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

Richmond Division

NICOLAS REYES,

Plaintiff,

v. CASE NO. 3:18CV00611

HAROLD W. CLARKE, *et al.*,

Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER VENUE UNDER 28 U.S.C. § 1404(a)

Plaintiff Nicolas Reyes, an inmate currently incarcerated within the Virginia Department of Corrections ("VDOC"), has filed suit against various VDOC officials and employees, challenging aspects of his conditions of confinement at Red Onion State Prison ("ROSP"). Defendants have filed a Rule 12 motion to dismiss based on improper venue (ECF No. 13, 14), as well as a corresponding Rule 12 motion to dismiss for failure to state a claim upon which relief can be granted (ECF No. 15, 16). Defendants recognize that, depending upon the resolution of their pending Rule 12 motions, the present motion to transfer venue might become moot. However, to ensure that the Court has been presented with all applicable venue-related arguments contemporaneously, rather than in a piecemeal fashion, Defendants submit this alternative motion, pursuant to 28 U.S.C. § 1404(a), to transfer venue to the Western District of Virginia, Big Stone Gap Division. Because the overwhelming majority of the parties and potential witnesses to this action are located in the Western District, because all materials pertinent to this action are located in the Western District (including a physical location that might be subject to a jury view), and for multiple other reasons, Defendants submit that venue

should be transferred, under § 1404(a), based on the convenience of the parties and the witnesses. The specific evidence and reasoning in support of this request are as follows.

SUMMARY OF ALLEGATIONS

Plaintiff Nicolas Reyes is a current inmate at ROSP, a maximum-security prison located in Pound, Virginia. He entered VDOC custody in April 2001, following his conviction for the first-degree murder of his pregnant girlfriend.[1] Although Reyes committed the murder in 1991, he fled to Florida, where he remained at large for almost ten years, before being apprehended in Miami.[2] Reyes is not a legal resident of the United States, and he has been designated for removal by the Immigration and Naturalization Service ("INS"). Ans. ¶ 16.

Reyes was first incarcerated at ROSP in June 2001. Compl. ¶ 67. He was transferred to Wallens Ridge State Prison ("WRSP") about a year later, and then advanced to the general population by July 2003. Compl. ¶ 67. In July 2006, however, Reyes was involved in an altercation with his cellmate. Compl. ¶ 68. Following the assault, Reyes was transferred back to ROSP, where he was reclassified as a security level "S" offender. Compl. ¶ 72. In May 2009, Reyes was moved into the progressive housing unit, "a setting aimed ostensibly at helping people transition out of" segregation. Compl. ¶ 92. But when Reyes refused to be housed with a cellmate, he was returned to segregation. Compl. ¶ 92. Reyes was given another chance to return to the progressive housing unit in 2010, and he declined. Compl. ¶ 94. Reyes was given a third chance to return to the progressive housing unit in 2011, and he again declined. Compl. ¶ 95.

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[1] *See* Patricia Davis, *Man Convicted of 1991 Murder of Girlfriend*, THE WASHINGTON POST (Nov. 19, 2000), *available at* https://www.washingtonpost.com/archive/local/2000/11/19/man-convicted-of-1991-murder-of-girlfriend/2ae37a5f-4fc0-4fbc-a72e-c84a0202a649/?utm_term=.241bf3ff1de6 (last visited Nov. 9, 2018).

[2] *Id.*

In 2011 and 2012, VDOC adopted and implemented the Step-Down Program, which was designed to create a pathway for offenders housed at security level "S" to transition out of restrictive housing and back to the general population. *See* VDOC Operating Procedure 830.A. The Step-Down program creates two pathways for level "S" offenders: Intensive Management ("IM") and Special Management ("SM"). Each pathway consists of a progressive series of privilege levels, so that as offenders complete goals, they advance to the next level and earn additional privileges. The ultimate goal, under either pathway, is to advance the offenders from security level "S" to security level 6, and then to security level 5 (general population).

In December 2012, following the adoption of the Step-Down Program, Reyes was placed into the "SM" internal pathway and assigned to security level SM-0. Compl. ¶ 73. He alleges that, because he does not read or write in English, he has not been able to progress through the Step-Down Program, and has therefore been effectively trapped at security level "S." He further contends that the multiple security and privilege level reviews he receives have not been effective or meaningful and, for that reason, have not provided him with adequate procedures to facilitate his transition out of restrictive housing.

Reyes also alleges that his mental health has deteriorated during his time at ROSP. Recently, he was diagnosed with major depression, and he has been placed on anti-depressants. Compl. ¶ 150.

Based on these facts, Reyes has brought, under 42 U.S.C. § 1983, an Eighth Amendment deliberate indifference claim, a procedural due process claim, and an equal protection claim. He has also brought official-capacity claims against Director Clarke and Warden Kiser under the Americans with Disabilities Act ("ADA"), the Rehabilitation Act ("RA"), and Title VI of the Civil Rights Act.

SUPPLEMENTAL FACTS

To facilitate the Court's consideration of this motion, Defendants are submitting two factual affidavits with additional supporting information: an affidavit from Stacy Beverly, a human resources manager for VDOC (Exhibit 1), and an affidavit from Defendant Kiser, the warden of ROSP, (Exhibit 2). Defendants respectfully request that this Court consider the contents of those affidavits, which establish the following:

1. After having consulted with employees of VDOC, WRSP, and ROSP, as well as having reviewed numerous documentary sources of information (including, for example, Reyes' complete institutional file, medical and mental health records, counselor notes, disciplinary records, and grievance records), counsel for the Defendants compiled a list of potential non-party witnesses to this action. That list, which encompasses 110 current and former VDOC employees, is included as Enclosure A to the affidavit of Stacy Beverly.[3]

2. The list includes 54 individuals who are current ROSP employees.

3. The current ROSP employees live in the following Virginia cities and counties: Wise County (23), Dickenson County (17), North City (4), Scott County (2), Lee County (2), Russell County (1) and Buchanan County (1). Four of the ROSP employees are non-Virginia

[3] Ordinarily, this type of material would be protected under the attorney work product doctrine. However, because counsel is aware that this information will be included in Defendants' Rule 26(a) initial disclosures, regardless, counsel is submitting this information, now, to facilitate the Court's consideration of the present motion. By disclosing this information, counsel does not waive any privilege claims associated with the underlying communications or other documentation involved in the preparation of this list.

Counsel also recognizes that not all of these individuals, certainly, would ultimately be called to testify at trial. But considering the length of time that Reyes has been housed at ROSP, as well as the nature of his allegations, it may very well be necessary to call a large portion of these non-party witnesses, each of whom interacted with Reyes at some point during his incarceration, and therefore has knowledge of his ability to communicate with staff, his mental condition, and/or his physical conditions of confinement—all facts that are in dispute and are central to Reyes' allegations.

residents: three live in the Commonwealth of Kentucky, and one lives in the State of Tennessee. Beverly Aff. ¶ 22.

4. The list also includes 21 VDOC employees who work at facilities other than ROSP.

5. The non-ROSP employees live in the following Virginia cities and counties: Wise County (5), Dickenson County (5), Goochland County (2), Brunswick County (2), Henrico County (1), Chesterfield County (1), Petersburg City (1), Charlottesville (1), Buchanan County (1), Russell County (1), and Richmond City (1). Beverly Aff. ¶ 23.

6. Finally, the list includes 35 individuals who are former VDOC employees.

7. The VDOC personnel records office was able to identify a last known address of record for 25 of those former employees. Those former employees live in the following Virginia cities and counties: Wise County (4), Dickenson County (13), Fredericksburg (1), Russell County (1), Chesterfield County (1), Lee County (1), and Loudoun County (1). Three of the former employees are non-Virginia residents: two live in Kentucky, and one lives in Tennessee. Beverly Aff. ¶ 24.

8. The seventeen named Defendants reside in the following jurisdictions:

- Director Clarke: Henrico County
- A. David Robinson: Powhatan County
- Warden Jeffrey Kiser: Russell County
- Former Warden Earl Barksdale: Charlotte County
- Former Warden Mathena: Goochland County
- Major Avril Gallihar: Wise County
- Unit Manager Amee Duncan: Wise County

- Unit Manager Larry Collins: Dickenson County
- Justin Kiser: Dickenson County
- Lt. Christopher Gilbert: Scott County
- Lt. Garry Adams: Eolia, Kentucky
- Lt. James Lambert: Dickenson County
- Dr. W. Lee: Roanoke City
- Terrance Huff: Cumberland, Kentucky
- Donnie Trent: Wise County
- Steven Herrick: Chesterfield County
- Dr. McDuffie: Bountville, Tennessee

Beverly Aff. ¶¶ 4-20.

9. Combining these various lists, then, the Defendants and potential non-party witnesses reside in the following judicial districts:

- Eastern District of Virginia: 15
  11 non-party witnesses and 4 Defendants
- Western District of Virginia: 92
  82 non-party witnesses and 10 Defendants
- Eastern District of Kentucky: 7
  5 non-party witnesses and 2 Defendants
- Eastern District of Tennessee: 3
  2 non-party witnesses and 1 Defendant

10. If this matter were to proceed to trial, "the prolonged absence of the ten named defendants [who work at ROSP], alone, would be incredibly disruptive to the operation of ROSP, which is a maximum-security level facility that houses approximately 778 inmates." Kiser Aff. ¶ 7.

11. As to the 54 potential non-party witnesses who also work at ROSP, "the potential absence of even a portion" of those identified employees would cause significant disruptions to the operations of ROSP. Kiser Aff. ¶ 8.

12. If the ten ROSP Defendants, along with even a portion of the non-party employees, "were compelled to be absent" from the prison "in order to testify at a jury trial in Richmond, ROSP would need to take extraordinary steps to ensure the continuing safety and security of [the] facility." Kiser Aff. ¶ 8.

13. "Specifically, the absence of that number of employees would result in the prison being so understaffed that it could not be safely operated." Kiser Aff. ¶ 9. That is, "ROSP would be compelled to either transfer a portion of its current inmate population to other VDOC facilities," or "bring in correctional officers and employees from other VDOC facilities to help staff the prison." Kiser Aff. ¶ 9.

14. "Transferring a large number of high-security-level inmates to other VDOC facilities would place a fiscal [and administrative] burden on ROSP and VDOC," considering the security and staffing procedures that would have to be followed in order to transport those inmates. Kiser Aff. ¶ 11.

15. "Calling in security staff from other prisons" would also pose a financial burden, and "could potentially make those other VDOC institutions short-staffed." Kiser Aff. ¶ 12.

16. Also of note, "if any ROSP inmates were identified as potential witnesses in this action, transporting those inmates to Richmond for purposes of trial would also present logistical issues, the severity of which would vary depending upon the number of inmates called to testify." Kiser Aff. ¶ 13.

17. Accordingly, "if this case were to proceed to a jury trial, and if that trial were held in Richmond, the resulting staffing shortage . . . would critically undermine the safety and security of the prison." Kiser Aff. ¶ 14.

18. However, "[t]hese same logistical concerns would not be present if this case were tried in the federal courthouse in Big Stone Gap, or even in Abingdon." Kiser Aff. ¶ 15. That is, "[c]onsidering the close proximity of the prison to those courthouses, the prison would be able to rotate shifts and allow for the temporary absence of employees who might need to appear in court to testify." Kiser Aff. ¶ 15. Additionally, "ROSP is accustomed to transporting inmates back and forth to those courthouses to testify, and no relocation or reassignment would be required in order to bring those witnesses to court for purposes of testifying to the jury." Kiser Aff. ¶ 15.

ARGUMENT AND AUTHORITIES

Under the federal venue statute, "[f]or the convenience of parties and witnesses, [and] in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). "[I]n considering whether to transfer venue, a district court must make two inquiries: (1) whether the claims might have been brought in the transferee forum, and (2) whether the interest of justice and convenience of the parties and witnesses justify transfer to that forum." *Koh v. Microtek Int'l*, 250 F. Supp. 2d 627, 630 (E.D. Va. 2003); *see also Hengle v. Curry*, No. 3:18cv100, 2018 U.S. Dist. LEXIS 100939, at *15 (E.D. Va. June 15, 2018). Overall, "a decision whether to transfer an action to another district is committed to the district court's sound discretion." *Koh*, 250 F. Supp. 2d at 630.

I.

As to the first prong of the § 1404(a) inquiry, Defendants are requesting that the Court transfer this matter to the Federal District Court for the Western District of Virginia, Big Stone Gap Division, which is a jurisdiction where this case might have been brought (and, as Defendants have argued elsewhere, *should* have been brought). Because a substantial part of the cause of action arose at ROSP, because ROSP is located in the proposed transferee division, because the Plaintiff is physically located in the proposed transferee division, and because all Defendants are being sued for actions allegedly committed within the Commonwealth of Virginia, the first element should not be at issue in this case.

Specifically, as to venue, as Defendants argued in support of their Rule 12(b)(3) motion to dismiss for improper venue, venue is proper in the Western District under 28 U.S.C. § 1391(b)(2). *See* Mem. in Support Defs. R. 12(b)(3) Mot. to Dismiss (ECF No. 14), at p.10.

As to jurisdiction over the individual Defendants, "[u]nder Federal Rule of Civil Procedure 4(k)(1)(A), a federal court may exercise personal jurisdiction over a defendant in the manner provided by state law." *Diamond Healthcare of Ohio, Inc. v. Humility of Mary Health Partners*, 229 F.3d 448, 450 (4th Cir. 2000). "And a Virginia court may exercise personal jurisdiction 'over a person . . . as to a cause of action arising from the person's . . . transacting any business in Virginia.'" *Id.* (quoting Va. Code Ann. § 8.01-328.1(A)). Here, each of the Defendants is being sued, specifically, for conduct that allegedly occurred in Virginia, affecting an inmate who is incarcerated at a prison in the Western District of Virginia. For this reason,

jurisdiction in any federal court in the Western District of Virginia would be proper under Rule 4(k)(1)(A) of the *Federal Rules of Civil Procedure*.[4]

Because venue would be proper in the Western District of Virginia, and because a court in the Western District of Virginia would have personal jurisdiction over all the parties, it follows that the first inquiry under § 1404(a) is satisfied.

II.

Turning to the second prong of the § 1404(a) analysis, the interests of justice and the convenience of the parties and witnesses strongly weigh in favor of transfer. Factors relevant to this consideration "include the plaintiff's choice of forum, witness convenience and access [to sources of proof], party convenience, and the interest of justice." *Koh*, 250 F. Supp. 2d at 633. "No single factor is dispositive in the transfer analysis, which is highly fact-dependent." *Hengle*, 2018 U.S. Dist. LEXIS 1000939, at *16. Other identified considerations include "the availability of compulsory process," the "interest of having local controversies decided at home," and, "in diversity cases, the court's familiarity with the applicable law." *Id.*

For the following reasons, the circumstances of this case weigh strongly in favor of transfer, and this Court should exercise its discretion and grant the motion to transfer venue.

A. <u>The Plaintiff's Choice of Forum</u>

With respect to the first factor, although "the plaintiff's choice of forum is ordinarily entitled to substantial weight," a plaintiff's "chosen venue is not given substantial weight when the plaintiff selects a forum other than its home forum and the claims bear little or no relation to

[4] Although specific personal jurisdiction is established because Defendants are being sued for their conduct and decisions relative to ROSP, personal jurisdiction could also be satisfied under the "minimum contacts" due-process analysis required for application of Virginia's long-arm statute. *See* Va. Code § 8.01-328.1(A); *Int'l Shoe Co. v. Washington*, 326 U.S. 301, 318-20 (1945); *Diamond Healthcare*, 229 F.3d at 450 (discussing difference between general personal jurisdiction and specific personal jurisdiction).

the chosen forum." *Id.*; *see also Lycos, Inc. v. TiVo, Inc.*, 499 F. Supp. 2d 685, 692 (E.D. Va. 2007); *Ion Bean Applications S.A. v. Titan Corp.*, 156 F. Supp. 2d 552, 563 (E.D. Va. 2000) ("[W]here the plaintiff's choice of forum is a place where neither the plaintiff nor the defendant resides and where few or none of the events giving rise to the cause of action accrued, that plaintiff's choice loses its [] status in the court's consideration.").

Here, the Plaintiff does not have a "home forum" for purposes of determining how much weight to give his choice of forum. Reyes is a citizen of either Honduras or El Salvador.[5] He is not a legal permanent resident, and he has been designated for removal by INS. For this reason, he is "an alien for purposes of venue," and therefore has no "home forum" in the United States. *See Hernandez Najera v. United States*, 1:16cv459, 2016 U.S. Dist. LEXIS 162110, at *16 (E.D. Va. Nov. 22, 2016) (holding that the Plaintiff, a citizen of Honduras who entered the country illegally but was granted temporary protected status ("TPS"), was "a citizen of Honduras and is, therefore, an alien for purposes of venue," reasoning that even a valid TPS does not confer "lawful permanent residence in the United States").[6]

Also, for the reasons discussed in Defendants' Memorandum in Support of Motion to Dismiss for Improper Venue (ECF No. 14), and the corresponding Reply Brief (ECF No. 35), the Eastern District of Virginia bears little or no connection to the facts underlying this lawsuit. Reyes challenges aspects of his conditions of confinement, along with his alleged lack of mental health treatment, at a prison in the Western District of Virginia, over a period of approximately

[5] *See* Ans. ¶ 16.

[6] Defendants further note that, even if the Court were to attempt to determine Reyes' "domicile" for venue purposes, it would most likely be the Southern District of Florida, where Reyes voluntarily lived for ten years before he was arrested for the murder he committed in Alexandria. *See Roberts v. Morchower*, No. 91-7688, 1992 U.S. App. LEXIS 3848, at *1 (4th Cir. Mar. 4, 1992) ("[A] prisoner's domicile is presumed to be where he was domiciled prior to incarceration.").

ten years. The crux of his lawsuit involves decisions that were made by individual employees who work at that prison. Although the VDOC policy establishing and governing the Step-Down Program was physically signed at the VDOC headquarters in Richmond, that policy is applied—and *only* applied—at two prisons (WRSP and ROSP) in the Western District. For this reason, the Eastern District bears little or no relation to the disputed facts of this lawsuit.

Because Reyes is not domiciled in the Eastern District, and because this cause of action overwhelmingly arose in the Western District, the first factor—the Plaintiff's choice of forum—weighs in favor of transferring venue under § 1404(a). *See Koh*, 250 F. Supp. 2d at 635 ("[I]f there is little connection between the claims and this judicial district, that would militate against a plaintiff's chosen forum and weigh in favor of a transfer to a venue with more substantial contacts.").

B. Witness Convenience and Access to Sources of Proof

With respect to the second factor, the majority of the potential witnesses in this action—both for the Plaintiff and for the Defendant—are located in the Western District of Virginia. Many of these witnesses are current employees of ROSP, and, for the reasons discussed in Warden Kiser's affidavit, they cannot leave that prison, *en masse*, to testify at a multi-day jury trial located 370 miles (about a six hours' drive) away from the prison where they work. For the handful of potential witnesses in other locations, most of those individuals are supervisory or administrative VDOC employees, rather than witnesses with direct firsthand knowledge of Reyes' conditions of confinement and treatment at ROSP. Their testimony, while important, is therefore not as critical to the defense of this matter as that of the individuals actually working at ROSP and interacting with Reyes on a daily basis. *Cf. Koh*, 250 F. Supp. 2d at 636 ("[I]t is permissible to infer, absent any contrary evidence from the non-movant, that witnesses are

located at or near the center of the allegedly [wrongful] activities."). Also, the VDOC administrative witnesses are better situated, from a scheduling perspective, to travel a long distance to testify at trial than the correctional officers and prison administrators at ROSP.

Defendants acknowledge that, notwithstanding the distance between ROSP and the federal courthouse, the multiple non-party witnesses could potentially be compelled to testify at trial under Rule 45(c)(1)(B)(ii) of the *Federal Rules of Civil Procedure*, and are therefore not necessarily beyond the subpoena power of this Court. However, for the reasons discussed in Warden Kiser's affidavit, VDOC would incur substantial cost and an added administrative burden if ROSP were half-emptied to supply necessary fact witnesses for trial. As also noted in Warden Kiser's affidavit, VDOC would also face practical difficulties transporting any incarcerated witnesses that the Plaintiff may wish to have testify at trial. None of these issues would be encountered if the trial were held instead at the federal courthouse in Big Stone Gap, which is less than an hours' drive from the prison.

Depending upon what facts are still in dispute by the time of trial, Defendants further note that Reyes' challenge to the conditions of his confinement might very well necessitate a jury view of the physical interior of ROSP. Courts have the inherent discretion to permit a jury view,[7] and allowing the factfinder to physically observe any disputed conditions of confinement would not be feasible if that jury were empaneled six hours away from ROSP.

For these reasons, the convenience of the non-party witnesses weighs strongly in favor of transferring this suit to the Western District.

[7] *See, e.g.*, *United States v. Simmons*, 380 F. App'x 323, 327 (4th Cir. 2010) (recognizing federal courts' "inherent power" to permit views by the trier of fact); *see also United States v. Harvey*, 181 F.3d 92 (4th Cir. 1999).

C. Party Convenience

For similar reasons, the convenience of the parties also weighs in favor of transfer. Thirteen of the seventeen defendants reside and work in either the Western District, or a closely-adjacent location (adjoining counties in Kentucky and Tennessee). During trial, those thirteen defendants could easily travel back and forth from their residences to the federal courthouse in Big Stone Gap, eliminating the need to stay overnight at a hotel located hours away from their work and home. And the remaining four defendants—Director Clarke, Mr. Robinson, Mr. Herrick, and Mr. Mathena—are VDOC administrators who are accustomed to traveling to southwest Virginia, and who do not object to accommodating the needs and convenience of the other defendants by conducting a trial in Big Stone Gap.

Defendants recognize that the convenience of the Plaintiff is not ordinarily considered as a reason in support for a § 1404(a) motion to transfer. Defendants note, however, that the Plaintiff would not have to be transferred to a different prison if the trial were moved to Big Stone Gap, but could instead return to his own cell in the evenings. By contrast, if the trial were held in Richmond, VDOC would have to physically relocate the Plaintiff, for a period of several days, to a prison closer to Richmond, so that he could attend his own trial. Accordingly, this is not a case where "transfer would merely shift the balance of inconvenience from the [Defendants] to the [Plaintiff]." *Koh*, 250 F. Supp. 2d at 639. Also, the relative convenience of the VDOC personnel who would be tasked with transporting the Plaintiff back and forth to trial is an additional and appropriate factor for this Court to consider.

Finally, Defendants anticipate that the Plaintiff may argue that his attorneys, some of whom are located in Richmond, would be inconvenienced if venue were to the Western District. That is likely certainly true. Without question, the undersigned counsel will also be

inconvenienced, on a practical level, by a transfer of venue. But bottom line, that does not matter. "Although courts consider a variety of factors in determining whether to transfer a case, the convenience of the attorneys is not one of them." *Bjoraker v. Dakota, Minn. & Eastern R.R. Corp.*, No. 12-C-7513, 2013 U.S. Dist. LEXIS 34161, at *17 (N.D. Ill. Mar. 12, 2013).

For these reasons, the convenience of the parties also weighs in favor of transferring this case to the Western District of Virginia, Big Stone Gap Division.

D. Interests of Justice and Other Factors

Finally, the interests of justice also favor transferring venue under § 1404(a). "The interest of justice consideration is 'an analysis encompassing those factors unrelated to witness and party convenience.'" *Koh*, 250 F. Supp. 2d at 639 (quoting *Acterna, LLC v. Adtech, Inc.*, 129 F. Supp. 2d 936, 939-40 (E.D. Va. 2001)). "Such factors include the pendency of a related action, the court's familiarity with the applicable law, docket conditions, access to premises that might have to be viewed, the possibility of an unfair trial, the ability to join other parties, and the possibility of harassment." *Id.*; *see also Hengle*, 2018 U.S. Dist. LEXIS 1000939, at *16.

Of those factors, access to premises has been discussed, *supra*, in the section pertaining to witness convenience and access to sources of proof. Defendants note that jurists in the Western District of Virginia are quite familiar with ROSP and the Step-Down Program, and that they have previously addressed various constitutional challenges to aspects of that Program. To the extent it is a proper consideration, the proposed transferee district is therefore familiar with the applicable law. In terms of docket conditions, transferring the case to the Western District would not hamper the discovery process or otherwise prolong bringing this case to trial. And finally, the Defendants have an interest in having this controversy resolved "at home"—meaning, in the area where ROSP is located and the Step-Down Program is administered. A Richmond

jury would have little, if any, interest in the administration of a prison program over 300 miles away, as that program affects a prisoner also located over 300 miles away. By contrast, a Big Stone Gap jury would have an interest in adjudicating this controversy, which pertains to a local prison that employs local individuals, and where some of those local individuals stand accused of violating a local prisoner's constitutional rights. *See, e.g.*, *Shenton v. Aerojet Rocketdyne, Inc.*, No. 3:17cv404, 2018 U.S. Dist. LEXIS 96150, at *23-24 (E.D. Va. May 21, 2018) ("[T]he Court finds that the unfairness of burdening Richmond jurors with a case that has little, if any, connection to this Division, weighs in favor of transfer to the WDVA.").

CONCLUSION

Because there is little, if any, connection between the Plaintiff's allegations and the Eastern District, and considering the factors discussed above, Defendants submit that the balance of these considerations weighs in favor of transferring this case to the Western District of Virginia, Big Stone Gap Division. *See Koh*, 250 F. Supp. 2d at 640 (granting § 1404(a) motion to transfer venue where "there is little, if any, connection between this district and the [plaintiff's] claims," and, "[m]ore importantly, the center of the accused activity is in the [proposed transferee forum], and it is apparent that the predominant number of potential witnesses and documents relating to both [the challenged activity] and damages are located [there]"). Accordingly, if the Court denies Defendants' Rule 12(b)(3) motion to dismiss, Defendants respectfully request, in the alternative, that their motion to transfer venue, under § 1404(a), be GRANTED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2018, I electronically filed the foregoing Memorandum in Support of Defendants' Motion to Transfer Venue with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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