

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

NICOLAS REYES,)
)
)
 Plaintiff,)
)
)
 v.)
)
 HAROLD CLARKE, Director of the Virginia)
 Department of Corrections; A. DAVID)
 ROBINSON, Chief of Corrections Operations;)
 JEFFREY KISER, Warden of Red Onion State)
 Prison; EARL BARKSDALE, Former Warden)
 of Red Onion State Prison; RANDALL)
 MATHENA, Security Operations Manager and)
 Former Warden of Red Onion State Prison,)
 ARVIL GALLIHAR, Chief of Housing and)
 Programs; AMEE DUNCAN; LARRY)
 COLLINS; JUSTIN KISER; CHRISTOPHER)
 GILBERT; GARRY ADAMS; JAMES)
 LAMBERT; WILLIAM LEE; TERRANCE)
 HUFF; D. TRENT; EVERETT MCDUFFIE and)
 STEVEN HERRICK, Health Services Director,)
)
 Defendants.)

Case No. 3:18CV611

JURY TRIAL DEMANDED

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiff Nicolas Reyes has lived in solitary confinement for twelve and a half consecutive years inside the Virginia Department of Corrections’ (VDOC) most restrictive and notorious facility, Red Onion State Prison. He lives behind a solid steel door in total isolation 22-24 hours a day. The incidental opportunities to converse with staff and other prisoners are mostly nugatory – Mr. Reyes is a monolingual Spanish

speaker, whereas the vast majority of staff and prisoners at Red Onion speak only English.

2. Mr. Reyes' mental health has deteriorated greatly over the course of his solitary confinement,¹ and he now suffers from depression and disordered thinking. At times he has been unable even to identify the prison where he is held. He experiences routine, vivid hallucinations, in which he communicates with his dead parents and the former president of El Salvador, Jose Duarte.

3. There is no penological purpose for continuing to hold Mr. Reyes in long-term solitary confinement. He has not committed any act of violence since entering solitary confinement twelve and a half years ago and has not had a disciplinary infraction of any kind in over three years. In fact, VDOC officials charged with regularly reviewing Mr. Reyes' solitary confinement have acknowledged repeatedly that he does not pose a threat to the safety and security of the institution.

4. VDOC's sole justification for keeping Mr. Reyes in long-term solitary confinement is that he has not completed the VDOC Segregation Reduction Step-Down Program (Step-Down Program), implemented in 2011 ostensibly to create a pathway out of solitary confinement by conditioning progress towards general population on completion of certain programming. The Step-Down Program's promises are entirely illusory for prisoners like Mr. Reyes who lack the capacity to participate in the program,

¹ VDOC uses the euphemism "segregation" to refer to the practice of isolating prisoners from other humans for 23 or 24 hours a day. Plaintiff, like the United States Supreme Court, uses the more common term "solitary confinement." See *Davis v. Ayala*, 135 S. Ct. 2187, 2208 (2015) (Kennedy, J., concurring).

and its dizzying array of procedural checks are functionally meaningless in relation to Mr. Reyes except insofar as they obscure his arbitrary and discriminatory treatment.

5. Under the Step-Down Program, prisoners may not progress out of solitary confinement without completing a series of journals and associated programming that purport to change the behavior and mindset of high-risk inmates to improve their likelihood of success in a general population setting. Mr. Reyes, however, cannot read or write; the journal series is not offered in Spanish; and no accommodations are made for monolingual Spanish-speaking prisoners, illiterate prisoners, or prisoners with mental disabilities.

6. Defendants conduct meaningless, sham reviews of Mr. Reyes' ongoing solitary confinement that serve no purpose other than to rubberstamp his continued isolation. Mr. Reyes cannot understand let alone participate in these reviews due to Defendants' failure to accommodate his limited English proficiency, his inability to read and write, and his mental health limitations.

7. These failures are no accident. Red Onion staff knows Mr. Reyes cannot meaningfully access mental health treatment or the only pathway out of solitary confinement. Yet, because of hostility towards Spanish speakers and people of Central American ancestry like Mr. Reyes, staff continue to deny him the translation services he needs. Officials are deliberately indifferent to the intentional discrimination that keeps Mr. Reyes trapped in solitary confinement.

8. Red Onion's mental health staff have failed to provide Mr. Reyes with a comprehensive mental health evaluation despite very significant signs that Mr. Reyes is

suffering from a psychotic disorder. Instead, they perform cursory mental health assessments without the assistance of a translator. And mental health staff have failed to advocate for Mr. Reyes' removal from long-term solitary confinement despite his undeniable decompensation in these conditions.

9. The extreme, unusual and cruel conditions of Mr. Reyes' confinement, the deliberate indifference to Mr. Reyes' mental and physical decompensation, and the lack of meaningful review of the necessity of Mr. Reyes' continued isolation, violate the Eighth and Fourteenth Amendments to the United States Constitution. In addition, Defendants' complete failure to accommodate Mr. Reyes' mental health disabilities violates the Americans with Disabilities Act and the Rehabilitation Act of 1973. Finally, Defendants have intentionally discriminated against Mr. Reyes by indefinitely holding him in solitary confinement on account of his national origin and limited English proficiency, thereby violating his rights under the Equal Protection Clause of the Fourteenth Amendment to the Constitution and Title VI of the Civil Rights Act of 1964.

10. Mr. Reyes has suffered and continues to suffer irreparable physical, mental and emotional harm from the Defendants' conduct. By this action, Mr. Reyes seeks injunctive, declaratory, and monetary redress for the unlawful conditions and discrimination that he has endured, and the damage to his physical and mental health that Defendants have inflicted.

11. Without judicial intervention, Mr. Reyes' extreme isolation in solitary confinement will continue unabated, and he will continue to suffer.

II. JURISDICTION AND VENUE

12. This action is brought pursuant to 42 U.S.C. § 1983.

13. This Court has jurisdiction over Mr. Reyes' federal law claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3), because Plaintiffs' claims arise under the Constitution and the laws of the United States.

14. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

15. Venue is proper under 28 U.S.C. § 1391(b) because one or more of the Defendants is subject to the Court's personal jurisdiction with respect to this action.

III. Parties

16. Plaintiff Nicolas Reyes is a 47-year-old native of El Salvador, who has been in the custody of VDOC since 2001. Mr. Reyes is a monolingual Spanish speaker, and is unable to read or write in any language. He has been living in solitary confinement for the past twelve and a half years. He currently resides in Red Onion State Prison in Pound, Virginia.

17. Defendant Harold Clarke is the Director of VDOC, where he is responsible for the overall supervision and management of the system of state correctional facilities. Defendant Clarke has the authority to assign any offender to any institution deemed appropriate. Defendant Clarke's regular place of business is at VDOC headquarters in Richmond, Virginia. He is sued in his individual and official capacity.

18. Defendant A. David Robinson is the Chief of Corrections Operations for VDOC, where he is responsible for the operations of Virginia's correctional facilities, including overseeing the Department's "restrictive housing" program and compliance with federal laws. Defendant Robinson's regular place of business is at VDOC headquarters in Richmond, Virginia. He is sued in his individual and official capacity.

19. Defendant Jeffrey Kiser (Defendant Kiser) is the Warden of Red Onion State Prison, where he has ultimate responsibility over the care and custody of Red Onion prisoners, including Mr. Reyes. He has held this role since December 2016 and previously held the role of Assistant Warden of Red Onion. As Warden, Defendant Kiser is also the Facility Unit Head of Red Onion, in which role he has ultimate authority to approve – or to delegate authority to approve – security-level classifications of Red Onion prisoners. Defendant Kiser's regular place of business is at Red Onion State Prison in Pound, Virginia. He is sued in his individual and official capacity.

20. Defendant Earl Barksdale is the former Warden of Red Onion State Prison. He held this role from January 2015 to December 2016. His regular place of business is at Baskerville Correctional Center in Baskerville, Virginia, where he is currently the warden. He is sued in his individual capacity.

21. Defendant Randall Mathena is the Security Operations Manager for VDOC and former Warden of Red Onion State Prison. As Security Operations Manager he is responsible for performing biannual reviews of each prisoner in solitary confinement at Red Onion to determine if the prisoner should remain in solitary confinement. He held the role of Red Onion Warden from October 2011 to January 2015.

His regular place of business is at VDOC headquarters in Richmond, Virginia. He is sued in his individual and official capacity.

22. Defendant Arvil Gallihar is the Chief of Housing and Programs (CHAP) for Red Onion State Prison and has served on the Dual Treatment Team (DTT), which reviews solitary confinement classifications and mental health assessments to determine appropriate housing. Defendant Gallihar's regular place of business is at Red Onion State Prison in Pound, Virginia. He is sued in his individual and official capacity.

23. Defendant Ameer B. Duncan is the former Unit Manager of C-Building, where Mr. Reyes was housed between 2010 and 2018. In her role as Facility Unit Head designee she reviewed segregation classification decisions made by the Institutional Classification Authority (ICA), a team of staffers who conduct hearings to review the progress of individual prisoners through the Step-Down Program as well as their ongoing segregation classification. Defendant Duncan's regular place of business is at Red Onion State Prison in Pound, Virginia. Defendant Duncan is sued in her individual capacity.

24. Defendant Larry R. Collins is the Unit Manager of C-building, where Mr. Reyes was housed between 2010 and 2018. In his role as Facility Unit Head designee, he reviews segregation decisions made by the ICA. Defendant Collins' regular place of business is at Red Onion State Prison in Pound, Virginia. Defendant Collins is sued in his individual and official capacity.

25. Defendant Justin W. Kiser (Defendant Justin Kiser) is a former ICA member at Red Onion, responsible for reviewing and recommending segregation

classification for Mr. Reyes. Defendant Justin Kiser's last known regular place of business is at Red Onion State Prison in Pound, Virginia. Defendant Justin Kiser is sued in his individual capacity.

26. Defendant Christopher C. Gilbert is a former ICA member at Red Onion, responsible for reviewing and recommending segregation classification for Mr. Reyes. Defendant Gilbert's last known regular place of business is at Red Onion State Prison in Pound, Virginia. Defendant Gilbert is sued in his individual capacity.

27. Defendant Garry Adams is a former ICA member at Red Onion, responsible for reviewing and recommending segregation classification for Mr. Reyes. Defendant Adams' last known regular place of business is at Red Onion State Prison in Pound, Virginia. Defendant Adams is sued in his individual capacity.

28. Defendant James D. Lambert is an ICA member at Red Onion, responsible for reviewing and recommending segregation classification. Defendant Lambert's regular place of business is at Red Onion State Prison in Pound, Virginia. Defendant Lambert is sued in his individual and official capacity.

29. Defendant William Lee is the Psychology Associate Senior at Central Classification Services (CCS), the team that renders final classification decisions with respect to prisoners' security level and institution assignment, including mental health unit referrals. Defendant Lee's regular place of business is at VDOC headquarters in Richmond, Virginia. Defendant Lee is sued in his individual and official capacity.

30. Defendant Terrence Huff is a Qualified Mental Health Professional and VDOC employee. His title is Psychology Associate II. Defendant Huff's regular place of

business is at Red Onion State Prison in Pound, Virginia. Defendant Huff is sued in his individual and official capacity.

31. Defendant D. Trent is a Qualified Mental Health Professional and VDOC employee. His title is Psychology Associate I. Defendant Trent's regular place of business is at Red Onion State Prison in Pound, Virginia. Defendant Trent is sued in his individual and official capacity.

32. Defendant Everett McDuffie is a psychiatrist. He contracts with VDOC to provide psychiatric services to prisoners at Red Onion State Prison. Defendant McDuffie maintains a regular place of business at Red Onion State Prison. Defendant McDuffie is sued in his individual capacity.

33. Defendant Steven Herrick is the VDOC Director of Health Services, in which role he is responsible for ensuring that all VDOC prisoners have adequate access to health services, including mental health services. Defendant Herrick's regular place of business is at VDOC headquarters in Richmond, Virginia. Defendant Herrick is sued in his individual and official capacity.

IV. STATEMENT OF FACTS

A. The Well-Known Dangers of Solitary Confinement

34. The harms of solitary confinement are well-understood and recognized among mental health researchers, physicians, and the human rights community. There is a broad national and international consensus as to the serious risks that solitary confinement poses, even for individuals who are otherwise mentally stable. These harms and serious risks are known and understood by corrections professionals

throughout the country and were known or reasonably should have been known by Defendants.

35. Prisoners in long-term solitary confinement exhibit a range of profoundly harmful psychological injuries that include anxiety, depression, withdrawal, panic, loss of self-control, rage, hyper-sensitivity to stimuli, apathy, dementia, and detachment from reality and hallucinations. They also endure physiological injuries, including sweating, chills, insomnia, deteriorated vision, headaches, hypertension, tachycardia, back pain, appetite loss, weight loss and digestive problems. Prisoners in solitary confinement are disproportionately likely to attempt suicide and to self-mutilate.

36. Sensory deprivation of the kind Mr. Reyes is enduring has a host of negative effects. In the same way that food and shelter are critical to physical wellbeing, meaningful interactions with other people and with the environment are elemental to maintaining mental stability. Without societal and environmental engagement (i.e., natural light, outdoor sounds, color variety), cognitive functions atrophy and mental alertness, concentration, and the ability to plan all suffer.

37. The deleterious impact of solitary confinement on the mental wellbeing of a prisoner is immediate, often beginning within days or weeks. Prisoners in solitary confinement soon lose the ability to adequately concentrate and focus. Within days, tests of brain activity reveal abnormal patterns associated with inertness and mania.

38. The psychological consequences of prolonged solitary confinement are so severe as to cause those suffering from such confinement to dissociate and lose their

sense of self. Moreover, such consequences often linger even after a prisoner is no longer in isolation.

39. The types of traumatic psychological harms associated with solitary confinement often trigger detectable changes in neural pathways and the morphology and neurochemistry of the brain. These changes can be accurately characterized as a physical injury or illness because they adversely affect the nature and functioning of the sufferer's brain.

40. Justice Anthony Kennedy has cautioned that prolonged solitary confinement "exact[s] a terrible price." *Davis v. Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring). Appearing before the House Appropriations Subcommittee on Financial Services and General Government, Justice Kennedy further observed: "This idea of total incarceration just isn't working, and it's not humane Solitary confinement literally drives men mad."²

41. Although less than five percent of prisoners in the United States are housed in solitary confinement settings, half of all prison suicides occur in solitary confinement. Incidents of non-fatal self-mutilation are also far more prevalent in solitary confinement units than in general population.

42. Suicide rates are highest among prisoners with mental illness in solitary confinement. For prisoners with pre-existing mental illness, the harms of solitary confinement are magnified and accelerated, and they are more likely to be deadly.

² Supreme Court Fiscal Year 2016 Budget at 30:42-31:22 (C-SPAN television broadcast Mar. 23, 2015), goo.gl/8Hkuvj.

43. For these reasons, in 2012, the American Psychiatric Association issued a position condemning the use of prolonged solitary confinement for prisoners with serious mental illness. Other professional bodies advocating exclusion of prisoners with serious mental illness from solitary confinement include the World Health Organization, the American Public Health Association and the National Commission on Correctional Health Care.

44. The American Bar Association has called for a complete end to the use of solitary confinement lasting longer than fifteen consecutive days.

45. The international human rights community largely views long-term solitary confinement as cruel, inhuman or degrading treatment constituting torture.

46. Juan Mendez, the former U.N. Special Rapporteur on Torture and Cruel, Inhuman and Degrading Treatment, concluded that prolonged solitary confinement, i.e., lasting more than 15 days, amounts to cruel, inhuman and degrading treatment and is inconsistent with human rights norms.

47. Consistent with the findings of the Special Rapporteur, the U.N. Standard Minimum Rules for the Treatment of Prisoners prohibit both indefinite solitary confinement and prolonged solitary confinement.

48. Mr. Reyes has been in solitary confinement roughly 300 times longer than the outer limit of international human rights law.

49. Despite broad consensus as to the negative consequences of solitary confinement, Defendants have held Mr. Reyes in solitary confinement for twelve and a half years. Given the wealth of information available on the harms of solitary

confinement, Defendants have acted and continue to act with full knowledge of the risk that Mr. Reyes will continue to decompensate and seriously injure himself.

50. Indeed, Defendants are or reasonably should be well aware of the potentially deadly consequence of using solitary confinement on the prisoners in their custody.

51. In an HBO Documentary examining Red Onion's long-term solitary confinement units, a Red Onion mental health supervisor acknowledged that "[t]here have been studies that have shown that segregation can have harmful effects on a person's mental health," and explained that "occasionally we do see an offender who has a history of no mental health services has all of a sudden become symptomatic. And we have no other way to explain that except that they have been housed in this environment for such a long period of time."³

52. In that same documentary, a correctional officer described being shocked when he began working at Red Onion and looked into a cell to see that a prisoner had bitten a bloody hole into his arm. Reflecting back on that incident, the correctional officer recalled that it "broke [him] in" to the way things are at Red Onion.⁴

B. Solitary Confinement in VDOC

53. VDOC constructed Red Onion in 1998 as a "supermax" prison of the kind that spread across the United States in the last decade of the twentieth century.

³ SOLITARY: INSIDE RED ONION STATE PRISON (Candescent Films 2016) at 48:44 - 49:17.

⁴ Id. at 46:05 - 47:10.

54. According to Defendant Mathena: “Red Onion . . . was opened to be a security-level-6 segregation facility, supermax. Basically, a totally locked down facility, where most offenders remain in the cell 23 hours a day, seven days a week.”⁵



Photograph of Red Onion State Prison from the Richmond-Times Dispatch

55. Located on a mountaintop in the southwest corner of Virginia, Red Onion is geographically remote. Loved ones and attorneys travel between four and eight hours from Virginia’s more populous centers to visit prisoners consigned to this facility.

56. The architectural design of Red Onion emphasizes isolation and total control. The segregation cells are isolating by design, featuring solid steel doors, wide distances separating cells opposite one another, and single occupancy recreation cages.

57. The only opportunity for prisoners in solitary confinement to communicate with one another is to speak to prisoners who share a ventilation opening.

⁵ Id. at 10:13 – 10:53.

This practice is called “getting on the vent,” and in this way prisoners can speak to a maximum of three other persons: the person in the cell directly beside his and the two men housed either directly above or below. Otherwise, prisoners may try to communicate silently with prisoners on the opposite side of the pod by standing at the narrow window in their door and making hand signals.

58. In 2011, VDOC began transitioning to the Step-Down or “Pathways” Program with the purported goal of providing a defined pathway for prisoners to transition out of long-term, indefinite solitary. Under the Step-Down Program, there are two pathways: Intensive Management (IM) and Special Management (SM). See Attachment A, O.P. 830.A.III, effective 2/15/18. Each pathway consists of privilege levels 0, 1 and 2.

59. As Defendant Mathena described the pathways system:

At Red Onion the offender would start out as a level-0. That would be you get your rec and your showers and your food and all the basic requirements of life. You get the very minimum. If you behave, handle yourselves in compliance and you cooperate with staff, you will go to level-1. At that point you may pick up an electronic item, you may pick up a few more dollars of commissary. If the offender continues to cooperate he can go to level-2, where he will pick up more privileges. They may have some more commissary; of course they get their TV.⁶

60. According to Defendant Mathena, “to get out of segregation, [prisoners] must participate in [the] Step-Down Program.”⁷

⁶ Id. at 33:05 – 33:46.

⁷ Id. at 35:44 – 36:25.

61. The basic Step-Down Program consists of seven English-language journals called “the Challenge Series,” that purport to change the behavior and mindset of prisoners to improve their likelihood of success in general population. In-person instruction accompanies journals three through seven.

62. From the initiation of the Step-Down Program seven years ago until June of this year, Defendants did not progress Mr. Reyes beyond level 0, which former Warden Mathena described as “the very minimum.”

63. According to VDOC’s Step-Down Program “Operations Strategy” manual, Attachment B, the conditions for prisoners living at the lowest privilege level were designed to be as follows:

- a. One hour of recreation per day outside in recreation cages;⁸
- b. Three showers per week;
- c. Two fifteen-minute phone calls per month;
- d. One one-hour non-contact visitation per week;
- e. No video visitation;
- f. No television;
- g. Shackled with dual escort whenever out of cell;
- h. No out-of-cell programming, law library access, or religious services;
- i. Limited commissary list with no food items for purchase.

⁸ VDOC recently amended the policy providing for recreation to two hours per day, five days a week. Attachment C, O.P. 861.3.V.E.17.a (amended 1/16/2018).

64. For years, Mr. Reyes satisfied behavioral prerequisites. Yet because he was a non-English speaker, unable to read and write, and experienced mental health limitations, Mr. Reyes was unable to participate in the journal series component of the Step-Down Program, thereby making it impossible for him to progress out of solitary confinement without assistance or accommodations. And because of Red Onion correctional officers' hostility towards Spanish speakers and persons of Central American descent like Mr. Reyes, such assistance and accommodation have been withheld. Mr. Reyes has thus endured years of solitary confinement for no legitimate purpose.

65. Defendants did not move Mr. Reyes from SM 0 to 1 until June 2018, seven years after the Step-Down Program began.

66. Prisoners at SM 1 are able to purchase \$5 of food items from commissary and are entitled to one additional call per month. They can purchase a television and a radio. They are able to have an in-pod work assignment, but first priority for such assignments goes to SM 2 prisoners. They are not able to participate in out-of-cell programs unless they are inside a "therapeutic module," which is a cage roughly the size of a telephone booth. The conditions of their solitary confinement are otherwise identical to prisoners at SM 0.

C. Mr. Reyes

67. Mr. Reyes entered VDOC custody in April 2001. He arrived at Red Onion in June 2001. He spent over a year in segregation at Red Onion before being transferred to Wallens Ridge State Prison and placed in general population in July 2003.

68. On February 24, 2006, Mr. Reyes was brutally assaulted by his cellmate while he washed his underwear in the sink. Mr. Reyes was left bloodied and naked on the floor of his cell. He suffered broken teeth and a head injury. He still has a scar across his skull from the assault.

69. VDOC charged him with assault for defending himself against the attack.

70. Mr. Reyes believes that another prisoner wrote documents challenging the disciplinary ticket on his behalf. However, the prisoner contested the charges in English, so Mr. Reyes has no way of knowing what challenges were raised or if they had merit.

71. VDOC did not provide Mr. Reyes the opportunity to be heard or to present evidence before finding him guilty of assault. The only translation services VDOC staff provided Mr. Reyes before sending him to Red Onion for segregation was to translate the charges against him. No VDOC staff assisted Mr. Reyes in defending himself against those charges, even though they were aware of his inability to communicate in English.

72. Following the assault, VDOC sent Mr. Reyes to Red Onion and placed him in the long-term solitary confinement unit, where he remains to this day.

73. In December 2012, after VDOC instituted the Step-Down Program for prisoners in long-term isolation, Mr. Reyes was designated Special Management, or SM. The SM pathway is intended for prisoners who:

display an institutional adjustment history indicating repeated disruptive behavior at lower level facilities, a history of fighting with staff or offenders, and/or violent resistance towards a staff intervention resulting in harm to

staff, other offenders without the intent to invoke serious harm or the intent to kill, or serious damage to the facility, and where reasonable intervention at the lower security level have not been successful in eliminating disruptive behaviors. Attachment A, O.P. 830.A.III.

74. Mr. Reyes does not now meet, and has not ever met, the criteria for designation as an SM prisoner. Mr. Reyes does not have an extensive history of violence within VDOC. The altercation with his cellmate, in which Mr. Reyes insists that he acted in self-defense, was his first – and to this day, only – incident of violence. Nor did VDOC attempt any “reasonable intervention” to manage Mr. Reyes at lower security levels.

D. Sham Reviews of Mr. Reyes' Continued Isolation

i. Segregation Classification Review and the Step-Down Program

75. For many prisoners, including Mr. Reyes, the Step-Down Program is an impediment to leaving solitary confinement, as it provides an excuse for correctional officers to retain prisoners in solitary confinement who no longer pose a threat.

76. Under the Step-Down Program, solitary confinement prisoners such as Mr. Reyes are entitled to progressively earn more privileges as they move through the program. Prisoners are to receive regular reviews of their progress through the program and of the need for their ongoing separation from the rest of the prison population.

77. As an SM prisoner, Mr. Reyes is entitled to reviews of his segregation classification and progress through the Step-Down Program every 90 days by a designated staffer or staffers known as the Institutional Classification Authority (ICA). See Attachment A.

78. The Building Management Committee, comprised of mental health and correctional staff with direct knowledge of the prisoners in their custody, is responsible for making recommendations to the ICA, including recommendations regarding assignment of prisoners to privilege levels (0, 1, or 2). The Building Management Committee meets at least monthly.

79. The ICA reviews the progress of individual prisoners through the IM and SM pathways as well as their on-going segregation classification. For these segregation interim ICA reviews, a reporting staff member first makes a recommendation as to whether a prisoner should be retained in solitary confinement, and if so, at what privilege level (0, 1, or 2). On information and belief, this recommendation reflects the decision of the Building Management Committee. The ICA then reviews the staff recommendation internally before adopting it. All interim segregation reviews are also reviewed by the Facility Unit Head (currently Defendant Warden Kiser) or his designee.

80. Mr. Reyes is additionally entitled to have his status in segregation reviewed by the Dual Treatment Team (DTT) and by the External Review Team (ERT). The DTT is responsible for reviewing solitary confinement classifications and making recommendations as to whether prisoners are properly classified. The DTT also reviews mental health assessments to determine appropriate housing. The ERT reviews prisoners bi-annually to determine if they are appropriately classified to segregation, if they continue to meet criteria for the SM pathway, and if the DTT has made appropriate decisions to advance the prisoner through the Step-Down Program.

ii. VDOC's Toothless Reviews of Mr. Reyes' Solitary Confinement

81. Defendants conduct meaningless, sham reviews of Mr. Reyes' solitary confinement status that do not comport with basic procedural safeguards. Although multiple levels of review ostensibly provide a veneer of procedure, they have operated instead as rubberstamps of one another and of Mr. Reyes' indefinite solitary confinement.

82. Mr. Reyes does not receive Spanish-language notice of ICA hearings and recommendations before ICA segregation reviews occur, and so he has no meaningful opportunity to contest the basis for his ongoing solitary confinement.

83. ICA segregation reviews occur at prisoners' cell doors and consist of VDOC staff telling the prisoner the reporting staff's recommendation and asking for a statement from the prisoner. VDOC staff do not offer translation services for Mr. Reyes during ICA segregation reviews. As such, Mr. Reyes does not understand the reporting officer's recommendation, nor can he provide a statement. He thus has no meaningful opportunity to communicate his readiness to transition out of solitary confinement to the ICA. Indeed, Mr. Reyes is not even aware when ICA reviews are occurring. Unbeknownst to Mr. Reyes, his inability to participate in his own ICA review has been routinely used to justify his continued solitary confinement, as Defendants have faulted him for refusing to participate.

84. Although VDOC purports to provide "formal due process" for ongoing segregation ICA reviews, these reviews "do not require the presence of a reporting

officer or the right to call witnesses.” Attachment E, O.P. 830.1.IV.A.2.b.iii. & O.P. 830.1.IV.B.1.e.

85. Moreover, the written decisions of the ICA are not translated into Spanish or communicated orally to Mr. Reyes so that he might understand them.

86. Despite the directive that “[i]t is valuable for Officers, Counselors, and the Unit Manager to communicate with each offender routinely on their [Step-Down] ratings,” Attachment A, O.P. 830.A.IV.D.E.5.d, this is not done with Mr. Reyes.

87. For years Defendants denied Mr. Reyes the opportunity to progress out of solitary confinement on the sole ground that Mr. Reyes was not participating in the Step-Down Program. Yet the Step-Down Program was not made available to Mr. Reyes.

88. The ERT provides no meaningful review or oversight of the ICA’s segregation retention decisions.

89. Mr. Reyes does not meet the criteria for a Level S (i.e. long-term segregation classification) or SM offender, and yet the ERT and Defendant Mathena, the Chairman of the ERT, have not returned him to general population.

90. Prisoners do not attend their ERT reviews and are not notified of ERT decisions. There is no right to appeal ERT decisions.

91. The DTT likewise fails to provide meaningful review or oversight of segregation decisions. Prisoners do not attend DTT reviews and are not aware when they occur. As with ERT reviews, prisoners cannot appeal decisions of the DTT or otherwise challenge them.

iii. Mr. Reyes' Segregation Reviews Prior to the Step-Down Program

92. In May of 2009, prior to the existence of the Step-Down Program, VDOC deemed Mr. Reyes "not a threat to [Red Onion State Prison] or staff." VDOC promoted Mr. Reyes to Progressive Housing, a setting aimed ostensibly at helping people transition out of solitary confinement, for a brief period of roughly four months. However, when Mr. Reyes expressed fear of having another cellmate and refused to leave his cell, Defendants returned Mr. Reyes to the long-term solitary confinement unit.

93. A well-known consequence of solitary confinement is that those who have spent years in isolation become fearful and paranoid of others. Indeed, VDOC operates an entire unit for prisoners who "express resistance to out of cell activities or a general population environment," so as to "reintegrate offenders into a general population setting in preparation for advancement to a lower security level." Attachment A, O.P. 830.A.III. Mr. Reyes has never been to such a unit.

94. In September 2010, VDOC staff again deemed Mr. Reyes "not . . . a threat to the orderly operation of this institution." In October 2010, Mr. Reyes declined to move to Progressive Housing out of fear and paranoia. Instead of determining how best to reintegrate Mr. Reyes into general population after so many years of solitary confinement, or assuring Mr. Reyes that he would not be forced to live with another cellmate who would assault him, VDOC staff disciplined him for "disobeying an order" and he stayed in solitary confinement.

95. In July 2011, Mr. Reyes was once more approved for release to Progressive Housing, as he was “not . . . a threat to the orderly operation of th[e] institution” and his last disciplinary charge was from 2010. Nevertheless, he remained in solitary confinement.

96. VDOC staff then abandoned their prior decision to remove Mr. Reyes from solitary confinement, despite having determined he does not require the additional security of Red Onion’s long-term solitary confinement unit.

97. At his August 2011 segregation review, VDOC staff decided that Mr. Reyes would remain in solitary confinement based solely on two disciplinary offenses: the assault charge from 2006 and the disobeying-an-order charge for refusing a move to progressive housing in 2010. Yet just a month prior, VDOC staff had reviewed this same disciplinary record and determined solitary confinement unnecessary.

98. At each subsequent 90-day segregation review, correctional staff performed essentially identical, meaningless reviews, with the higher-level administrative staff unerringly rubberstamping the recommendations of line staff. The rationales for retaining Mr. Reyes in segregation included:

- disciplinary sanctions predating the ICA’s assessment that Mr. Reyes was no longer a security risk;
- a subsequent disciplinary offense for failing to submit to a drug test when there was no indication that Mr. Reyes had used drugs or even understood the order to submit to a drug test; and
- “ICA Recommends remain seg,” with no justification provided.

iv. **Mr. Reyes' Segregation Reviews Under the Step-Down Program**

99. At his December 2012 ICA segregation review, VDOC staff assigned Mr. Reyes to the SM pathway at level 0. Every 90 days thereafter, ICA staff conducted pro forma reviews that relied primarily on Mr. Reyes' supposed refusal to participate in the newly created Step-Down Program – a program that Mr. Reyes could not meaningfully participate in due to the lack of language access and his mental health disabilities – to justify his otherwise inexplicable retention in long-term solitary confinement.

100. The ICA reviews of Mr. Reyes' ongoing solitary confinement under the Step-Down Program demonstrate how the existence of the Step-Down Program served as an arbitrary stand-in for an actual evaluation of Mr. Reyes' risk. Staff conducting the upper-level administrative reviews routinely rubberstamped the decisions of line staff despite Mr. Reyes' obviously prolonged and pointless solitary confinement.

101. The meaningless, pre-textual rationales for retaining Mr. Reyes in solitary confinement under the Step-Down Program included the following:

- “ICA recommends Segregation based on SM 0 status and his refusal to participate in hearing”;
- “ICA recommends Segregation based on longer period of stable adjustment is warranted”;
- “ICA recommends segregation based on needing to do established programs”;
- “Offender needs to participate in program and remain charge free”;

- “Remain Segregation. Continue to pursue the programming”;
- “Offender Reyes is housed appropriately in segregation. He refuses programs”;
- “Offender has not met all the requirements of the step-down program at this time”; and
- “Remain segregation. Offender Reyes refuses to participate in the Challenge Series.”

102. In February 2018, officers provided Mr. Reyes a blue book. Mr. Reyes does not understand what is in the book because it is in English, and he cannot read it. On information and belief, the blue book is part one of the Challenge Series that he must complete to leave solitary confinement. February 2018 was the first time Mr. Reyes received these course materials. At Mr. Reyes’ June 2018 ICA hearing, the ICA retained Mr. Reyes in solitary confinement, but moved him from SM 0 to SM 1 for the first time in six years, citing his participation in a Step-Down Program that he does not comprehend.

103. As the above ICA decisions and rubber-stamp upper-level reviews demonstrate, the only path for Mr. Reyes to leave solitary confinement is to complete the Step-Down Program — a program that is not available in Spanish and which was not offered to Mr. Reyes for seven years.

104. There is no penological purpose to Mr. Reyes’ retention in solitary confinement. During the twelve and a half years that Mr. Reyes has been in isolation, he

has accrued just seven disciplinary reports – none of them involving incidents of violence. He has not had a disciplinary report of any kind in over three years.

105. In sum, the periodic reviews required under VDOC Operating Procedure 830.A, which purport to provide “formal due process,” do not provide Mr. Reyes a meaningful opportunity to progress out of indefinite, long-term solitary confinement.

E. Mr. Reyes’ Unnecessary and Cruel Isolation

106. Today Mr. Reyes lives in near-total isolation. Most days he does not step outside of his small, concrete cell.

107. Mr. Reyes’ cell is six paces in length and roughly half that size in width. It is minimally furnished with a steel bed, a steel table with no chair, and a steel toilet with a sink at the top. There is no mirror inside his cell. The fluorescent lights in his cell dim but do not turn off at night.

108. Mr. Reyes lives behind a solid steel door that masks all sound except the voices of those in the cells directly beside and below him. No Spanish-speaking prisoner is housed in a cell near enough for communication with Mr. Reyes. His isolation and lack of social interaction is nearly absolute.

109. Mr. Reyes’ identity as a Latino, non-English-speaking prisoner, combined with his mental vulnerability and cognitive limitations, subject him to disdain and torment from the overwhelmingly White and English-speaking correctional officers who control his every move.

110. Red Onion correctional officers regularly speak to Latino prisoners, including Mr. Reyes, using racist epithets such as “wetback,” a derogatory term meant

to refer to immigrants who enter the country illegally by swimming across the Rio Grande. Regardless of country of origin, correctional officers refer to all Latino prisoners as Mexicans. Correctional officers routinely castigate prisoners who speak Spanish and order them to communicate in English.

111. Correctional officers single Mr. Reyes out for mockery and harassment. They ridicule his language, and they use his inability to speak and understand English as an excuse to not take Mr. Reyes outside for recreation or to the shower. Correctional officers understand that Mr. Reyes is unable to advocate for himself and that there will be no repercussions for their actions.

112. Mr. Reyes entered solitary confinement weighing 186 lbs. He has lost nearly 50 lbs. since that time, and today weighs just 138 lbs.

113. Defendants have routinely deprived Mr. Reyes of meals, including for a full day at a time. For the seven years that correctional staff relegated him to the most restrictive form of solitary confinement, Mr. Reyes was categorically ineligible to work and earn money, and he was unable to purchase food items through commissary. When Mr. Reyes moved to SM 1 in June 2018, he became eligible for an in-unit job. SM 2 prisoners, however, have first priority for such assignments, and Mr. Reyes has not been assigned a job. His nutrition is dependent on the whims of the correctional officers who distribute food trays in his unit, and he often goes hungry. He has lost a substantial and unhealthy amount of weight while in solitary confinement due to Defendants' failure to provide adequate food.

114. For the majority of his time in isolation, VDOC policy provided that solitary confinement prisoners received no more than one hour of recreation five days a week. Recently, VDOC increased the policy to provide two hours of recreation five days a week. Attachment C, O.P. 861.3.V.E.17.a (amended 1/16/2018).

115. Mr. Reyes must rely on Red Onion correctional staff to open his cell door and to agree to escort him in shackles to the recreation cages. Red Onion staff regularly refuse to do so. In 2017, Mr. Reyes was taken out of his cell for recreation an estimated three times for the entire year. Now, Mr. Reyes goes outside for recreation roughly once every three-to-four weeks. For example, Mr. Reyes did not go outside for recreation once during the three-week period from on or about February 27 through on or about March 20, 2018 and again from on or about June 21 through on or about July 19, 2018.

116. At times when Mr. Reyes does go outside, he is relegated to a narrow cage resembling a dog run, where he recreates alone.

117. Every time Mr. Reyes leaves his cell, including on those rare occasions when officers allow him to go to the recreation cage, he must first submit to a cavity search. This search requires that he pass his clothing through the door to correctional officers on the other side. He must then squat, turn around, bend over, and pull his buttocks to the side to reveal his anus for a visual inspection. Officers then shackle him at the ankles, waist and wrists. While shackling Mr. Reyes, officers restrain him with a dog tether. If he moves in a way the officers find disobedient, correctional officers yank on the tether. Mr. Reyes finds the strip-search procedure humiliating and degrading.

118. Correctional staff routinely apply handcuffs to Mr. Reyes' wrists and ankles in a manner that is needlessly tight and that breaks the skin so as to cause him pain. This is a common practice at Red Onion that is used to dissuade prisoners from leaving their cells.

119. There is a small, narrow window on the back wall of Mr. Reyes' cell that has been darkened over so that he cannot see out of it. As such, the window does not relieve Mr. Reyes' sensory deprivation.

120. By policy, as a prisoner in segregation, Mr. Reyes can shower no more than three times each week. In practice, Mr. Reyes is routinely denied the opportunity to leave his cell to shower, with the result that he showers no more than once or twice a week and often far less. Correctional officers refuse to take him out for showers until the odor emanating from his cell becomes overwhelming. In 2017, Mr. Reyes showered only a handful of times over the course of the year. On information and belief, staff did not take him to shower during the month of August 2018.

121. Mr. Reyes has repeatedly requested an anti-dandruff shampoo to relieve his itchy scalp. Medical staff finally prescribed the anti-dandruff shampoo in July 2018, but correctional officers then confiscated it without explanation.

122. Due to Defendants' complete isolation of Mr. Reyes, he lost all contact with family and the outside world. Because correctional staff have denied him assistance writing to family, he has not corresponded with family since at least 2011, when he received a final letter from his sister.

123. As a prisoner in solitary confinement at the lowest privilege level, for more than seven years Mr. Reyes could only make two fifteen-minute telephone calls per month. Since June 2018, he is entitled to no more than three such fifteen-minute calls. In practice, he does not speak on the telephone with any family members, because staff have not provided meaningful instruction as to how to make outgoing calls.

124. The first telephone call Mr. Reyes had in nearly ten years occurred when undersigned counsel scheduled a legal phone call with Mr. Reyes in March 2018. Defendants insisted that Mr. Reyes be shackled behind his back during the entirety of this legal phone call. They placed Mr. Reyes in handcuffs that were so tight as to cause Mr. Reyes intense pain and discomfort. Officers then tied Mr. Reyes to the door with a tether. Mr. Reyes had to pin the phone between his shoulder and ear for the entirety of the one-hour phone call with legal counsel.

125. In addition, Defendants' solitary confinement policy mandates that Mr. Reyes not have contact or video visits with family, friends, or attorneys. He has not had a hug, handshake, or kindly human touch in twelve and a half years.

126. Due to Mr. Reyes' solitary confinement, he cannot participate in congregate programming or employment, and he has no access to religious services. Until June 2018, he had no television inside his cell and no way to watch television.

127. Because Mr. Reyes is serving time for an offense that occurred before January 1, 1995, he is eligible for 30 days of good conduct allowance for every month he is in prison. See Attachment D, O.P. 830.3.VII.C. However, while he remains in solitary

confinement, VDOC policy prohibits him from earning the maximum amount of good conduct time allowed. See *id.*, O.P. 830.3.V.G.

128. Over the past several months, Defendants have begun taking Mr. Reyes out of his cell for what he believes are English lessons. Correctional officers escort Mr. Reyes in handcuffs and shackles to a small, individual cage. One other prisoner sits inside an identical small, individual cage nearby. The instructor of these classes speaks only in English. When Mr. Reyes attempts to communicate in Spanish, the instructor tells Mr. Reyes: “You’re in our country, speak our language.”

129. Mr. Reyes believes that he is expected to learn English through this “class” so as to progress out of solitary confinement. On information and belief, Mr. Reyes is unknowingly participating in the Step-Down Program. He copies English words into the “Challenge Series” journals without understanding the words he is transcribing.

130. At all other times, Mr. Reyes is confined to a cell roughly half the size of a parking space. He eats all meals in this small, confined space, which is also where he uses the toilet and sleeps.

131. Most days, Mr. Reyes spends 24 hours a day inside this cell, sleeping, pacing his cell, and communicating with voices that only he can hear.

F. Mr. Reyes’ Mental and Physical Decompensation in Solitary Confinement and Defendants’ Shocking Indifference

132. Predictably, Mr. Reyes’ mental health has declined precipitously in solitary confinement. Despite his obvious decompensation, mental health staff have failed to seek his transfer to a more suitable housing unit, and they refuse to

acknowledge the severity of Mr. Reyes' mental illness. Mental health staff have also failed to ensure appropriate interpreter services for their interviews with Mr. Reyes, thereby leaving Mr. Reyes at risk for an unknown, undetected mental illness.

133. Upon entering VDOC in April 2001, mental health staff designated Mr. Reyes MH-0, the lowest of five mental health codes, indicating that he had no recent history of mental health treatment and no current behavior evidencing a need for services.

134. Beginning in June 2001, Mr. Reyes spent more than one year in solitary confinement at Red Onion. During that time, Mr. Reyes was twice placed on suicide precautions and exhibited unusual and bizarre behavior including hollering, screaming, and dancing around his cell. A mental health note from June 2002 reflects that Mr. Reyes' condition necessitated psychotropic medication.

135. In 2003, Mr. Reyes was placed in general population at Wallens Ridge. There is no evidence of Mr. Reyes coming to the attention of mental health staff for the next three years he spent in general population.

136. In 2006, Mr. Reyes returned to Red Onion and long-term solitary confinement. Back in solitary confinement, Mr. Reyes' mental health again deteriorated.

137. In November 2007, after Mr. Reyes had spent nearly one year in isolation, Defendant Huff, a Qualified Mental Health Professional (QMHP), evaluated Mr. Reyes because he had not eaten in over eight days. Defendant Huff noted that Mr. Reyes appeared "disheveled" and there was a strong smell of body odor emanating from his cell. Mr. Reyes "approached the door with his hands clasped under his chin as if in a

pray[er] or pleading position.” He was crying “profusely.” Defendant Huff noted that Mr. Reyes spoke little English and that it was difficult to determine whether Mr. Reyes understood his questions. Mr. Reyes also evidenced clear indicators of psychosis, “making bizarre references to President Bush, the police, and making wide, arching military type salutes.”

138. Defendant Huff deemed Mr. Reyes severely depressed and indicated that Mr. Reyes would be considered for referral to a mental health facility. On information and belief, Defendant Huff did not follow up on this referral, and Mr. Reyes was not referred to a mental health facility. He spent one day on a suicide watch before being returned to solitary confinement.

139. Over the next decade, Mr. Reyes continued to exhibit indicators of a serious psychosis, but the mental health staff charged with his care failed to take reasonable measures to address his decline.

140. For example, a mental health professional who examined Mr. Reyes in 2009 observed that he was “constantly looking from side to side and nodding, as if responding to internal stimuli” and noted that he appeared “gaunt,” as though he had not eaten in some time. She ascertained that Mr. Reyes was delusional and likely in need of acute treatment, as he “could continue to deteriorate if further interventions are not made.” Despite these grave and prescient concerns, Mr. Reyes received no meaningful mental health treatment.

141. At one point, a psychiatrist examined Mr. Reyes because he had lost twenty pounds and was not eating. Mr. Reyes exhibited clear signs of paranoia and

anxiety, expressing concern that if he were around other prisoners his old cellmate would somehow find and kill him. The psychiatrist noted that Mr. Reyes had been charge free for over three years, and that he was requesting a transfer to a different facility. Mental health staff indicated that they would “look[] into whether any adjustments can be made within the system.” On information and belief, both correctional and mental health staff failed to meaningfully respond to Mr. Reyes’ clear need for a less restrictive housing setting.

142. Mr. Reyes’ language limitations and the lack of access to translation services continued to be a barrier to communication with mental health. For example, in July 2015, the examiner noted that Mr. Reyes “shook his head in an upward and downward motion (as if to suggest yes) when asked if he is doing okay.”

143. In May 2016, an increase in Mr. Reyes’ behavioral agitation necessitated an assessment of his mental stability. Defendant Trent, another QMPH, met with Mr. Reyes with the assistance of a Spanish interpreter. Defendant Trent observed that Mr. Reyes appeared disheveled, that his personal hygiene was lacking, and that he carried a strong smell of body odor. Defendant Trent administered a “mini mental status examination.” Mr. Reyes scored extremely poorly on this examination. Defendant Trent arbitrarily discarded Mr. Reyes’ results and attributed his poor performance to language limitations, even though an interpreter was present. Defendant Trent acknowledged a need to advocate on Mr. Reyes’ behalf with correctional staff regarding his inability to participate in programming and his need for support services. Either Defendant Trent failed to advocate on Mr. Reyes’ behalf or correctional staff refused to

transfer Mr. Reyes from solitary confinement in response to Defendant Trent's advocacy. Mr. Reyes received no additional mental health treatment except for periodic wellness checks, and mental health staff continued to identify him as MH-0.

144. In November 2016, Defendant Huff determined that Mr. Reyes was not suffering from a Serious Mental Illness (SMI) as that term is used in VDOC. On information and belief, Defendant Huff made this assessment without personally evaluating Mr. Reyes.

145. In the fall of 2017, VDOC began identifying SMI prisoners for possible diversion out of long-term segregation and into a Secure Diversionary Treatment Program (SDTP) at one of the institutions with special programming and individualized treatment services for SMI prisoners. Defendant Trent met with Mr. Reyes with the help of an interpreter to assess whether Mr. Reyes should be designated SMI. He found Mr. Reyes unkempt, suffering from possible psychosis, and unaware of "the building, town, and year." He diagnosed Mr. Reyes with severe cognitive deficits and found him severely functionally impaired. Defendant Trent re-classified Mr. Reyes as MH-2S, indicating that Mr. Reyes was suffering under a substantial impairment.

146. On January 19, 2018, Defendant Lee denied Mr. Reyes a transfer to an SDTP, stating that Mr. Reyes should be re-examined. Defendant Lee suggested that Mr. Reyes appeared more mentally ill than he was because of his inability to speak English.

147. At Defendant Lee's request, Defendant Huff evaluated Mr. Reyes on January 22, 2018. Again Mr. Reyes could not recall basic information such as his state prison identification number or the name of the institution where he is housed.

148. Defendant Huff identified Mr. Reyes as having evident memory problems and determined that his depression could be a result of his inability to communicate with others. Defendant Huff was unable to rule out delusional thinking.

149. When Defendant Trent evaluated Mr. Reyes again the following day, January 23, 2018, Mr. Reyes was exhibiting severely disordered, grandiose and delusional thinking. He told Defendant Trent that he “studied to be president of el Salvador, Guatemala, and Mexico.” Mr. Reyes was not oriented to person, time or situation.

150. On January 25, 2018, Defendant McDuffie, the Red Onion psychiatrist, met with Mr. Reyes for the first time. He diagnosed Mr. Reyes with major depression, severe recurrent, and indicated that his mental disorder is an extreme impairment to functioning. Defendant McDuffie prescribed Prozac, and would later prescribe Effexor, for Mr. Reyes’ depression and disordered thinking.

151. Defendant Huff then *reversed* Defendant Trent’s designation of Mr. Reyes as SMI. Defendant Huff did not identify Mr. Reyes as cognitively impaired, despite the fact that Defendant Huff had himself personally observed Mr. Reyes’ inability to recall basic facts. He acknowledged Mr. Reyes’ newly diagnosed depressive disorder, but in light of the new Prozac prescription, determined that Mr. Reyes no longer met the criteria for a functional impairment.

152. On information and belief, Defendant Huff’s decision to rescind Mr. Reyes’ SMI designation was motivated in significant part by Defendant Lee’s resistance

to transferring Mr. Reyes out of solitary confinement and his calling Mr. Reyes' SMI designation into question.

153. Rather than address the aggravating environmental conditions that are causing and/or exacerbating Mr. Reyes' mental illness and causing him to exhibit signs of psychosis, Defendants have opted to retain Mr. Reyes in solitary confinement and medicate him. As a result of the psychiatric medication he is taking, Mr. Reyes is increasingly lethargic and now sleeps during the day.

154. At other times, Mr. Reyes rants and raves inside his cell, sings gospel songs, and is the target of harassment and malign neglect from correctional officers. He reports daily conversations with dead family members and influential political leaders, and he sees these individuals appear inside his cell.

G. Comparison to Conditions of Confinement in General Population

155. The conditions of Mr. Reyes' solitary confinement represent an atypical and significant hardship as compared to the treatment of general population prisoners in VDOC.

156. General population prisoners in VDOC reside in dormitories or cells that permit communication amongst prisoners. Cells are open-barred and do not feature the solid steel doors typical of VDOC isolation cells.

157. General population prisoners have routine, daily interactions that allow for meaningful connection and conversation. Prisoners in general population share congregate meals in a dining area and recreate in large groups on the yard and in dayrooms.

158. Prisoners in general population have access to outdoor recreation every day, weather permitting. They can access recreation equipment including basketballs and basketball hoops. Prisoners recreating in dayrooms can interact by playing card games.

159. General population prisoners have no limitation on the number of phone calls they may place each month. They are entitled to contact visits with family and attorneys.

160. General population prisoners are permitted to move about without shackles or restraints. There is no requirement that general population prisoners submit to a cavity search before leaving their cell.

161. Moreover, general population prisoners have congregate programming opportunities, including anger management groups and cognitive behavioral therapy. General population prisoners can go to the law library to peruse legal materials, and can go to a chapel for religious programming.

162. General population prisoners also have access to vocational training and employment opportunities. Through such opportunities, general population prisoners may earn good conduct allowance credits off their sentence.

163. Prisoners who committed their felony offenses on or after July 1, 1981 and prior to January 1, 1995, as Mr. Reyes did, can earn up to 30 days of good conduct allowance for every 30 days served. Attachment D, O.P. 830.3.VII.C.

164. Prisoners in general population do not have strict dollar limitations on the amount of commissary they may purchase, and they are not limited to commissary for

hygiene products only. Prisoners in general population may purchase television sets for their cells, and may also watch television in a congregate setting in a dayroom.

H. Acts and Omissions of Defendants

165. As VDOC Commissioner, **Defendant Clarke** sets policy for the VDOC, including the long-term segregation policy in effect at Red Onion State Prison. Defendant Clarke signs VDOC policies and supervises compliance with those policies.

166. Due to Defendant Clarke's segregation policy, Mr. Reyes has spent years in solitary confinement for no penological purpose.

167. Defendant Clarke also dictates the extremely harsh conditions of confinement for prisoners in long-term solitary confinement, including Mr. Reyes. Defendant Clarke is well aware of the serious psychological consequences of solitary confinement. He is deliberately indifferent to the risk that his policies will cause lasting psychological harm.

168. Despite his awareness that prisoners with language limitations, cognitive impairments, and serious mental health complications populate VDOC prisons and long-term solitary confinement units, Defendant Clarke has failed to accommodate such prisoners in VDOC's long-term solitary confinement policy.

169. Defendant Clarke has also failed to ensure that adequate interpretation services are available to prisoners of limited English proficiency and has failed to promulgate a language access policy, despite knowing that the VDOC has a significant Spanish-speaking population.

170. As the Chief of Corrections Operations, **Defendant Robinson** is responsible for approving VDOC's long-term segregation policy and overseeing its implementation.

171. Due to Defendant Robinson's segregation policy, Mr. Reyes has spent years in solitary confinement for no penological purpose. Despite Defendant Robinson's awareness of the serious psychological consequences of solitary confinement, he has approved and overseen a policy that causes psychological harm.

172. The solitary confinement policy which Defendant Robinson oversees and for which he bears responsibility does not provide adequate safeguards for prisoners with Mr. Reyes' limitations to progress out of solitary confinement.

173. As warden, **Defendant Kiser** bears the ultimate responsibility for the care and custody of Red Onion prisoners, including Mr. Reyes. This responsibility includes a duty to ensure that limited English proficiency prisoners such as Mr. Reyes have adequate translation services. As warden, Defendant Kiser is also directly responsible for decisions removing prisoners from Level S (i.e., long-term segregation) classification to a less restrictive security level. Due to Defendant Kiser's direct actions and omissions, Mr. Reyes has spent well over a year in solitary confinement in unconstitutional conditions and will remain in solitary confinement for the foreseeable future.

174. Defendant Kiser is also responsible for training correctional staff and for exercising oversight to ensure that his correctional officers perform their duties in a professional manner that follows correctional policy and that respects the inherent dignity of the incarcerated persons in their care. Despite numerous reports of

correctional officers refusing to take prisoners in solitary confinement outside for recreation or to showers and of correctional officers giving prisoners empty food trays, Defendant Kiser has taken no steps to correct this misconduct.

175. For example, on September 13, 2017, another prisoner submitted an informal complaint on Mr. Reyes' behalf alerting Defendant Kiser that Mr. Reyes had been denied access to showers and recreation for months at a time. Defendant Kiser failed to take appropriate action in response to this serious complaint and inappropriately ceded the responsibility for responding to the Unit Manager, who did not investigate the allegation.

176. On another occasion, May 23, 2017, a third party submitted an informal complaint alleging that officers refused to feed Mr. Reyes his lunch meal. Defendant Kiser failed to adequately investigate this serious allegation by failing to interview the officers involved and by failing to review surveillance footage.

177. Defendant Kiser has thus implicitly endorsed such mistreatment of prisoners, all but ensuring that vulnerable prisoners like Mr. Reyes are subjected to torment from correctional officers.

178. **Defendant Barksdale** served as warden immediately prior to Defendant Kiser. As warden, Defendant Barksdale bore the ultimate responsibility for the care and custody of Red Onion prisoners including Mr. Reyes. This responsibility included a duty to ensure that limited English proficiency prisoners such as Mr. Reyes had adequate translation services. As warden, Defendant Barksdale was also directly responsible for decisions removing prisoners from Level S (i.e., long-term segregation)

classification to a less restrictive security level. Due to Defendant Barksdale's direct actions and omissions, Mr. Reyes spent years in solitary confinement in unconstitutional conditions.

179. Defendant Barksdale was also responsible for training correctional staff and for exercising oversight to ensure that his correctional officers performed their duties in a professional manner that followed correctional policy and that respected the inherent dignity of the incarcerated persons in their care. Despite numerous reports of correctional officers refusing to take prisoners in solitary confinement outside for recreation or to showers and of correctional officers giving prisoners empty food trays, Defendant Barksdale took no steps to correct this misconduct. Instead, Defendant Barksdale implicitly endorsed such behavior, all but ensuring that vulnerable prisoners such as Mr. Reyes would be subjected to torment from correctional officers.

180. **Defendant Mathena** served as Assistant Warden when Red Onion opened in 1998. He took over as Warden in 2011 and instituted the Step-Down Program that has caused Mr. Reyes to remain in solitary confinement indefinitely. As warden, Defendant Mathena bore the ultimate responsibility for the care and custody of Red Onion prisoners, including Mr. Reyes. This responsibility included a duty to ensure that limited English proficiency prisoners such as Mr. Reyes had adequate translation services. As warden, Defendant Mathena was also directly responsible for decisions removing prisoners from Level S (i.e., long-term segregation) classification to a less restrictive security level.

181. Defendant Mathena was also responsible for training correctional staff and for exercising oversight to ensure that his correctional officers performed their duties in a professional manner that followed correctional policy and that respected the inherent dignity of the incarcerated persons in their care. Despite numerous reports of correctional officers refusing to take prisoners in solitary confinement outside for recreation or to showers and of correctional officers giving prisoners empty food trays, Defendant Mathena took no steps to correct this misconduct. Instead, Defendant Mathena implicitly endorsed such behavior, all but ensuring that vulnerable prisoners such as Mr. Reyes would be subjected to torment from correctional officers.

182. Defendant Mathena currently works at VDOC headquarters as the head of Security Operations. As Security Operations Manager, he serves as the Chairman of the External Review Team. In this role, Defendant Mathena performs biannual reviews of each prisoner assigned to Red Onion at Security Level "S" (i.e., in solitary confinement) to determine if the prisoner should move out of solitary confinement. Mr. Reyes remains in solitary confinement due to Defendant Mathena's failure to perform a meaningful review of the necessity of Mr. Reyes' continued isolation.

183. As Chief of Housing and Programs (CHAP) for Red Onion, **Defendant Gallihar** serves on the Dual Treatment Team (DTT). Defendant Gallihar has abdicated his responsibility as a member of the DTT to advise the Regional Operations Chief and Warden that Mr. Reyes does not meet the criteria for segregation.

184. Defendant Gallihar also serves on the Building Management Committee and bears responsibility for the decisions of the Building Management Committee. In

this role, Defendant Gallihar is responsible for assigning, or in the alternative, for recommending offenders to SM 0, SM 1, and SM 2 privilege levels and for discussing and preparing recommendations for the ICA and DTT. Defendant Gallihar has failed to meaningfully assess and review Mr. Reyes' status, and so has caused Mr. Reyes to remain in segregation at the lowest privilege level for years.

185. **Defendants Duncan and Collins** performed Administrative Reviews of Mr. Reyes' segregation ICA reviews. They abdicated their responsibility to perform meaningful reviews of Mr. Reyes' continued placement in solitary confinement. At each 90-day review, they merely rubberstamped the recommendation of lower-level staff. Due to their failure to perform even a modicum of investigation or oversight into Mr. Reyes' solitary confinement status, Mr. Reyes spent years in solitary confinement in unconstitutional conditions and has suffered lasting psychological damage.

186. Defendant Duncan is the former C-Building Unit Manager. Defendant Collins is the current C-Building Manager. As Unit Manager, Defendants Duncan and Collins are responsible for ensuring that the correctional officers in their unit perform their duties in a professional manner that follows correctional policy and that respects the inherent dignity of the incarcerated persons in their care. Despite numerous reports of correctional officers refusing to take prisoners on their units outside for recreation or to showers and giving prisoners empty food trays -- including reports specific to Mr. Reyes -- Defendants Duncan and Collins took no steps to correct this misconduct. By failing to take corrective action to ensure the correctional staff under their supervision

provide prisoners appropriate care, Defendants Duncan and Collins all but ensured that mistreatment of the kind Mr. Reyes endured would occur.

187. **Defendants Justin Kiser, Gilbert, Adams, and Lambert** are or have been members of the ICA responsible for reviewing the continued segregation of Mr. Reyes during his time in solitary confinement. They have abdicated their responsibility to perform meaningful reviews of Mr. Reyes' continued placement in solitary confinement. At each 90-day review, they merely retained Mr. Reyes in segregation at the lowest privilege level due to Mr. Reyes' purported failure to participate in programming. Due to their insistence that Mr. Reyes complete the Step-Down Program journal series, Mr. Reyes spent years in solitary confinement in unconstitutional conditions and suffered lasting psychological damage.

188. **Defendant Lee** is a member of Central Classification Services. He is responsible for approving prisoner transfers out of long-term solitary confinement units for mental health reasons. Due to Defendant Lee's refusal to approve the transfer of Mr. Reyes to a residential mental health unit because of Mr. Reyes' inability to speak English, Mr. Reyes continues to suffer in unconstitutional conditions in solitary confinement.

189. **Defendants Huff, Trent and McDuffie** are Mr. Reyes' treating mental health professionals. They have failed to address the obvious primary cause of Mr. Reyes' poor mental health: his unending solitary confinement. As qualified mental health professionals, Defendants Huff and Trent serve on the Building Management Committee and Dual Treatment Team, and are responsible for making

recommendations and decisions regarding Mr. Reyes' ongoing solitary confinement. Defendants Huff, Trent and McDuffie also have failed to perform a comprehensive mental health evaluation of Mr. Reyes so as to render a meaningful diagnosis and develop a treatment plan. Defendants' repeated failure to use translation services when communicating with Mr. Reyes places him at immense risk. Defendants Huff, Trent and McDuffie refuse to designate Mr. Reyes as seriously mentally ill and functionally impaired, despite a long history of psychotic behavior evident in the medical record. As a result of Defendants' unconstitutional conduct, Mr. Reyes continues to suffer in unconstitutional conditions in solitary confinement, and his mental health will decline.

190. **Defendant Herrick** is the Director of Health Services for VDOC. He is responsible for ensuring that all VDOC prisoners, including Mr. Reyes, have adequate access to health services. On information and belief, Defendant Herrick has failed to institute a policy requiring that all mental health staff use interpretation services when communicating with limited English proficiency prisoners such as Mr. Reyes. Defendant Herrick is well aware that VDOC has limited English proficiency prisoners and that without interpretation services, there exists a significant and unacceptable risk that mental illness will go undiagnosed or misdiagnosed in this population. Defendant Herrick is also aware that long-term solitary confinement causes and exacerbates mental illness. Yet Defendant Herrick failed to ensure that mental health staff properly assess solitary confinement prisoners for decompensation and advocate for the removal of prisoners like Mr. Reyes who have decompensated in such conditions. As a result of

Defendant Herrick's actions and omissions, Mr. Reyes continues to suffer in unconstitutional conditions in solitary confinement, and his mental health will decline.

V. CAUSES OF ACTION

Count I: Violation of the Eighth Amendment to the U.S. Constitution - Against All Defendants

191. Mr. Reyes re-alleges the preceding paragraphs as if fully set out herein.

192. Prolonged or indefinite solitary confinement creates a substantial risk of serious harm to prisoners, including mental illness, brain dysfunction, suicide, self-mutilation, hypertension, and heart problems. These effects continue after a person is released from solitary confinement and may be permanent.

193. Mr. Reyes' solitary confinement at Red Onion has caused him to experience mental health crises, to physically and mentally decline, and to experience auditory and visual hallucinations. Mr. Reyes' mental health has deteriorated to the point that it requires pharmacological intervention and a treatment setting.

194. Defendants have held and continue to hold Mr. Reyes in solitary confinement at Red Onion despite knowing that solitary confinement poses an unreasonable risk of lasting harm to prisoners, that Mr. Reyes has in fact decompensated in solitary confinement, that he cannot effectively communicate with others due to his language limitations, and that solitary confinement has exacerbated and will continue to exacerbate his mental illness.

195. Defendants have failed to adequately supervise correctional officers responsible for Mr. Reyes' direct care, instead allowing correctional officers to routinely

deny Mr. Reyes access to outdoor recreation, showers, and a pathway out of long-term solitary confinement.

196. Defendants Huff, Trent and McDuffie exhibited deliberate indifference to Mr. Reyes' serious mental health needs by failing to perform a comprehensive mental health evaluation at any point in Mr. Reyes' incarceration, failing to designate Mr. Reyes as seriously mentally ill and functionally impaired, failing to take steps to remove him from solitary confinement and abate conditions that are obviously detrimental to his mental health, and by failing to routinely communicate with Mr. Reyes through a Spanish-language interpreter.

197. The acts or omissions of the Defendants were the legal and proximate cause of Mr. Reyes' injuries and pain.

198. Each Defendant, individually and collectively, has thereby violated Mr. Reyes' right under the Eighth Amendment to the Constitution to be free from cruel and unusual punishment by acts and omissions manifesting deliberate indifference to the serious deprivation of Mr. Reyes' basic human needs for physical health, mental health and sanity, environmental stimulation, social interaction, exercise, and basic human dignity.

**Count II: Violation of the Due Process Clause of the Fourteenth Amendment
(Procedural Due Process) to the U.S. Constitution - Against Defendants Clarke,
Robinson, Kiser, Barksdale, Mathena, Gallihar, Duncan, Collins, Justin Kiser,
Gilbert, Adams, Lambert and Lee**

199. Mr. Reyes re-alleges the preceding paragraphs as if fully set out herein.

200. Prolonged and indefinite solitary confinement in Red Onion State Prison constitutes atypical and significant hardship relative to the ordinary incidents of life in general population at any VDOC facility.

201. Mr. Reyes has a protected liberty interest in avoiding continued prolonged and indefinite solitary confinement. This liberty interest arises from (1) the VDOC regulations mandating periodic review of long-term segregation status, including the Segregation Reduction Step-Down Program and VDOC Operating Procedure 830.A, and (2) the conditions of Mr. Reyes' confinement, which cause atypical and significant hardship in comparison to the general prison population.

202. As such, Mr. Reyes' prolonged and indefinite solitary confinement in Red Onion far exceeds the expected bounds of imprisonment in VDOC, and periodic reviews of Mr. Reyes' ongoing indefinite isolation must comport with Due Process.

203. Defendants have failed to provide meaningful proceedings to determine the continued propriety or necessity of Mr. Reyes' solitary confinement. Defendants have failed to articulate any legitimate basis to Mr. Reyes for why he remains in solitary confinement and have failed to provide him a meaningful opportunity to contest his placement. Instead, Defendants have rubberstamped decisions to retain Mr. Reyes in solitary confinement via rote repetition without providing a reasoned decision based on Mr. Reyes' current level of risk or assessment of his mental health.

204. Defendants have also interfered with Mr. Reyes' ability to progress through the Step-Down Program as provided in VDOC policy. Although other

prisoners classified security level “S” are provided the “Challenge Series” journals to progress out of solitary confinement, Defendants did not provide Mr. Reyes this opportunity for seven years. Defendants instead conducted sham review hearings wherein Mr. Reyes was denied any translation or interpretation services and repeatedly maintained in solitary confinement at the lowest level of privileges for not participating in a program he had no ability to access.

205. The acts or omissions of these Defendants were the legal and proximate cause of Mr. Reyes’ injuries and pain.

206. Each Defendant, individually and collectively, has thereby violated Mr. Reyes’ right under the Fourteenth Amendment to the Constitution to due process review of the ongoing necessity of his solitary confinement.

**COUNT III: Violation of the Americans with Disabilities Act - Against Defendants
Clarke and Kiser (Official Capacity)**

207. Mr. Reyes re-alleges the preceding paragraphs as if fully set out herein.

208. Mr. Reyes is an individual with a mental impairment, a record of such an impairment, and is regarded as having such an impairment within the meaning of 42 U.S.C. § 12102.

209. His serious mental illness, even when mitigated through medical treatment, constitutes a mental impairment that substantially limits him in several major life activities, including but not limited to learning, reading, concentrating,

thinking, communicating, and interacting with others. These limitations on his life activities have a profound effect on Mr. Reyes' life as fully described above.

210. Mr. Reyes is a qualified individual with a disability as defined in 42 U.S.C. § 12102.

211. These Defendants are public entities within the meaning of 42 U.S.C. § 12131.

212. Mr. Reyes is entitled to be free from discrimination under the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*

213. These Defendants failed to accommodate Mr. Reyes' mental disabilities and denied him the benefits and services of their facilities by reason of his mental disability by, among other things, holding Mr. Reyes in solitary confinement for twelve years despite his mental impairment, failing to provide him an alternate means to progress out of solitary confinement, and failing to account for his mental illness in the repeated reviews of his segregation.

214. These Defendants' discrimination was intentional and/or represents deliberate indifference to the strong likelihood that the actions and omissions, and, to the extent applicable, adoption of the policies that led to these actions and omissions, would likely result in a violation of federally protected rights.

215. As a proximate and foreseeable result of these Defendants' discriminatory acts and omissions Mr. Reyes suffered injuries including pain and suffering, emotional distress, and an exacerbation of his mental illness.

**COUNT IV: Violation of the Rehabilitation Act of 1973 – Against Defendants Clarke
and Kiser (Official Capacity)**

216. Mr. Reyes re-alleges the preceding paragraphs as if fully set out herein.

217. Mr. Reyes is an individual with a mental impairment, a record of such an impairment, and is regarded as having such an impairment within the meaning of 42 U.S.C. § 12102 (as incorporated into 29 U.S.C. § 709(b)(9)(B)).

218. His serious mental illness, even when mitigated through medical treatment, constitutes a mental impairment that substantially limits him in several major life activities, including but not limited to learning, reading, concentrating, thinking, communicating, and interacting with others. These limitations on his life activities have a profound effect on Mr. Reyes' life as fully described above.

219. Mr. Reyes, with or without reasonable modifications to rules, policies or practices, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by Defendants. Thus, Mr. Reyes is an "otherwise qualified handicapped person" within the meaning of the Rehabilitation Act.

220. These Defendants receive and benefit from federal financial assistance as that term is used in 29 U.S.C. § 794 through the Prison Rape Elimination Act and other sources.

221. Mr. Reyes is entitled to be free from discrimination under the Rehabilitation Act, 29 U.S.C. § 794, *et seq.*

222. These Defendants failed to accommodate Mr. Reyes' mental disabilities and denied him the benefits and services of their facilities by reason of his mental disability by, among other things, holding Mr. Reyes in solitary confinement for twelve years despite his mental impairment, failing to provide him an alternate means to progress out of solitary confinement, and failing to account for his mental illness in the repeated reviews of his segregation.

223. These Defendants' discrimination was intentional and/or represents deliberate indifference to the strong likelihood that the actions and omissions, and, to the extent applicable, adoption of the policies that led to these actions and omissions, would likely result in a violation of federally protected rights.

224. As a proximate and foreseeable result of these Defendants' discriminatory acts and omissions Mr. Reyes suffered injuries including pain and suffering, emotional distress, and an exacerbation of his mental illness.

COUNT V: Violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution - Against Defendants Clarke (Official Capacity), Kiser (Official Capacity and Individual Capacity), Barksdale, Mathena, Gallihar, Duncan, Collins, Justin Kiser, Gilbert, Adams, and Lambert (Individual Capacity)

225. Mr. Reyes re-alleges the preceding paragraphs as if fully set forth herein.

226. Defendants have been aware that Mr. Reyes and other prisoners with limited English proficiency need translation services to be able to meaningfully access

the benefits of VDOC programs and services, including mental health evaluations and the Step-Down Program.

227. Despite knowing that their policy and practice of not providing translation services has a disparate impact on limited English proficient prisoners, including by keeping them in solitary confinement longer than their English-speaking counterparts, Defendants acted intentionally, repeatedly, and with deliberate indifference by failing to provide access to translation services during mental health assessments, segregation review hearings and as part of the Step-Down Program, thereby excluding Mr. Reyes from participation in and denying him the benefits of VDOC services.

228. Defendants thus retained Mr. Reyes in solitary confinement for years even though he posed no threat to the safety and security of VDOC, because Mr. Reyes could not participate in the Step-Down Program in English. Defendants refused to allow Mr. Reyes to leave solitary confinement unless he learned to read and write in English, i.e., his non-native language.

229. Defendants' failure to make accommodations for individuals with limited English proficiency such as Mr. Reyes is inexcusable in light of the longstanding Executive Order requiring recipients of federal funds such as VDOC to implement a system by which limited English proficient persons can meaningfully access their services and benefits. Exec. Order No. 13166, 65 Fed. Reg. 50121 s 1 (Aug. 11, 2000). On information and belief, Defendants have failed to implement such a system for

integrating persons with limited English proficiency, including Mr. Reyes, and have not authored a language access procedure.

230. Defendants Clarke and Kiser are well aware that correctional officers engage in discriminatory treatment towards Latino prisoners and prisoners from Central America, yet they are deliberately indifferent to the hostile environment that exists at Red Onion.

231. Defendants thereby intentionally discriminated against Mr. Reyes on account of his national origin and limited English proficiency and violated his rights under the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

232. Mr. Reyes has suffered damages by reason of Defendants' national origin discrimination, including but not limited to physical and psychological harm, weight loss, auditory and visual hallucinations, emotional distress, severe sensory deprivation, and denial of access to recreation, programming, and other VDOC services.

**COUNT VI: Violation of Title VI of the Civil Rights Act of 1964 - Against
Defendants Clarke and Kiser (Official Capacity)**

233. Mr. Reyes re-alleges the preceding paragraphs as if fully set out herein.

234. VDOC is a recipient of federal financial assistance and subject to regulation under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

235. Defendants have been aware that Mr. Reyes and other prisoners with limited English proficiency need and lack translation services to be able to have meaningful access to the benefits of VDOC programs and services, including mental health evaluations and the Step-Down Program.

236. Despite knowing that their policy and practice of not providing translation services has a disparate impact on limited English proficient prisoners, including by keeping them in solitary confinement longer than their English-speaking counterparts, Defendants acted intentionally, repeatedly, and with deliberate indifference by failing to provide access to translation services during mental health assessments, segregation review hearings and as part of the Step-Down Program, thereby excluding Mr. Reyes from participation in and denying him the benefits of VDOC services.

237. Defendants thus retained Mr. Reyes in solitary confinement for years even though he posed no threat to the safety and security of VDOC, because Mr. Reyes could not participate in the Step-Down Program in English. Defendants refused to allow Mr. Reyes to leave solitary confinement unless he learned to read and write in English, i.e., his non-native language.

238. Defendants' failure to make accommodations for individuals with limited English proficiency such as Mr. Reyes is inexcusable in light of the longstanding existence of an Executive Order requiring recipients of federal funds such as VDOC to implement a system by which persons with limited English proficiency can meaningfully access their services and benefits. Exec. Order No. 13166, 65 Fed. Reg. 50121 s 1 (Aug. 11, 2000). On information and belief, Defendants have failed to implement such a system for integration of limited English proficient persons, including Mr. Reyes, and have not authored a language access procedure.

239. Defendants Clarke and Kiser are well aware that correctional officers engage in discriminatory treatment towards Latino prisoners and prisoners from Central America, yet they are deliberately indifferent to the hostile environment that exists at Red Onion.

240. Defendants thereby intentionally discriminated against Mr. Reyes on account of his national origin and limited English proficiency and violated his rights under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

241. Mr. Reyes has suffered damages by reason of Defendants' national origin discrimination, including but not limited to physical and psychological harm, weight loss, auditory and visual hallucinations, emotional distress, severe sensory deprivation, and denial of access to recreation, programming, and other VDOC services.

PUNITIVE DAMAGES - Against All Defendants

242. Mr. Reyes re-alleges the preceding paragraphs as if fully set out herein.

243. Mr. Reyes is entitled to recover punitive damages related to these Defendants' willful or reckless disregard of the violations of his constitutional rights under the Eighth and Fourteenth Amendments.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants:

- (a) Declaring that Defendants' isolation of Plaintiff in solitary confinement violates the Eighth and Fourteenth Amendments to the United States Constitution;
- (b) Declaring that Defendants' failure to treat Plaintiff's mental illness adequately violates the Eighth Amendment to the United States Constitution;

- (c) Declaring that Defendants' failure to accommodate Mr. Reyes' mental illness violates the Americans with Disabilities Act and the Rehabilitation Act;
- (d) Granting permanent injunctive relief enjoining Defendants and their successors, agents and representatives from further violation of the Eighth and Fourteenth Amendments of the United States Constitution, the Americans with Disabilities Act, the Rehabilitation Act, and Title VI of the Civil Rights Act;
- (e) Granting permanent injunctive relief requiring Defendants to cease the use of solitary confinement for Plaintiff and to transfer him to an inpatient 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;
- (f) Awarding Plaintiff compensatory damages for Defendants' constitutional and statutory violations, including damages for emotional pain and suffering;
- (g) Awarding Plaintiff nominal damages in the event that a trier of fact were to determine that his constitutional rights have been violated but that compensatory damages are not warranted;
- (h) Awarding Plaintiff punitive damages for Defendants' pattern of outrageous and unlawful conduct;
- (i) Awarding Plaintiff costs and reasonable attorney's fees;
- (j) Granting such other equitable and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: September 4, 2018

Respectfully submitted:

/s/ Maggie E. Filler

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**Pro hac vice* petition forthcoming

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