoners in solitary confinement without a valid penological purpose); *id.* ¶¶ 188-204 (alleging that the Step-Down Program lacks a valid scientific basis and requires or permits ongoing solitary confinement of prisoners who do not pose a sufficient risk but cannot complete the Program's irrelevant requirements). Class Plaintiffs also claim, on behalf of a sub-class of disabled prisoners, that the Step-Down Program violates the Americans with Disabilities Act and the Rehabilitation Act. *Id.* ¶¶ 214-15.

Class Plaintiffs brought suit in this District to challenge the Step-Down Program in the very place it was envisioned, designed, administered, and continues to be overseen: VDOC's Richmond headquarters. Red Onion and Wallens Ridge, and the staff at both, are only *objects* of the Complaint, incidental to the *subject* of Class Plaintiffs' claims. The Complaint alleges that the Step-Down Program (like its predecessor program at MCC), and the VDOC leadership who conceived of and supervise it, have designed a system that violates the rights of a class of prisoners as a whole. The Class Action Complaint seeks a remedy that will end VDOC's improper policies and prohibit their resumption at Red Onion, Wallens Ridge, and anywhere else within VDOC's jurisdiction. *See id.* ¶ 272.

B. The *Reyes* Case Focuses Only on an Individual Prisoner's Individual Issues

Although *Reyes* involves solitary-confinement conditions, mental health treatment, and the Step-Down Program—its similarities to this class action end there. As this Court has recognized,

"Reyes' constitutional and statutory claims . . . do not rest only, or even heavily, upon facial challenges to Defendants' policies that may have been formulated in the Eastern District of Virginia." *Reyes*, at *29. That is a crucial factual difference.

As this Court recognized, Mr. Reyes challenges how Red Onion staff in the Western District of Virginia apply the Step-Down Program and mental health treatment protocols *to him*, in light of his national origin, language proficiency, mental illness, and disciplinary record. *Reyes*, at *23-25. He alleges, for example, that Red Onion staff responsible for making solitary-confinement status review decisions "fail[ed] to use translation services" necessary to render accurate determinations, though they were aware of Reyes's inability to understand or communicate. *Reyes*, at *3, *6-9. Thus, Mr. Reyes alleges that several of the Red Onion defendants in that case "failed" to "meaningfully assess" his status under the Step-Down Program (*id.* at *5) and "interfer[ed] 'with Reyes's ability to progress through the Step-Down Program *as provided in* VDOC policy'" (*id.* at *24 (emphasis added and alterations in original omitted)).

As this Court also observed, *Reyes* concerns conditions of confinement *specific to Mr. Reyes*. His claims "insist that the conditions in confinement for Reyes at Red Onion are worse than those specified in the regulations." *Reyes*, at *15, *30. Specifically, "correctional officers treat Reyes with disdain because he is Latino, does not speak in English, and has mental vulnerabilities." *Id.* at *15; *see also id.* at *23-24 (alleging that Red Onion staff "fail[ed] to designate Reyes as seriously mentally ill" (alteration in original omitted)). These officers denied Mr. Reyes meals, work opportunities, and regularly required out-of-cell time. *Id.* at *15-16.

II. ARGUMENT

Section 1404(a) "is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and

fairness.'" *Mullins v. Equifax Info. Servs., LLC*, No. 3:05-cv-888, 2006 U.S. Dist. LEXIS 24650, at *14 (E.D. Va. Apr. 28, 2006) (Payne, J.) (quoting *Stewart Org., Inc. v. Ricoh, Inc.*, 487 U.S. 22, 29 (1988)). As this Court has explained, where venue may also be proper elsewhere, courts in the Fourth Circuit consider four factors when determining whether to transfer under Section 1404(a). *See Reyes*, at *26; *see also Trs. of the Plumbers & Pipefitters Nat'l Pension Fund v. Plumbing Servs.*, 791 F.3d 436, 444 (4th Cir. 2015). These factors include (1) the weight accorded to plaintiff's choice of venue; (2) witness convenience and access; (3) convenience of the parties; and (4) the interest of justice. *See Reyes*, at *26. Under this test, Class Plaintiffs' choice of forum should be respected because Richmond is the nucleus of the operative facts alleged in the Class Action Complaint.

A. Class Plaintiffs' Choice of the Eastern District Is Due Deference Because Richmond Is the Nucleus of the Operative Facts Alleged in the Complaint

A plaintiff's choice of forum is afforded "substantial weight," and "[u]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Div. Access Control, Inc. v. Landrum*, No. 3:06-cv-414, 2007 U.S. Dist. LEXIS 31133, at *18 (E.D. Va. Apr. 26, 2007) (Payne, J.) (quoting *Byerson v. Equifax Info. Servs., LLC*, 467 F. Supp. 2d 627, 633 (E.D. Va. 2006); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1946)); *see also Seaman v. IAC/InterActiveCorp, Inc.*, No. 3:18-cv-401, 2019 U.S. Dist. LEXIS 58072, at *11 (E.D. Va. Apr. 3, 2019) (substantial weight due if the plaintiff selects a venue where the "nucleus of operative facts" lies); *Bd. of Trs. v. Sullivant Ave. Props., LLC*, 508 F. Supp. 2d 473, 477 (E.D. Va. 2007).

As explained above, the nucleus of operative facts is located in this District because this class action is predominantly a facial, constitutional challenge to how the VDOC Defendants in Richmond devised, created, authorized, and administered the solitary-confinement policies

imposed on the Class Plaintiffs. *See* CAC ¶ 36 ("The Named Plaintiffs and the members of the class are each at a substantial risk of serious harm due to VDOC's solitary confinement policies and practices."); *id.* ¶ 119 ("VDOC's policies render solitary confinement at Red Onion and Wallens Ridge long-term, arbitrary, and indefinite."); *id.* ¶¶ 236-45 (Defendants maintained policies that treat differently situated prisoners the same). The Complaint also seeks to enforce VDOC and the Defendants' prior agreement settling litigation before this Court to eliminate the kind of solitary-confinement practices now being used once again to harm a class of VDOC inmates. *Id.* ¶¶ 72, 222-30.

Class Plaintiffs' allegations are unlike *Reyes*, where the nucleus of operative facts rely "extensively upon the specific misconduct of Defendants and other individuals in the Western District of Virginia." *Reyes*, at *29-30. Here, VDOC's departmental leaders in Richmond—who comprise most of the Defendants—are not just "supervisory officials." *Id.* at *30. Rather, their motivations, policy decisions, knowledge, and detailed records make them the lead actors (and custodians) for assessing the class action claims.

This weighs heavily against transfer and in favor of the substantial weight due to Class Plaintiffs' choice of venue in this District. The substantial weight given to Class Plaintiffs' selection is further magnified by Defendants' decision not to challenge venue under Rule 12(b)(3) of the Federal Rules of Civil Procedure at this stage, which implicitly recognizes that the Complaint's allegations render venue in this District unassailable.

B. Richmond Is Where Proof of Class Plaintiffs' Claims Is Located and Is Far More Convenient for Witnesses and Parties

The second and third factors focus on convenience of witnesses, access to proof, and convenience of the parties. *Bd. of Trs. v. Baylor Heating & Air Conditioning, Inc.* 702 F. Supp. 1253, 1257 (E.D. Va. 1988) (convenience of witnesses); *Newbauer v. Jackson Hewitt Tax Serv.*,

No. 2:18-cv-679, 2019 U.S. Dist. LEXIS 53826, at *36-37 (E.D. Va. Mar. 28, 2019) (access to proof); *Trs. of the Plumbers & Pipefitters Nat'l Pension Fund*, 791 F.3d at 444 (convenience of the parties). All point to retaining this matter in this Court.

No one—other than the parties themselves—have been identified as potential witnesses. *See also Seaman*, 2019 U.S. Dist. LEXIS 58072, at *15 (merely reciting the number and location of witnesses is not sufficient to show inconvenience). Any non-party witnesses also are likely to reside in Richmond as they will be testifying to the history and process of policymaking at VDOC itself—and not, as in *Reyes*, to the treatment of an individual prisoner. Class Plaintiffs do not anticipate calling at trial any non-party witnesses employed at Red Onion or Wallens Ridge as most of the evidence regarding both prisons will be documentary in nature. Finally, to the extent Class Plaintiffs require the testimony of non-party witnesses outside of the Eastern District, video depositions of those witnesses can be used at trial. *See Doka USA, Ltd. v. Gateway Project Mgmt., LLC*, No. WDQ-10-1896, 2011 U.S. Dist. LEXIS 82380, at *35 (D. Md. July 25, 2011) (finding that the party asserting witness inconvenience failed to show "that alternatives to live testimony, such as video depositions, would be inadequate").

Most Defendants are in this District. Seven of the eleven Individual Defendants in this case reside or work in Richmond, and their documents are present in Richmond as well. This is the opposite of *Reyes*, in which the Court noted that thirteen of the seventeen defendants reside outside of the Eastern District altogether. *Reyes*, at *32. As explained above, these seven Defendants will be the key witnesses on how VDOC devised, formulated, and implemented the Step-Down Program (and its predecessor policies). Unlike in *Reyes* (at *37 n.7), no prison employee's testimony will be central or more important than the testimony of VDOC and the

Individual Defendants. *See Bd. of Trs.*, 702 F. Supp. at 1257 (holding that witnesses whose testimony is central to the claim or claims weigh more heavily in the convenience analysis).

Of the four Individual Defendants who reside outside of the Eastern District, two—VDOC Regional Operations Chief Henry Ponton and VDOC Regional Administrator Marcus Elam—reside in Roanoke, which is roughly equidistant between the federal courthouses in Richmond and Abingdon. CAC ¶¶ 43-44. The other two, the wardens of Red Onion and Wallens Ridge, are closer to the Western District. However, if these Defendants choose not to appear in person at trial, the wardens could appear via live video feed from the courthouses in Big Stone Gap or Abingdon, locations that Red Onion Warden Kiser stated would be convenient.[2] *See Reyes*, at *35-36; *see also* Fed. R. Civ. P. 43(a) ("For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location."); *In re Actos® (Pioglitazone) Prods. Liab. Litig.*, No. 6:11-md-2299, 2014 U.S. Dist. LEXIS 2231, at *50 (W.D. La. Jan. 8, 2014) ("[C]ontemporaneous transmission is now equally incorporated as proper trial procedure and an acceptable means of appearing at court and trial, as were written and video depositions, respectively, in the past."). Likewise, Plaintiffs do not anticipate calling many or even most of their Class Representatives at trial in Richmond because their testimony can be presented in the form of video deposition or via live contemporaneous transmission from Big Stone Gap or Abingdon.

[2] If live testimony from a witness or defendant employed at Red Onion or Wallens Ridge becomes necessary, then Class Plaintiffs have no objection to that witness or defendant appearing by live video feed from the federal courthouses in Abingdon or Big Stone Gap. *See Video Conference Systems*, United States District Court Eastern District of Virginia, http://www.vaed.uscourts.gov/resources/Court%20Technology/evidence_presentation_systems.htm (last visited Nov. 4, 2019); *Courtroom Technology*, Western District of Virginia, http://www.vawd.uscourts.gov/programs-services/courtroom-technology.aspx (last visited Nov. 4, 2019).

Access to non-party witnesses does not support transfer. To the extent Class Plaintiffs require testimony from non-party witnesses employed at Red Onion and Wallens Ridge, they intend to take video depositions at locations that are mutually convenient for those witnesses and introduce this testimony at trial. Courts in this Circuit routinely recognize the value of depositions in weighing the burden on non-party witnesses. *See, e.g.*, *Acterna, L.L.C. v. Adtech, Inc.*, 129 F. Supp. 2d 936, 939 (E.D. Va. 2001) (availability of video depositions for non-party witnesses residing in Maryland and Virginia supported the convenience of transfer to the District of Hawaii); *ARCpoint Franchise Grp., LLC v. Blue Eyed Bull Inv. Corp.*, No. 6:18-cv-00235, 2018 U.S. Dist. LEXIS 101528, at *19 (D.S.C. June 13, 2018) (Quattlebaum, J.) (noting that the "burden of inconvenience" on non-party witnesses "can be mitigated with depositions for which there is nationwide service of process"). Class Plaintiffs have no objections to using video deposition testimony at trial and are prepared to take that testimony proximate to the prisons, including at the courthouses in Abingdon or Big Stone Gap—locations with which the defendants in *Reyes* had no concern. *See Reyes*, at *35-36.

The nature and location of evidence supports venue in the Eastern District. The location of evidence is relevant to the convenience analysis. *See Koh v. Microtek Int'l, Inc.*, 250 F. Supp. 2d 627, 636-38 (E.D. Va. 2003) (weighing location of evidence in the convenience determination). The Class Action Complaint alleges that VDOC "is responsible for issuing regulations, policies, directives, and operating procedures governing the operation of state correctional facilities," including "operating procedures governing the Step-Down Program at Red Onion and Wallens Ridge." CAC ¶ 37. VDOC's headquarters and leadership are in Richmond, and documentary evidence of the "regulations, policies, directives, and operating procedures" relevant to this class action may be found there. *Id.* Indeed, VDOC has centralized this

information—and more, including extensive prisoner records—on VACORIS, VDOC's "organized computer-based system that provides for the collection, storage, review, retrieval, analysis, and reporting of information as part of the overall management, planning, and research capacity relating to both offenders and organizational units within DOC." *VDOC Operating Procedure 050.1*, Operating Procedures, https://vadoc.virginia.gov/files/operating-procedures/050/vadoc-op-050-1.pdf (last visited Nov. 4, 2019). Moreover, the documents related to VDOC's funding, planning, and construction of MCC, and later of Red Onion and Wallens Ridge, are most likely located at VDOC headquarters in Richmond—not at Red Onion and Wallens Ridge. Accordingly, the convenience of witnesses and the parties, and the location of evidence, does not vie in favor of transferring this action or overcome the substantial weight due to Class Plaintiffs' venue selection.

C. This Class Action Belongs in the Eastern District, Which Can Speedily Resolve the Claims at Issue and Directly Enforce an Injunction Against Defendants

The last factor, "the interest of justice," encompasses considerations such as judicial economy, avoidance of inconsistent judgments, docket congestion, and the interest in having local controversies decided at home. *See Newbauer*, 2019 U.S. Dist. LEXIS 53826, at *39-40 (quoting *Byerson*, 467 F. Supp. 2d at 635). None of these considerations supports transfer to the Western District.

First, as explained above, the operative factual nucleus of this class action arises from VDOC and its leadership in Richmond: specifically, policies, decisions, and actions conceived, implemented, and maintained by VDOC regarding the Step-Down Program in its various iterations. This District, and the Richmond Division in particular, therefore, possesses a strong local interest in resolving this controversy.

Second, because this action focuses on VDOC, and how its leaders have devised and implemented a solitary-confinement policy across multiple prisons, this Court is in the best position to enforce and monitor the injunctive relief requested by Class Plaintiffs. *See Reyes*, at *41-42 (citing *Boyd v. Snyder*, 44 F. Supp. 2d 966, 971 (N.D. Ill. 1999)). Unlike in *Reyes*, where the plaintiff is demanding individualized relief,[3] Class Plaintiffs request "permanent injunctive relief enjoining Defendants and their successors, agents, and assigns from further violation of the Eighth and Fourteenth Amendments of the U.S. Constitution, the Americans with Disabilities Act, and the Rehabilitation Act." CAC ¶ 272. Thus, this case is not like *Boyd*, where the policies in question were developed in the transferee district and the relief focused "almost exclusively" on a single prison. *Boyd*, 44 F. Supp. 2d at 970-71, *cited in Reyes*, at *42. Rather, this case aligns with the *Farmer* case, which *Boyd* distinguished, where the policies in question were developed in the transferor district and the relief requested sought to end the policies across multiple prisons. *Boyd*, 44 F. Supp. 2d at 970 (citing *Farmer v. Hawk*, No. 94-cv-2274, 1996 U.S. Dist. LEXIS 13630 (D.D.C. Sept. 5, 1996)).

Third, the efficient resolution of this case does not weigh in favor of transfer to the Western District and instead counsels venue in this Court. *See Intranexus, Inc. v. Siemens Med. Sols. Health Servs. Corp.*, 227 F. Supp. 2d 581, 585 (E.D. Va. 2002) (holding that a "more speedy resolution of this case in the Eastern District of Virginia would be in the interest of justice"). The Complaint outlines serious harms inflicted by VDOC's Step-Down Program. Class Plaintiffs, and class

[3] In *Reyes*, the Court noted that plaintiff "demands, *inter alia*, 'permanent injunctive relief requiring [d]efendants to cease the use of solitary confinement *for [p]laintiff* and to transfer *him* to a mental health hospital for proper diagnosis and care, and to then house *him* in a non-solitary unit with appropriate access to mental health care programming and supports." *Reyes*, at *41 (emphasis added).

members generally, remain at imminent risk of continuing harm every day that this confinement regime remains in place. The Eastern District's "rocket docket" provides the most expeditious route to resolving these violations. *See id*. (noting that the speed of the "rocket docket" is relevant to the interest of justice analysis).

Fourth, the Eastern District has repeatedly considered the constitutionality of VDOC solitary-confinement review procedures and the Eighth Amendment standard for solitary-confinement conditions. *See, e.g.*, *Porter v. Clarke*, 290 F. Supp. 3d 518 (E.D. Va. 2018), *aff'd*, 923 F.3d 348 (4th Cir. 2019); *Porter v. Clarke*, No. 1:14-cv-1588, 2016 U.S. Dist. LEXIS 90728 (E.D. Va. July 8, 2016), *rev'd*, 852 F.3d 358 (4th Cir. 2017); *Prieto v. Clarke*, No. 1:12-cv-1199, 2013 U.S. Dist. LEXIS 161783 (E.D. Va. Nov. 12, 2013), *rev'd*, 780 F.3d 245 (4th Cir. 2015). These cases resulted in binding Fourth Circuit precedent regarding solitary confinement. By contrast, the Western District has only cited the Fourth Circuit's decision in *Porter* once—and has never applied its rule to the conditions at any maximum-security facility. On the other hand, this Court has rigorously applied the *Porter* standard to allegations regarding conditions at Red Onion. *See Reyes v. Clarke*, No. 3:18-cv-611, 2019 U.S. Dist. LEXIS 146237 (E.D. Va. Aug. 27, 2019).

Finally, the Western District also has never considered most of the evidence to be adduced in this case, which will bear upon the origins of the Step-Down Program, its scientific validity, its efficacy, and any economic motivations for the long-term solitary confinement regime it creates. Neither has the Western District considered the extensive evidence of class-wide harm caused by long-term solitary confinement that will be produced in this case. As such, the interest of justice does not substantially weigh in favor of transfer to the Western District.

CONCLUSION

For the foregoing reasons, Class Plaintiffs' choice of venue in the Eastern District of Virginia should be given substantial weight, and this class action should not be transferred to the United States District Court for the Western District of Virginia.

Dated: November 4, 2019

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November, 2019, I electronically filed the foregoing Class Plaintiffs' Statement of Position in Support of Venue and Opposing Transfer with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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