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

Alexandria Division

THOMAS PORTER et al.,

Plaintiffs,

v. Civil Action No: 1:14-CV-1588 (LMB/DD)

HAROLD W. CLARKE, et al.,

Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT

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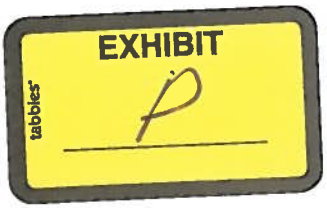

43. VDOC has spent approximately $2 million planning and constructing the physical improvements to Virginia's death row.[65]

44. Director Clarke has worked steadily to conceptualize and implement changes to the policies and procedures governing Virginia's death row. He has no intent to re-impose the prior conditions of confinement, and neither does Mr. Robinson, his second-in-command.[66]

45. Although the new operating procedure contains language indicating that it is subject to annual review and revision every three years, this is standard language that is incorporated into virtually every single VDOC operating procedure.[67]

ARGUMENT AND AUTHORITIES

At the time this suit was filed, Plaintiffs alleged that their "permanent, unmitigated segregation . . . subjects them to an inhumane existence unrelated to any legitimate penological goal, amounting to the imposition of cruel and unusual punishment violating the Eighth Amendment."[68] As previously argued, however, plaintiffs were not left languishing in darkened cells, almost entirely bereft of human contact, for significant periods of time. Rather, they constantly interacted with one another, with prison staff, and with individuals from outside SISP. For this reason, their conditions of confinement did not pose an objectively intolerable risk of harm. And even presupposing some risk existed, the VDOC policies regarding mental health care, medical care, visitation, telephone privileges, access to grievances, and attorney access

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[65] Zook Aff. ¶ 22 (ECF No. 161-1).

[66] Exhibit 1, H. Clarke Deposition, pp. 149-150; Exhibit 2, Robinson Deposition, pp. 102-03; 104-05; *see also* Zook Aff. ¶ 15 (ECF No. 139-2).

[67] For example, of the ninety VDOC operating procedures that are publicly-available, the only policy that does not contain this exact language is procedure 500.1, the food services manual, which provides that the manual should be reviewed "annually" and "revised as necessary." The operating procedures are available on the VDOC website, at https://vadoc.virginia.gov/about/procedures/default.shtm.

[68] Compl. ¶ 16.