IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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| STEVEN BROWN<br>WILBERT DELANO<br>GREGORY HAMMOND<br>SEDRIC HOLLEY<br>RUSSELL HOPKINS<br>JOHNNIE JAMES<br>TYRELL POLLEY<br>MAYNARD SNEAD<br>ROBERT WILSON,<br><br>*Plaintiffs*,<br><br>v.<br><br>DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES<br>STEPHEN MOYER<br>DAYENA M. CORCORAN<br>RICHARD MILLER,<br><br>*Defendants*. | * | Civil Action No. RDB-16-945 |

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

At the time plaintiffs filed suit in 2016, they were all incarcerated at the Roxbury Correctional Institution ("RCI"), an institution of the Maryland Division of Correction ("DOC"). Five of the plaintiffs have since been released from DOC custody. Each plaintiff initially filed his complaint in proper person in a separate action,[1] and those actions were subsequently consolidated upon the entry of appearance of counsel employed by the Prisoner Rights Information System of Maryland, *see* ECF 24. Following the appearance of additional counsel on behalf of the plaintiffs, an amended complaint was filed on September 7, 2016, *see* ECF No. 23. In their amended complaint, plaintiffs, who allege that they are blind or otherwise visually impaired, seek to hold senior officials of the Department of Public Safety and Correctional Services ("the Department") personally liable for purportedly denying their constitutional rights while they were incarcerated at RCI. The named individual defendants in the complaint are Stephen Moyer, the Secretary of Public Safety and Correctional Services; Dayena Corcoran, the former Commissioner of Correction; and Richard Miller, the former warden of RCI. Plaintiffs bring suit under 42 U.S.C § 1983 against the individual defendants in their individual and official capacities for alleged violations of the First, Eighth, and Fourteenth Amendments to the United States

[1] *See* RDB-16-947, ECF No. 1 (pro se complaint of Steven Brown); RDB-16-948, ECF No. 1 (pro se complaint of Robert Wilson); RDB-16-949, ECF No. 1 (pro se complaint of Maynard Snead); RDB-16-950, ECF No. 1 (pro se complaint of Russell Hopkins); RDB-16-951, ECF No. 1 (pro se complaint of Tyrell Polley); RDB-16-952, ECF No. 1 (pro se complaint of Gregory Hammond); RDB-16-953, ECF No. 1 (pro se complaint of Sedric Holley); RDB-16-954, ECF No. 1 (pro se complaint of Wilbert Delano); RDB-16-946, ECF No. 1 (pro se complaint of Johnnie James).

Constitution. Plaintiffs have also sued the Department and Secretary Moyer under the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12131-12165, 12201-12213, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Rehab Act").

Defendants previously moved to dismiss the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that it failed to state a plausible claim for relief. *See* ECF No. 100. Although a decision has not yet been rendered on defendants' Rule 12(b)(6) motion, the parties have now largely completed discovery in this matter. For the reasons set forth below, defendants now move for summary judgment on all of plaintiffs' claims against the defendants under § 1983, as well as all claims for injunctive relief under any theory of liability, on the ground that there remains no genuine dispute of material fact for a jury to decide, and defendants are therefore entitled to judgment as a matter of law.

**LEGAL STANDARD**

Under Rule 56 of the Federal Rules of Civil Procedure, a district court "shall grant summary judgment" if the pleadings, affidavits, depositions and other materials in the record "show that there is no genuine dispute as to any material fact" and the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Rule 56 mandates the entry of summary judgment where, after adequate time for discovery, the non-moving party fails to come forth with proof sufficient to establish an essential element of its claim upon which it will bear the burden of proof at trial. *Feldman v. Law Enforcement Associates Corp.*, 752 F.3d 339, 348 (4th Cir. 2014); *Cray Communications v. Novatel*, 33 F.3d 390, 393 (4th Cir. 1994), *cert. denied*, 513 U.S. 1191 (1995).

In order to survive a properly-supported motion for summary judgment, the non-moving party must present evidence from which a reasonable fact-finder could return a verdict in its favor. *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 768 (1984). The mere existence of some disputed fact does not require denial of the motion. *Thompson Everett, Inc. v. National Cable*, 57 F.3d 1317, 1322 (4th Cir. 1995). Rather, the disputed facts must be material to an issue necessary for resolution of the case and the quality and quantity of the evidence offered to create a question of fact must be adequate to support a verdict. *Id.*; *FDIC v. Cashion*, 720 F.3d 169, 180 (4th Cir. 2013).

**STATEMENT OF UNDISPUTED FACTS**

As noted, plaintiffs allege varying degrees of visual impairment.[2] (Am. Compl. ¶¶ 13-21). During their incarcerations, plaintiffs were incarcerated in Department institutions, primarily at RCI, at different times as described herein. Plaintiff Steven Brown has been incarcerated at RCI since 2007, and except for a short period of time in 2013, he has been assigned to a single cell with no cellmate. (*See* Exhibit 1, Deposition Transcript of Steven Brown ("Brown Dep.") 25:11 – 26:7, 28:12-14). Plaintiff Wilbert Delano was incarcerated from 2007 until October of 2018, and was housed at RCI for approximately six years. (*See* Exhibit 2, Deposition Transcript of Wilbert Delano ("Delano Dep.) 11:18-20, 15:15-21, 16:17 – 17:20, 11:18-20). Delano was assigned to a single cell while he was at RCI. (Delano Dep. 37:14 – 38:13). Plaintiff Gregory Hammond was incarcerated from 2011 to

[2] Defendants do not contest this fact for the sole purposes of the instant motion, but reserve their right to do so at a later date, including at trial.

2017, and was housed at RCI from early 2016 to near the end of 2016. (*See* Exhibit 3, Deposition Transcript of Gregory Hammond Dep. 9:2 – 10:3). He was assigned to a double cell with another inmate. (Hammond Dep. 16:3-9). Plaintiff Sedric Holley was incarcerated from August of 2009 until October of 2017, and was housed at RCI from 2010 until his release in 2017. (*See* Exhibit 4, Deposition Transcript of Sedric Holley Dep. 9:8-14, 14:2-8). Holley was assigned to a single cell the entire time he was housed at RCI. (Holley Dep. 18:19 – 19:2).

Plaintiff Russell Hopkins was incarcerated from July 2014 until August of 2018, and was housed at RCI from July 2015 until he was released. (*See* Exhibit 5, Deposition Transcript of Russell Hopkins ("Hopkins Dep") 20:15 – 21:8, 32:8 – 33:11, 62:18-22). At RCI, Hopkins was double-celled until 2016 and was then given a single cell until he was released. (Hopkins Dep. 118:15 – 119:1). Plaintiff Johnnie James has been incarcerated at RCI since 2013 and has been assigned to a single cell with no cellmate that entire period. (*See* Exhibit 6, Deposition Transcript of Johnny James ("James Dep.") 2:1-8, 10:11—14, 36:9-14, 50:9 – 51:18). Plaintiff Tyrell Polley was incarcerated at RCI from November of 2015 until October of 2016 when he was released. (See Exhibit 7, Deposition Transcript of Tyrell Polley ("Polley Dep.") 9:5 – 10:9, 15:9-21). Polley was housed in a single cell for approximately three months, and a double cell the remainder of his incarceration. (Polley Dep. 15:9-21).

Plaintiff Maynard Snead[3] has been incarcerated at RCI since 2002. (See Exhibit 8, Deposition Transcript of Maynard Snead ("Snead Dep.") 12:10 – 14:4). Snead was housed in a double cell until 2014, but has been in a single cell since then. (Snead Dep. 95:1-12). Plaintiff Robert Wilson has been incarcerated since August of 2013. (*See* Exhibit 9, Deposition Transcript of Robert Wilson ("Wilson Dep.") 18:18 – 19:14). He was housed at RCI until March 2017, where he had a single cell for a few months, and then a double cell thereafter. (Wilson Dep. 22:10 – 23:6, 36:3-4). After a few transfers, he went to Eastern Correctional Institution ("ECI") in September of 2017, where he has had a single cell since November of 2017. (Wilson Dep. 90:13 – 91:22). On February 14, 2019, he was transferred back to RCI. *See* Exhibit 10, Wilson Traffic History.

Stephen Moyer has been the Secretary of the Department since January 2015.[4] (*See* Exhibit 11, Deposition Transcript of Steven T. Moyer ("Moyer Dep.") 18:5-16). As Secretary, he manages approximately 10,000 employees and a $1.4 billion budget. (Moyer Dep. 32:9 – 33:15). This requires him to prepare for and participate in budgetary hearings and meetings with the Governor's Office and the Department of Legislative Affairs, to testify before the Legislature, and to monitor approximately 3,000 pending bills. (Moyer

[3] In the amended complaint, plaintiff's last name is spelled "Sneed," which is the name under which plaintiff was committed to the custody of the Department. However, on motion of the plaintiffs, *see* ECF No. 29, the Court granted plaintiffs' request to amend the docket to reflect that plaintiff's last name is spelled "Snead." ECF No. 42. Accordingly, that spelling will be used in this motion.

[4] On March 7, 2019, Secretary Moyer announced his departure from State service, effective the end of March, for a position as Public Safety Director for the Sarasota Memorial Health Care System in Florida. *See* https://news.maryland.gov/dpscs/home (accessed March 15, 2019).

Dep. 36:2 – 37:11). Additionally, Secretary Moyer routinely meets with other cabinet members and the Governor's Office. (Moyer Dep. 37:12 – 38:1). As Secretary, he has limited involvement in the daily operations of the individual facilities, including RCI. (Moyer Dep. 32:2 -34:5).

Secretary Moyer has never had any communications or interactions with the plaintiffs. (Moyer Dep. 13:17 – 14:3). He is not directly involved in the housing or cell assignments of inmates, including blind inmates (Moyer Dep. 71:10-13, 725-18, 82:2-12, 88:13 – 89:12), in the educational or work programs available to blind inmates (Moyer Dep. 84:11-19, 87:14 – 88:1, 89:2-12, 90:10 – 91:1, 92:14 – 93:7), in the "walker" program (101:16-18, 102:14 – 103:5), in the processes by which inmates address any ADA-related concerns (Moyer Dep. 56:21 – 57:21, 60:15-19, 81:1 – 82:12), in the Administrative Remedy Procedure ("ARP") (Moyer Dep. 99:11-19, 100:9 – 101:15), or generally in inmate requests for specific accommodations (Moyer Dep. 56:21 – 57:21, 60:15-19, 81:1-11, 90:20 – 91:1).

Dayena Corcoran was Commissioner of Correction for the Department from 2016 until September 2018. (*See* Exhibit 12, Deposition Transcript of Dayena Corcoran ("Corcoran Dep.") 46:10-12, 48:2-10). As Commissioner, she was responsible for managing all DOC institutions, implementing and enforcing DOC policies, conducting audits of the Division, and serving as a liaison to the greater community and other organizations. (Corcoran Dep. 46:10 – 47:17, 99:3-20). She also managed the wardens at all DOC facilities. *Id*. The individual institutions within DOC set their own policies and

procedures and have the authority to manage internal issues without the Commissioner's involvement. (Corcoran Dep. 49:16 – 50:8).

The Commissioner had no involvement in inmate housing assignments (Corcoran Dep. 203:5-13, 210:20 – 211:19), or formal training of staff members, but would advise administrators regarding new policies. (Corcoran Dep. 100:14 – 101:15). If inmates contacted the Commissioner with a complaint arising from their facility, the Commissioner would respond or refer the complaint to the appropriate person to address it. (Corcoran Dep. 145:8 – 147:1). If inmates filed a complaint through the Administrative Remedy Procedure or the Inmate Grievance Office, the Commissioner's involvement would typically be limited to signing off on a facility's final decision or communicating with a warden about what actions are being taken. (Corcoran Dep. 142:20 – 144:1, 246:17 – 247:15).

Richard Miller was the Warden at RCI from April 2015 until November 2017. (*See* Exhibit 13, Deposition Transcript of Richard Miller ("Miller Dep.") 25:10-16). As Warden, he was responsible for managing the operation of the entire facility and a budget of over $55 million. (Miller Dep. 44:2-7, 106:3-9). During his time at RCI, there were over 400 employees and nearly 1,800 inmates under his management. (Miller Dep. 57:2 – 58:2).

One month after Warden Miller began his tenure as Warden of RCI, he received correspondence from plaintiff Sedric Holley which included a copy of a grievance Holley had filed in 2011 regarding programs or services he could not participate in as a result of his visual impairment. (Miller Dep. 93:9 – 96:14). In July of 2012, in response to Holley's grievance, RCI installed a computer work station in the library with software to assist blind

and visually impaired inmates; assigned a library aide trained in using the software to train and assist blind and visually impaired inmates; enabled inmates to obtain books on tape and audio readers; and implemented a policy to allow blind and visually impaired inmates to be escorted to the recreation hall and other activities in advance of general population movement. (*See* Exhibit 14, Proposed Decision in *Sedric Holley v. Maryland Division of Correction*, S Holley 000001 – 000014; Exhibit 15, Communication dated July 30, 2012 from J. Michael Stouffer to Gary Maynard, Holley 000423). Warden Miller reviewed documents pertaining to the 2011 grievance and spoke to RCI staff members to determine whether RCI was in compliance with the grievance decision. (Miller Dep. 95:10 – 96:14). Based upon this, Warden Miller believed RCI was in compliance with the grievance decision. *Id*.[5]

Warden Miller also assigned staff members to work on obtaining additional services for visually impaired inmates, including life skills training and improvements to the GED program. (Miller Dep. 90:5 – 91:3, 96:7 – 97:1, 97:17 – 98:6). Warden Miller was informed that the Hadley School was retained to provide materials and training for vision impaired inmates, including Braille training, that aides were trained to work directly with visually

[5] As noted *infra* at p. 26, because this action was filed in March 2016, any claim based on conduct occurring prior to March 2013 is barred by the applicable statute of limitations. Thus, this information regarding Warden Miller's review of the actions taken to comply with the 2012 administrative order issued in response to Holley's 2011 grievance is included to demonstrate that Warden Miller, during his tenure as warden in 2015-2017, did not engage in any conduct that deprived a plaintiff of a constitutional right, and had no knowledge that any subordinate was engaged in such conduct. *See* argument at *infra* pp. 13, 29-31. Any claim by plaintiffs regarding purported constitutional violations occurring in 2011 or 2012 are untimely.

impaired inmates, and he procured audio books and equipment to listen to audio books, and subsequently software to enable visually impaired inmates to create documents on the computer. (Miller Dep. 115:1 – 117:17, 118:13 – 119:12). When the instant lawsuit was filed, Warden Miller then participated in discussions with plaintiffs' counsel to determine what auxiliary aids and services plaintiffs were requesting and what was reasonable and feasible for RCI to provide. (Miller Dep. 121:8 – 122:8).

The following auxiliary aids and services are currently being provided to visually impaired inmates at RCI. (*See* Exhibit 16, Declaration of Warden Casey Campbell).

***Access to educational programs, classes, and services***

- Braille training classes provided by the Hadley school
- Cane training classes and additional support meetings by Blind Industries of Maryland ("BISM")
- Tutors for visually impaired inmates available in the Education Department
- Inmate library aides available in library to assist visually impaired inmates with all library services. Library aide is a preferred job that requires a GED or high school diploma among its eligibility requirements.

***Independent Reading and Writing***

The RCI library is equipped with the following items for visually impaired inmates:

- Computer software and other auxiliary aides that enable printed documents to be scanned and converted to text-speech, including a SARA-CE scanner and a DaVinci Pro HC/OCR with 24" monitor

- 3 Dell computer workstations dedicated for use by visually impaired and blind inmates with software to enable them to read and type, in addition to 3 Microsoft lifechat headsets and microphones
- Various magnification devices, including the Optelec Clear Reader Advanced and Ruby HD Handheld Video Magnifier
- Various devices to enable reading and writing Braille, including a Read and Write Slate and Electric Perkins Brailler
- Access to the Library for the Blind and Physically Handicapped bi-monthly audio tape ordering catalogs. Ear phones and audio tape players are provided to each blind or visually impaired inmate for personnel use in their cells.

***Navigation***

- Early start to meals and recreation periods
- Visually-impaired inmates are housed in the tier closest to the dining hall, recreation area, library, and medical services
- Inmate assistant or escort assigned upon request. Eligibility to become assistant or escort requires housing at RCI for a minimum of 120 days, off disciplinary segregation for a minimum of 180 days, off cell restriction for a minimum of 90 days, and no sex offense convictions. Case management personnel exercise discretion in choosing inmates who meet eligibility requirements.

- Inmate assistants are counseled on their responsibilities, which include escorting inmates to all pass locations and appointments, escorting during an emergency evacuation with staff guidance, and other duties outlined below.
- Separate library and recreation periods available for visually impaired inmates, in addition to the general library and recreation periods they may attend with their housing unit
- Cane training by BISM and Medical Department

***Handbook and Orientation Materials***

- Institutional Bulletins and Directives provided in large print and on video CD in the library, and can be viewed with imaging materials
- Institutional Bulletins are also shown on the inmate television service, aired multiple times per week
- Inmate handbook available on audio CD for visually impaired inmates upon request
- New 2019 Inmate Handbook ordered in large print and on audio CD, and will be offered to all visually-impaired inmates
- Aforementioned reading devices may additionally be utilized for reading

***Grievances and lawsuits***

- Aforementioned reading/writing aids and services may be used to assist with filing ARPs and grievances

- Case Management staff, ARP/IGO Coordinator, the RCI Librarian, library aides, and other correctional staff are available to assist with ARPs and grievances upon request
- Inmate assistants are counseled on their additional duties to assist with written correspondence if needed, including ARP/IGO forms and departmental requests

***Other Accessibility Services***

- Medical department provides all medical services to visually-impaired inmates, including training on cane use for any inmates provided with canes
- Inmate assistants are counseled on their duties to assist visually impaired inmates in learning to complete daily tasks, including cleaning, laundry, and attending meals in dining hall, and with any written correspondence, including sick call requests
- Inmate assistants are instructed to direct any questions or concerns regarding any of their duties to the Housing Unit Officer in Charge
- Private religious counseling available to visually impaired inmates
- Sanitation of cell may be done by visually impaired inmate, an inmate assistant, or an inmate sanitation worker, with correctional officer available for supervision and safety

***Single Cell Housing***

- Single cell status may be granted based upon a medical determination by medical staff, a psychological determination by psychology staff, or a security determination by security staff, including the RCI Administration
- Plaintiffs Brown, James, and Snead are currently assigned to single cells

## ARGUMENT

### I. LEGAL PRINCIPLES APPLICABLE TO § 1983 CLAIMS SEEKING TO HOLD GOVERNMENTAL OFFICIALS PERSONALLY LIABLE FOR PURPORTED VIOLATIONS OF CONSTITUTIONAL RIGHTS.

To establish personal liability against the defendants under § 1983, plaintiffs must demonstrate that the defendants were personally involved in unconstitutional conduct that resulted in injury. It is well settled that liability under 42 U.S.C. § 1983 must be premised on personal conduct of the defendant and cannot rest on a theory of *respondeat superior* or any other type of vicarious liability. *See Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977) (for liability to arise under § 1983, state official must have acted personally to cause a deprivation of constitutional rights).

Absent an allegation of direct involvement by a supervisor in causing an injury, a supervisor may be held liable only if the plaintiff demonstrates that: (1) the supervisor had "knowledge that his subordinate was engaged in conduct that posed a 'pervasive and unreasonable risk' of constitutional injury" to plaintiff; (2) the supervisor's response "was so inadequate as to show 'deliberate indifference to or tacit authorization of'" the alleged

conduct; and (3) "'an affirmative causal link' between the supervisor's inaction" and the plaintiff's injury. *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994) (citations omitted).

"[T]he Supreme Court explained in [*Ashcroft v. Iqbal*, 556 U.S. 662 (2009)]. that 'a supervisor's mere knowledge' that his subordinates are engaged in unconstitutional conduct is insufficient to give rise to liability; instead a supervisor can only be held liable for 'his or her own misconduct.'" *Evans v. Chalmers*, 703 F.3d 636, 660-61 (4th Cir. 2013) (quoting *Iqbal*, 556 U.S. at 677). Thus, "'a plaintiff must plead that *each* [supervisory] defendant, through the official's *own individual actions*, has violated the Constitution.'" *Chalmers*, 703 F.3d at 661 (quoting *Iqbal*, 556 U.S. at 676).

Plaintiffs are unable to meet this standard. First, Plaintiffs' complaint itself contains no plausible claims against the defendants for alleged violations of plaintiffs' constitutional rights. Indeed, it contains no specific claims against the individual defendants at all. Nearly all of the references to the individual parties are contained in the "Parties, Jurisdiction, and Venue" section of the complaint, which merely identifies the defendants as supervisors and alleges, in conclusory fashion, that they were "aware of . . . policies and practices regarding blind inmates," and "the requirements of federal law . . . ." Am. Compl. ¶¶ 23, 24, 25. Nor are there factual allegations in the numbered counts themselves indicating how any defendant personally violated any plaintiff's constitutional rights.

Plaintiffs' failure to set forth plausible constitutional violations allegedly committed by the defendants extends to the summary judgment record. Absent from the record is any evidence of any conduct of defendants that violated the constitutional rights of any

defendant to access to courts or to be free from substantial risk of harm. Thus, as demonstrated more fully below, summary judgment should be granted to the defendants.[6]

## II. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' § 1983 ACCESS TO COURTS CLAIM AGAINST SECRETARY MOYER, COMMISSIONER CORCORAN, AND WARDEN MILLER.

Plaintiffs allege that defendants failed to "make reasonable accommodations and/or provide auxiliary aids and services to make the grievance process, courts, and library accessible to Plaintiffs." Am. Compl. ¶ 87. Defendants are entitled to summary judgment on this claim. First, plaintiffs' claim fails as a matter of law, because it is premised on the erroneous belief that the Constitution requires individuals to be able to read, write, conduct legal research, and file documents "privately and independently," or that there is a constitutional right to a law library or a "grievance process." *See* Am. Compl. ¶ 32. Second, the undisputed evidence demonstrates that defendants have not denied plaintiffs their right of access to courts. Third, plaintiffs cannot demonstrate that any purported constitutional violations resulted in any actual injury or that any of the defendants, as senior ranking officials in the Department, had any personal involvement in any purported constitutional deprivations.

[6] To the extent plaintiffs' § 1983 claims are brought against Secretary Moyer, Commissioner Corcoran, and Warden Miller in their official capacities, they fail for the additional reason that they are barred by the Eleventh Amendment to the United States Constitution. It is well established that the Eleventh Amendment bars suit against a state, a state agency, and state officials sued in their official capacities in federal court, absent a valid waiver. U.S. Const., amend. XI; *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984).

### A. Plaintiffs Overstate their Denial of Access to Courts Claim.

The right of access to the courts "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries ***or*** adequate assistance from persons trained in the law." *Bounds v. Smith*, 430 U.S. 817, 825 (1977) (emphasis added). It does not "guarantee inmates the wherewithal to transform themselves into litigating engines," *Lewis v. Casey*, 518 U.S. 343, 355 (1996), but instead, guarantees them a "reasonably adequate opportunity," *Bounds*, 430 U.S. at 828, *id.* at 828, to challenge their sentence or conditions of confinement. *See Lewis*, 518 U.S. at 354-55. As the Fourth Circuit has noted, there is no "right of access to a law library;" rather "there is a right of access to the *courts*." *Strickler v. Waters*, 989 F.2d 1375, 1385 (4th Cir. 1993). Thus, "[i]t does not inexorably follow from the fact that an institution's library is inadequate or that access to that library is restricted . . . that the prisoner was denied access to the courts." *See Wells v. Thaler*, 460 F. App'x 303, 308 (5th Cir. 2012) (noting, in affirmance of grant of summary judgment to prison officials in blind inmate's access to courts claim, that while "[i]t has long been recognized that prisoners enjoy the constitutional right of access to the courts, . . .[t]he Supreme Court has not . . . established that prisoners have a freestanding right to a law library or legal assistance") (citing *Lewis* 518 U.S. at 350–51). *See also Mims v. Williams*, No. 1:08CV521-01-MU, 2009 WL 454598, at *1 (W.D.N.C. Feb. 23, 2009) (rejecting access-to-courts claim based on lack of prison law library because prison had a legal-services program that "provides inmates with the constitutionally mandated level of assistance necessary to protect their meaningful access to the court"). The right of access to the courts requires that inmates have the

"tools" necessary to attack their sentences and challenge the conditions of their confinement. *Lewis*, 518 U.S. at 355. So long as they have sufficient assistance to ensure their claims are heard in court, it is simply irrelevant whether they are able to read, write, and research "privately" and "independently." Am. Compl. ¶ 33.

Moreover, because the right at issue is one of "access to the *courts*," *Strickler*, 989 F.2d at 1385, plaintiffs' allegation that they cannot access the DOC's administrative grievance process (the Administrative Remedy Procedure, or "ARP") fails to state a claim for relief. There is no "fundamental" right to an institutional inmate complaint resolution process, *see Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988); *Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994), and alleged defects in an inmate grievance system do not violate the Constitution. *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1995) (prisoner's allegation that jail grievance procedures were inadequate to redress his grievances did not state claim for violation of due process). *See also Booker v. South Carolina Dep't of Corr*., 855 F.3d 533, 541 (4th Cir. 2017) ("[I]inmates have no constitutional entitlement or due process interest in access to a grievance procedure."). As the court explained in *Lewis*, the right of access to the courts extends only to lawsuits challenging a conviction, sentence, or conditions of confinement, and "[i]mpairment of any *other* litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." *Lewis*, 518 U.S. at 355. Thus, plaintiffs' attempt to base their access to courts claim on their alleged lack of ability to access the DOC's grievance process is simply misplaced and fails as a matter of law.

In addition to demonstrating that he has been deprived of assistance in "preparation and filing of meaningful legal papers," *Bounds*, 430 U.S. at 825, a plaintiff must satisfy the second component of a denial of access to courts claim: "actual injury." *See Lewis*, 518 U.S. at 352-54. Actual injury requires that the inmate demonstrate that his "non-frivolous" post-conviction or civil rights legal claim has been "frustrated" or "impeded." *Id.* at 353–54. Because there is no "abstract, freestanding right to a law library or legal assistance, an inmate cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense." *Id* at 351. Rather, "the inmate therefore must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a [non-frivolous] legal claim[;] for example, that a complaint [the prisoner] prepared was dismissed for failure to satisfy some technical requirement which, because of deficiencies in the prison's legal assistance facilities, [the prisoner] could not have known," or that "he was unable to file even a complaint." *Lewis*, 518 U.S. at 351. *See also Strickler*, 989 F.2d at 1385 ("'A demonstration of inability to present a legal claim is an essential ingredient . . . because the prisoner must be able to show that the rules interfered with his entitlement (access to the courts) rather than with a mere instrument for vindicating an entitlement (access to books)." (quoting *DeMallory v. Cullen*, 855 F.2d 442, 452 (7th Cir.1988) (Easterbrook, J., dissenting))).

### B. The Undisputed Record Evidence Demonstrates that Defendants Are Entitled to Summary Judgment.

#### 1. Plaintiffs Were Not Deprived of Access to Courts.

When viewed under the proper constitutional standard, the undisputed evidence makes clear that no access to courts violation has occurred in this case. First, in this case alone, plaintiffs successfully filed nine *pro se* complaints to initiate this action in March 2016, and succeeded in obtaining appointed counsel, ECF No. 2, and then other counsel, who have represented the plaintiffs since 2016. *See* ECF Nos. 4, 11 and 12; n. 1, *supra*. In addition, they are provided access to the courts through "the array of services provided by the Office of the Public Defender and the Prisoner Assistance Program of the Legal Aid Bureau," *see Savko v. Rollins*, 749 F. Supp. 1403, 1408 (D. Md. 1990), which has been succeeded by PRISM, and through privately retained counsel. *See Pevia v. Commissioner of Corr.*, No. CV ELH-17-0273, 2018 WL 4052244, at *12 n.10 (D. Md. Aug. 24, 2018) ("This [C]ourt has found that the combination of services provided to [DOC] prisoners through private contract with outside agencies such as . . . . PRISM, the Office of the Public Defender, and LASI, is sufficient to ensure their right of access to the courts."). Indeed, as noted, two attorneys for PRISM are representing plaintiffs in this very lawsuit. *See* Civil Docket for Case 1:16-cv-00 945-RDB at 1.

It is also undisputed that plaintiffs have all successfully secured legal representation not only in this case, but in numerous other cases, including their underlying criminal matters, and are able to meet and speak with their attorneys as needed. *See, e.g.*, Snead Dep. 82:7 – 83:2 (stating that there is a phone on the tier that plaintiffs can use to call their

attorneys); *see also* Hopkins Dep. 166:14 – 171:2; Brown Dep. 14:11 – 15:9; Polley Dep. 11:22 – 12:5; Wilson Dep. 112:5-10. Critically, plaintiffs have never claimed that their numerous attorneys have failed to access the courts or represent their interests. Instead, they attempt to shift the focus away from their professional legal representation, and, as noted, focus on their purported inability to litigate "independently." *See* ECF 23 (amended complaint, ¶ 33) (alleging that "Plaintiffs have no way to initiate and complete the grievance or court processes privately and independently"). But as demonstrated above, the right of access to courts plainly does not extend so far, and plaintiffs therefore cannot establish that their rights have been violated in this case.

Moreover, although not properly encompassed by their access to courts claim, plaintiffs cannot show that they have been denied access to the administrative grievance process. On the contrary, plaintiffs acknowledge they have filed ARP complaints and grievances with the Inmate Grievance Office. *See* Wilson Dep. 28, 39; Snead Dep. 20, 36, 79; Hammond Dep. 72; Delano Dep. 45; Brown Dep. 27; Polley Dep. 67. Any claim that they have been denied access to the courts or grievance process is unsupported and simply contrary to the evidence.

Plaintiffs' testimony that some of them have had to rely on other inmates for assistance in filing ARPs or grievances provides no support for their access to courts claim. Even if the constitutional right extended to filing administrative complaints and grievances, which it does not, the fact that plaintiffs received assistance from other inmates is not evidence of a constitutional denial. As the Supreme Court has explained, all that is guaranteed is the "capability of bringing contemplated challenges . . . before the court,"

*Lewis*, 518 U.S. at 356, not "the capability of turning pages in a law library," *id*., and plaintiffs' own testimony, as well as the undisputed documentary evidence, demonstrates that plaintiffs have been able to bring such challenges.

In any event, the prison practice of relying on other inmates to prepare papers and pleadings is commonplace, and the fact that this ordinary aspect of prison life occurred to plaintiffs shows no more of a constitutional violation than it does when other inmates rely on fellow prisoners to assist them. *See Jong Pil Park v. Diaz*, No. SACV 12-1835-FMO MAN, 2013 WL 4008762, at *7 (C.D. Cal. Aug. 5, 2013) (noting that "[i]t is far from unusual for prisoners to seek and utilize the assistance of other prisoners, especially those with greater legal experience or knowledge, when pursuing post-conviction relief" and rejecting prisoner's access to courts claim and request for equitable tolling to file belated habeas corpus petition); *Henderson v. Johnson*, 1 F.Supp.2d 650, 655 (N.D.Tex.1998) ("[i]t is common for prisoners to count on other inmates for assistance in . . . seeking habeas relief"); *Fonseca v. McNeil*, 2009 WL 196095, *5 (D.Fla.2009) ("The fact that [petitioner] might need to rely on inmate law clerks and others because he is uneducated in the law, as he contends, is not uncommon. Prisoners often count on other prisoners for assistance in filing lawsuits or seeking habeas relief."). In this case, because the record evidence demonstrates that plaintiffs were able to file administrative and other complaints, either by themselves or with the assistance of others, there is no constitutional violation, and defendants are entitled to summary judgment.

**2. Plaintiffs Cannot Demonstrate Any Actual Injury.**

Defendants are also entitled to summary judgment because plaintiffs cannot demonstrate any injury as a result of the purported denial of access to the courts. A showing of "actual injury" is a "constitutional prerequisite" to establishing this claim, *Lewis,* 518 U.S. at 351, and such an injury occurs only when a prisoner "shows that an actionable claim . . . which [the prisoner] desired to bring has been lost or rejected, or that the presentation of such a claim is currently being prevented, because [the] capability of filing suit has not been provided." *Id.* at 343. *See Christopher v. Harbury*, 536 U.S. 403, 415 (2002) ("Our cases rest on the recognition that the right [of access to courts] is ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court."). And, given the limited scope of cases to which the right applies, "[u]ltimately, a prisoner wishing to establish an unconstitutional burden on his right of access to the courts must show 'actual injury' to '*the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts*.'" *O'Dell v. Netherland,* 112 F.3d 773, 776 (4th Cir. 1997) (emphasis added) (quoting *Lewis,* 518 U.S. at 355).

Plaintiffs have failed to adduce any evidence that a non-frivolous lawsuit challenging a sentence or condition or confinement was dismissed as a result of their alleged denied access, or that they were prevented from such a suit. Indeed, the record evidence conclusively demonstrates both lack of denial of access and lack of injury. *See* Exhibit 17 (interrogatory to plaintiff Robert Wilson asking plaintiff to "[i]dentify each occasion on which you claim that because of your blindness you were denied access to court," to which plaintiff responds, "Mr. Wilson makes no such allegation at this time.");

*See* Exhibit 18 (same interrogatory to plaintiff Sedric Holley to which he summarily responds that "Mr. Holley was denied equal effective access to the courts because he was provided no accommodations allowing him to perform his own legal research at the RCI library," but that "[h]e was able to retain an attorney"); *See* Exhibit 19 (same interrogatory to plaintiff Hammond to which he responds that he "was forced to pay another inmate to perform legal work in support of his motions for post-conviction relief," but that he "*prevailed* in his request for relief and was granted a new trial in October or November 2016 in Dorchester County Circuit Court") (emphasis added); See Exhibit 20 (same interrogatory to plaintiff Tyrell Polley to which he responds that he "was denied the opportunity to use an accessible computer at the library and was thus effectively denied the opportunity to conduct his own legal research and complete forms independently," but that he "was not otherwise denied access to court").

Likewise, the access to courts claims of the other plaintiffs also fail as a matter of law because they do not comply with Supreme Court's admonition that "the predicate claim [must] be described well enough to apply the 'nonfrivolous' test and to show the 'arguable' nature of the underlying claim is more than hope." *Christopher*, 536 at 416 (footnote omitted). As this Court has cautioned, "more than a conclusory allegation . . . is required to show actual injury," *Young-Bey v. Kennedy*, No. CIV.A. JFM-12-0162, 2013 WL 1976004, at *4 (D. Md. May 10, 2013), and a claim will be rejected where "the underlying cause of action and its lost remedy" are not "addressed by allegations in the complaint sufficient to give fair notice to a defendant." *Christopher*, 536 U.S. at 416.

Plaintiffs' complaint itself provides no description whatsoever of any underlying causes of action that were allegedly frustrated or impeded by plaintiffs' purported lack of access to courts. Instead, they simply allege that they have had "grievances and lawsuits," which they do not identify, "dismissed due to mistakes by sighted inmates." Am. Compl. ¶ 41. To the extent that plaintiffs James, Snead, Delano, Brown, and Hopkins have provided any information in discovery regarding the underlying causes of action on which they ostensibly base their claims, it is similarly vague, conclusory and inadequate. Plaintiff Johnny James alleges that "in or around 2014, he was unable to work independently on his effort to gain court approval for his admission to the 8-505 drug program," *see* Exhibit 21, but fails to describe this "effort" in any meaningful way, let alone provide facts sufficient for a jury to conclude that he had a meritorious claim that was dismissed because of inadequacy in legal services or a law library.[7] In any event, Mr. James acknowledges that he received assistance from "other inmates . . . in preparing his motion to the court." *Id.* Mr. James's lack of satisfaction with the quality of that assistance is of no moment, because the Constitution does not require the State to "enable the prisoner to *discover* grievances, and to *litigate effectively* once in court." *Lewis*, 518 U.S. at 354.

[7] Although not explained by plaintiffs, the "8-505 drug program" presumably refers to the procedure set forth in § 8-505 of the Health General Article of the Annotated Code of Maryland, which permits, but does not require, a court to "order the [Maryland Department of Health] to evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment." *See* Md. Code Ann, Health Gen. § 8-505(a)(1)(i) (LexisNexis 2013). *See also* Health Gen. § 8-507 (permitting court to commit a defendant to the Maryland Department of Health for substance abuse treatment).

Mr. James's claim that he was unable to obtain a divorce, resulting in his "remain[ing] legally married against his wishes," *id.*, also fails as a matter of law. As noted, the right of access to courts is limited to challenges to criminal sentences and conditions of confinement, *see Lewis,* 518 U.S. 355, and thus has no application to domestic claims. *See Wagner v. Gober*, No. 4:15-CV-1789 CAS, 2017 WL 2984841, at *4 (E.D. Mo. July 13, 2017) ("Numerous cases have held that the constitutional right of access to the courts does not extend to litigation involving divorce cases.") (citing cases); *see also Rice v. Turner*, No. 4:17CV2684, 2018 WL 3067767, at *6 (N.D. Ohio June 21, 2018) ("Plaintiff is not guaranteed access to the courts for a domestic relations case."). In any event, Mr. James acknowledges that he received assistance from other inmates, and again, fails to demonstrate both that he had a meritorious claim, and that his civil action was prejudiced by purported inadequacies in the legal services available to him. In particular, while he vaguely asserts that he "missed a filing deadline," and that a fee waiver request was not properly filled out, *id*., he does not assert that his case was dismissed or show that presentation of his case was impeded because of any defendant's actions.

Mr. Hopkins claims that he "was denied access to the courts because of his blindness in or around late 2016 or early 2017, when he could not find any inmates whom he trusted to assist him to file a motion with the Maryland district court in Towson to have his sentence reduced." *See* Exhibit 22. He acknowledges, however, that he received assistance from an attorney in the Collateral Review Division of the Maryland Public Defender's Office. That the attorney did not ultimately file the motion on his behalf, as Mr. Hopkins alleges, does not mean that he was deprived of legal assistance; nor does it constitute any evidence of a

deprivation of his right of access to courts as a result of any action of the defendants. Moreover, while vaguely asserting that the court had committed "a sentencing error" in his underlying criminal case, he does not describe this error in any way and thus has failed to demonstrate that he had a meritorious legal claim. *See James v. Cotter*, No. CV 9:14-4518-TLW-BM, 2017 WL 7054157, at *6 (D.S.C. Sept. 19, 2017), *report and recommendation adopted*, No. 9:14-CV-4518-TLW, 2018 WL 573157 (D.S.C. Jan. 26, 2018) (rejecting access to courts claim where prisoner "provided no docketing information relating to his criminal convictions, affidavits or deposition testimony from any qualified legal experts or sources indicating he had a non-frivolous legal claim concerning his conviction that was prejudiced by the alleged loss of this material, or any other evidence to support his otherwise general and conclusory claim").

Mr. Delano's allegations also reveal the absence of any valid access to courts claim. He testified that "in or around 2007 and 2008, [he] filed motions with the Circuit Court for Caroline County to modify or reduce his sentence" but "had a great deal of difficulty understanding the process and was not able to do any legal research to help him craft his claims." *See* Exhibit 23. First, these allegations are untimely. For claims under 42 U.S.C. § 1983, federal courts borrow the State's general personal injury limitations period, which in Maryland is three years. *Jersey Heights Neighborhood Ass'n v. Glendening*, 174 F.3d 180, 187 (4th Cir. 1999) (citing Md. Code Ann., Cts. & Jud. Proc. § 5-101). A claim under § 1983 "accrues when the plaintiff 'knows or has reason to know of the injury which is the basis of the action,'" *A Society Without a Name v. Virginia,* 655 F.3d 342, 348 (4th Cir. 2011) (citation omitted). Although Mr. Delano has not provided the court's disposition of

the motion for modification, a review of the docket entries of the Circuit Court for Caroline County indicates that the court denied Mr. Delano's request in December 2007,[8] and thus to the extent Mr. Delano had any claim, it accrued on that date. Because his complaint was not filed until March 2013, more than five years later, it is barred.

Mr. Delano has no plausible access to courts claim for the additional reason that he *did* file his cause of action, and like the other plaintiffs, has produced no facts demonstrating that he was actually harmed or prejudiced with respect to the litigation at issue. Nor has he demonstrated that his modification request was "arguable" or based on "more than hope." *Christopher*, 536 U.S. at 415. Similarly, Mr. Delano acknowledges that he received assistance from the Office of the Public Defender in 2014 with regard to a petition for post-conviction relief, and though he alleges he could not fill out the paperwork provided by that office because of his blindness and lack of auxiliary aids, he provides no description whatsoever of the post-conviction claims he purportedly wished to raise, and has thus failed to demonstrate that he had a meritorious case in that instance. *See Owuor v. Welch*, No. 2:09-CV-1098-CSC, 2012 WL 4513618, at *7 (M.D. Ala. Oct. 1, 2012) (rejecting access to courts claim where prisoner argued that jail's failure to have a law library or law books "impeded his ability to prosecute two separate civil actions," but prisoner failed to "specifically identity either action" and "concede[d] that he was able to file one federal tort claim which was subsequently denied").

[8] *See State of Maryland v. Wilbert Mark Delano*, Cir. Ct. for Caroline Co., No. 05-K-07-006927http://casesearch.courts.state.md.us/casesearch/inquiryDetail.jis?caseId=05K0700 6927&loc=50&detailLoc=ODYCRIM (accessed March 18, 2019).

The record evidence also completely refutes Mr. Delano's bald allegation that he was denied access to the legal process during hearings before the Maryland Parole Commission in 2018 and subsequent judicial review. At a hearing before Parole Commissioner Cluster on February 22, 2018, Mr. Delano admitted that he had violated the terms of his mandatory supervision release and his release was revoked. *See* Exhibit 24. A transcript of the hearing confirms that Mr. Delano was able to participate in the proceeding and there is no indication that his ability to do so was hindered in any way. *Id.* Subsequently, Mr. Delano filed a petition for judicial review challenging his revocation in the Circuit Court for Howard County, as well as a memorandum of law, and appeared before the court by video hearing on September 4, 2018. *See* Exhibit 25. A transcript of the hearing before the circuit court confirms that Mr. Delano was able to make his arguments before the court, and that both the Court and the assistant attorney general representing the Parole Commission made every effort to accommodate him and to ensure that he was able to properly present his case. *See* Exhibit 26. The record evidence thus demonstrates that Mr. Delano did not suffer any constitutional violation whatsoever.

Mr. Snead claims that in 2002, he "missed a deadline for filing a federal habeas petition," because he was allegedly denied "auxiliary aids and services that would allow him to conduct his own legal research and file his own petition[s] . . . independently," but that claim is clearly time-barred, as any claim Mr. Snead had with regard to the matter accrued 11 years before suit was filed in this case. *See* Exhibit 27. Moreover, Mr. Snead never describes the petition that he wished to file, and thus has completely failed to demonstrate that he had an "arguable" habeas claim. *Lewis*, 518 U.S. 353. The same result

applies to Mr. Snead's claim that in 2002 he missed a deadline to file a post-conviction petition that he does not describe or to seek "other relief" that he fails to specify. And similarly bereft of any supporting factual support is Mr. Snead's claim that in 2016, he was "unable to pursue [a] lawsuit" against unidentified defendants "regarding medical malpractice allegations that led to the loss of sight in one eye." As is the case with the other plaintiffs, Mr. Snead's bare and conclusory allegations fall far short of raising any triable issue that he was deprived of the opportunity to pursue an "actionable claim." *Lewis*, 518 U.S. at 356.

Mr. Brown's numerous allegations of a denial of access to courts also lack merit. Mr. Brown's claim that in 2007, after arriving at RCI, he missed a deadline for "fil[ing] charges against officers in the Anne Arundel County Detention Center who had assaulted him, resulting in his blindness," Exhibit 28, is time barred, having accrued approximately nine years prior to the filing of this lawsuit in 2016. Mr. Brown also fails to identify the "information he needed to file charges" to which he was purportedly denied access, and does not describe his putative cause of action or claims against the county or its personnel with sufficient particularity so as to demonstrate that it was actionable. He also fails to explain why he had only a "short period of time" after arriving at RCI "in which he could file charges," and has thus failed to sufficiently provide a "demonstration of inability to present a legal claim." *Strickler*, 989 F.2d at 1385.[9] Time barred as well is Mr. Brown's

[9] In fact, a review of this Court's docket indicates that on August 13, 2009, Mr. Brown filed a pro se civil suit against Anne Arundel County and several county correctional officers arising from the alleged use of excessive force. *See Brown v. Matolka*, Civ. No. 8:09-cv-02127-PJM, ECF No. 1 (complaint). On November 18, 2009, this Court granted

vague claim that "[i]n or around 2008, [he] missed a filing deadline for his appeal, because he was unable to read relevant legal documents independently." *Id.*

Also time barred, and lacking in any degree of specificity that would permit a reasonable juror to determine that they were actionable, are Mr. Brown's allegations that "[i]n or around 2009," he was unable to obtain assistance from the "Collateral Review Division of the Maryland Court of Appeals" [sic]; that "[i]n or around 2011, [he] had to find an inmate to assist him to write to his lawyer . . . concerning an outstanding warrant he had discovered"; and that "[i]n or around 2010," he had to seek help from other inmates to "file[] a motion with the Anne Arundel Circuit Court seeking help after he was attacked," which was denied. These vague and conclusory allegations fail to provide any evidence that an alleged denial of access to legal assistance impacted a meritorious legal claim. Accordingly, defendants are entitled to summary judgment.

### C. Plaintiffs Have Failed to Establish the Personal Involvement or Supervisory Liability of the Defendants.

Plaintiffs' denial of access to the courts claims fail for the additional reason that they cannot establish any personal involvement or liability on behalf of the individual named defendants. First, the vast majority of plaintiffs' access to courts claims concern events that occurred long before the defendants assumed even their positions. As noted, Stephen Moyer became Secretary in January 2015; Dayena Corcoran was Commissioner of

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Mr. Brown's motion for appointment of counsel, *see id*. at ECF no. 3, and on February 8, 2013, the parties stipulated to the dismissal of the action with prejudice.

Correction from 2016 until September 2018; and Richard Miller was the Warden at RCI from April 2015 until November 2017. Any claims arising before the defendants' tenure in their respective offices are barred because defendants lacked the capacity to take any action that would purportedly have violated any of the plaintiffs' constitutional rights.[10]

Moreover, absent from the record is any evidence that any of the defendants took any action to prevent or restrict plaintiffs from accessing the courts. As shown above, plaintiffs were fully and competently represented by counsel in numerous cases, *see* Hopkins Dep. 166:14 – 171:2; Brown Dep. 14:11 – 15:9; Polley Dep. 11:22 – 12:5; Wilson Dep. 112:5-10, and had the ability to communicate with their counsel via telephone as needed. *See* Snead Dep. 82:7 – 83:2. Furthermore, plaintiffs cannot show that any of the defendants were aware that their subordinates were engaged in widespread abuses with an unreasonable risk of denying plaintiffs access to the courts, or that the defendants were deliberately indifferent to, or tacitly authorized, such conduct. *Shaw*, 13 F.3d at 799. Nor can they show the requisite causative link. *Id*. Indeed, they have adduced no evidence

[10] Secretary Moyer testified that prior to his appointment as Secretary, he was employed as Director of Security for the University of Maryland Medical Center from 2008 to April 2013, when he was appointed Deputy Chief of Police in Sarasota, Florida, a position he held until his appointment as Secretary in January of 2015. Moyer Dep. 17-18. Former Commissioner Corcoran was employed as warden at the Maryland Correctional Institution - Jessup from 2009 to 2014, and was an assistant commissioner of correction from 2014 until her appointment as commissioner in 2016. Corcoran Dep. 42, 46. Mr. Miller was a correctional officer at RCI until June 2007, when he was appointed to the position of chief of security at the institution. In April 2010 he was promoted to assistant warden at the Maryland Correctional Training Center, a position he held until approximately December 2013, when he was appointed to the position of assistant warden at North Branch Correctional Institution ("North Branch"). He was promoted to acting warden of North Branch in December 2014, and became warden of RCI in April 2015, a position he held until his retirement from state service on November 1, 2017. Miller Dep. 23-25.

whatsoever to show what conduct even posed a pervasive and unreasonable risk of denying plaintiffs' access to the courts, let alone that the defendants were aware of such conduct and failed to act in response. To the contrary, the undisputed evidence makes clear that defendants in fact had every reason to believe plaintiffs *were* being provided with their constitutional right of access to the courts, most conspicuously by the existence of this very lawsuit. That plaintiffs were challenging their convictions and/or sentences, as well as filing ARPs and grievances relating to the conditions of their confinement, makes ever clearer that defendants did not know, nor could they have known, that plaintiffs were purportedly being pervasively denied access to the courts. *See Bridges v. Gilbert*, 557 F.3d 541, 555 (7th Cir. 2009) ("Because he is currently exercising his right to petition the government for redress of grievances through this lawsuit, he has not been harmed."); *Antonelli v. Sheahan*, 81 F.3d 1422, 1430 (7th Cir. 1996) (holding that the plaintiff's "invocation of the judicial process indicates that the prison has not infringed his First Amendment right to petition the government for a redress of grievances."). Defendants are therefore entitled to summary judgment on plaintiffs' § 1983 claim for denial of their right to access the courts.

## III. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT ON PLAINTIFFS' § 1983 DELIBERATE INDIFFERENCE FAILURE TO PROTECT CLAIM AGAINST SECRETARY MOYER, COMMISSIONER CORCORAN, AND WARDEN MILLER.

This Court should grant summary judgment to defendants Moyer, Corcoran, and Miller on plaintiffs' claim of deliberate indifference to their safety because plaintiffs cannot establish the requisite elements of this claim. Plaintiffs argue that their Eighth Amendment

protection against cruel and unusual punishment was violated by defendants' purported failure to provide them with auxiliary aids and services to allow them to independently navigate the prison facility, independently read and write, and have single cells. Am. Compl. ¶ 92. They claim that the absence of these auxiliary aids and services caused them to suffer "physical and sexual abuse, extortion, disruption of their relationships with their loved ones, and severe anxiety and emotional distress." Am. Compl. ¶ 93. The undisputed record evidence demonstrates that they are wrong.

"[N]ot every injury suffered by a prisoner at the hands of another 'translates into constitutional liability for prison officials responsible for the victim's safety.'" *Makdessi v. Fields*, 789 F.3d 126, 133 (4th Cir. 2015) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). To succeed on an Eighth Amendment failure-to-protect claim, a prisoner must prove that the defendant (i) had knowledge of a substantial risk of serious harm and (ii) acted with deliberate indifference, a criminal recklessness standard, to the prisoner's safety. *Farmer*, 511 U.S. at 834.

Thus, a two-part inquiry that includes both an objective and a subjective component must be satisfied before liability can be established. *See Raynor v. Pugh,* 817 F.3d 123, 127 (4th Cir. 2016). The objective inquiry asks whether the plaintiff "'establish[ed] a serious deprivation of his rights in the form of a serious or significant physical or emotional injury,' or a substantial risk thereof." *Id.* (quoting *Danser v. Stansberry,* 772 F.3d 340, 346-47 (4th Cir. 2014)). The subjective component requires a showing "that the prison official had a 'sufficiently culpable state of mind,' which . . . consists of 'deliberate indifference to inmate health or safety.'" *Raynor*, 817 F.3d at 127 (quoting *Farmer*, 511 U.S. at 834). Under the

subjective test, "actual knowledge of facts from which a reasonable person might have inferred the existence of the substantial and unique risk to [the prisoner] . . . is not enough to establish a violation of the Eighth Amendment," because "the defendant official . . . *must actually have drawn the inference*." *Rich v. Bruce*, 129 F.3d 336, 340 (4th Cir. 1997) (emphasis added). Negligence alone does not violate the Eighth Amendment's prohibition against cruel and unusual punishment. *See Ruefly v. Landon*, 825 F.2d 792, 793 (4th Cir. 1987); *Whitley v. Albers*, 475 U.S. 312, 319 (1986) ("It is obduracy and wantonness, not inadvertence or error in good faith, that characterize the prohibited conduct.").

### A. Plaintiffs Cannot Establish that They Were Exposed to a Substantial Risk of Serious Harm.

Plaintiffs cannot establish the objective element of their claim because they cannot demonstrate that they were subjected to conditions which caused them serious harm or exposed them to a substantial risk of serious harm. "Only extreme deprivations are adequate to satisfy the objective component of an Eighth Amendment claim regarding conditions of confinement." *De'Lonta v. Angelone*, 330 F.3d 630, 633–34 (4th Cir. 2003). To prove an extreme deprivation, there must be a significant physical or emotional injury, or "a substantial risk of such serious harm resulting from the prisoner's exposure to the challenged conditions." *Id*. Plaintiffs claim their double-cell housing assignment, and having to rely upon assistance from other inmates to read, write, and navigate the facility exposed them to such injuries and risks (Am. Compl. ¶¶ 92-3), but they cannot demonstrate this or even raise a genuine dispute of fact about it.

First, it is beyond dispute that double-celling is an accepted practice and does not violate the Eighth Amendment. *McCann v. Shearin*, 13-Civ-3693-RWT, 2015 WL 3753764, at *8 (D. Md. June 11, 2015) (citing *Rhodes v. Chapman*, 452 U.S. 337, 343-44 (1981)) ("[T]he Supreme Court has squarely addressed the issue of whether double-celling of prisoners constitutes cruel and unusual punishment, and has held that it does not."). From a prison administration perspective, it can be safer for inmates to be double-celled since cellmates can obtain assistance for each other in the event of an emergency. *See* Moyer Dep. 70:2 – 71:4. Moreover, plaintiffs Brown, Delano, Holley, and James were housed *only* in single cells at RCI, and plaintiffs Hopkins, Polley, Snead, and Wilson were housed at times in single cells and at times in double cells. Thus, it is plainly disingenuous for plaintiffs as a group to base this claim upon their purported double-cell housing.

Second, courts routinely uphold prison practices which require inmates to rely upon each other for such basic functions as navigating, reading, and writing. *See, e.g. Wells v. Thaler*, 460 F. App'x 303, 312-13 (5th Cir. 2012) (upholding practice of inmate assisting another blind inmate with reading and court filings); *Mason v. Correctional Med. Servs., Inc.*, 559 F.3d 880, 887 (8th Cir. 2009) (upholding practice of inmate assigned to assist blind inmates with daily tasks including filing grievances). Thus, plaintiffs cannot base their claim upon a practice that is constitutionally permissible.

And third, the undisputed record evidence makes clear that plaintiffs did not suffer a serious injury, nor were they exposed to a substantial risk of injury, as a result of their purported double-celling or reliance upon other inmates for assistance with navigating, reading, and writing. Although Mr. [redacted] claims to have been assaulted and sexually

assaulted by his inmate walkers ([redacted] Answers to Defendants' Supplemental Interrogatories, No. 22, dated December 27, 2018), he in fact was not. ([redacted] Dep. 51:11-54:14). To the contrary, his only complaints about the walkers were that they were involved with drugs or alcohol, but not that they caused him any harm. ([redacted] Dep. 42:5 – 44:6).

Mr. [redacted] claims he was assaulted on a number of occasions, and was almost raped on one occasion, but there is no evidence that these incidents were the result of his reliance upon other inmates for assistance or because of his visual impairment. To be clear, he did not generally rely upon other inmates for reading ([redacted] Dep. 18:8-10, 51:18 – 52:10), and had no real problems with his assigned escorts/walkers. ([redacted] Dep. 22:14 – 25:2). He believes the inmates who assaulted him took advantage of his visual impairment, but it is undisputed that he was not relying upon those inmates for assistance, and when he reported the assault, he was placed in protective custody. ([redacted] Dep. 29:17 – 30:14, 39:16 -40:12). Additionally, he claims he was sexually assaulted, but he admits that he was not raped or injured, he was sleeping when the incident occurred, and was subsequently transferred for his safety. ([redacted] Dep. 56:3-7, 56:17 – 57:2).

Mr. Hammond claims to have been assaulted by a cellmate, but that he only suffered bruising, *see* Hammond Dep. 16:8-12, 17:21 – 19:10, 21:12-17, 67:17 – 68:10, which is not sufficiently serious to satisfy the objective element. *Landy v. Isenberg*, 14-CV-501 PWG, 2015 WL 5289027, at *4 (D. Md. Sept. 9, 2015) ("The contemporaneous findings of minor bruising and a knee scrape were not objectively serious conditions."); *Jefferson v. Wooten*, 10-CV-2927 JFM, 2011 WL 3511036, at *4 (D. Md. Aug. 9, 2011), *aff'd,* 463 F. App'x 187 (4th Cir. 2012) ("An abrasion measuring less than one millimeter, bruising and

swelling are not serious in nature."). And there is no evidence to show that the assaults in any way pertained to Mr. Hammond's visual impairment. Additionally, Mr. Hammond did not initially report any of his cellmate's conduct (Hammond Dep. 19:2-4, 75:11 – 76:18), and when he did, the cellmate was transferred out of his cell. (Hammond Dep. 16:8-12, 17:21 – 19:10, 67:17 – 68:10). And critically, neither his second cellmate nor any other inmate upon whom he relied, ever assaulted him or caused him injury. (Hammond Dep. 69:14-15, 72:11-12, 74:20 -75:5).

Although Mr. Holley seeks over $50,000 for injuries arising from assaults and sexual assaults, Exhibit 4, (Holley's Answers to Defendants' Supplemental Interrogatories, Nos. 11, 22, dated December 27, 2018), he was in fact never assaulted by any inmate. (Holley Dep. 98:1-12, 98:18 – 99:3). Not only does this warrant granting defendants' motion, this is a frivolous claim.

Mr. [redacted] alleges that he was sexually assaulted by one of his walkers "touching" and "grabbing" him, and assaulted by another inmate who kicked him. ([redacted] Dep. 75:21 – 78:13, 78:14 – 79:7, 79:20-22, 106:7-9, 124:4-19). When one of Mr. [redacted] walkers "grabb[ed]" Mr. [redacted] Mr. [redacted] "pushed him back," and asked an unnamed officer for a new walker. (*Id.* at 76:11-77:8.) Although the unnamed officer did not immediately grant his request, a few weeks later Mr. [redacted] again requested a new walker and was a new inmate was assigned "that day." (*Id.* at 77:20-78:8.) As for the kicking incident, although Mr. [redacted] did not testify that he reported that incident, his complaints about the particular inmate who kicked him were heard and the walker was subsequently replaced at Mr.

[redacted] request. ([redacted] Dep. 121:16-124:3.) Mr. James does not claim physical injury from either incident. (106:7-9.)

Mr. Polley claims he had one altercation when his cellmate poked him in the head, and in response, Mr. Polley punched his cellmate. (Polley Dep. 17:15 – 19:19, 20:6-11, 40:11 – 41:12). He suffered no injuries as a result of this fight, and had no further altercations with his cellmate. *Id*. This does not suffice to demonstrate any serious injury. Additionally, he was never assaulted by his walkers or tutors or other inmates who assisted him. (Polley Dep. 63:11-15, 66:20-21, 75:4-6, 75:22 – 76:1). In fact, the only other injury he sustained at RCI was when he accidentally bumped his head, for which he was given Motrin and an ice pack. (Polley Dep. 38:14 – 40:10).

Mr[redacted] claims that one inmate choked and sexually assaulted him 2014, and was subsequently transferred to a different housing area, but he did not report the incident until three years later. ([redacted] Dep. 41:10-18, 42:10-11, 46:6-18, 48:20 – 49:13, 51:17 – 52:2, 97:15 – 98:4).

Although Mr. [redacted] claims he was injured as a result of physical and sexual assaults ([redacted] Answers to Defendants' Supplemental Interrogatories, No. 22, Dated December 27, 2018), the only assault he was subjected to was by one cellmate who, "a couple times," "physically grabbed [Mr[redacted]] on [his] chest" but did not hurt him, a series of assaults that Mr. [redacted] "just didn't report," but never caused any harm or injury. ([redacted] Dep. 23:7 – 25:4, 26:9 – 27:11). He was never assaulted or injured by any other inmates. *Id*.

Based upon the foregoing, the undisputed record evidence simply fails to demonstrate that plaintiffs suffered any serious injuries or were exposed to a substantial risk of serious injury as a result of their double-celling or reliance upon other inmates to navigate, read, and write. As a result, defendants are entitled to summary judgment.

### B. Plaintiffs Cannot Establish that Defendants Were Deliberately Indifferent to a Substantial Risk of Serious Harm.

Plaintiffs' claims fail for the additional reason that they cannot meet the subjective component of the Eighth Amendment test, which requires not only "[a]ctual knowledge or awareness on the part of" the defendant to the substantial and excessive risk of harm to the prisoner, *Brice v. Virginia Beach Corr. Ctr.*, 58 F.3d 101, 105 (4th Cir. 1995), but also a showing that the official acted with "deliberate indifference." *Jackson v. Lightsey*, 775 F.3d 170, 178 (4th Cir. 2014). As noted previously, the individual defendants are barely mentioned in the amended complaint, and the complaint itself is thus devoid of any factual allegations demonstrating that a defendant was aware of a serious risk of harm to any plaintiff.

The same infirmity in plaintiffs' case is present in the summary judgment record. To demonstrate deliberate indifference, plaintiffs must show that defendants "subjectively recognized" *both* that a "substantial risk of harm" existed to a particular prisoner *and* that his or her actions were "inappropriate in light of that risk.'" *Parrish ex rel. Lee v. Cleveland*, 372 F.3d 294, 303 (4th Cir. 2004) (citing *Rich v. Bruce*, 129 F.3d 336, 340 n.2 (4th Cir. 1997)). Plaintiffs cannot do so. As noted, Secretary Moyer, the head of a principal unit of Maryland state government maintaining custody of nearly 20,000 inmates confined in 23 prisons and a jail, as well as supervising approximately 30,000 offenders in the community, *see* Moyer

Depo. at 21-22, never had any communications or interactions with the plaintiffs and was not involved in their housing or cell assignments, and there is thus no evidence that Secretary Moyer was aware of any risk of harm to a plaintiff, let alone that he was deliberately indifferent to it. Plaintiffs' discovery responses contain no evidence to the contrary. Plaintiffs have not even alleged any specific facts, let alone produced them, indicating that Secretary had any actual knowledge that plaintiffs were purportedly in danger of a risk of serious harm. Instead, plaintiffs' claims rely on generalities, conclusory claims of wrongdoing, and regurgitations of the allegations of the amended complaint, which, as noted, are themselves cursory and inadequate. For example, in response to defendants' interrogatory seeking facts on which plaintiffs rely for their claim that Secretary Moyer should have foreseen harm to plaintiffs and taken steps to prevent it, plaintiffs responded that Secretary Moyer "is an individual knowledgeable of [the Department's] policies and practices regarding inmates, including those regarding blind inmates, and the requirements of federal law, and should therefore have foreseen the harm suffered by" plaintiffs. *See* Exhibit 18.

Also absent from the record is any evidence that Commissioner Corcoran, who was responsible for overseeing the wardens of all 23 facilities in the DOC and thus had no involvement in their day-to-day management or the housing assignments of particular inmates within the facilities, was aware that any plaintiff was at risk from harm. Additionally, although all of the plaintiffs were able to send correspondence, prepare pleadings and grievances, and file ARP complaints, none of the plaintiffs have ever claimed to have communicated with Secretary Moyer or Commissioner Corcoran to express any

concerns or fears that they were at risk from harm from another inmate. Accordingly, defendants are entitled to summary judgment. [11]

Also absent from the record is any evidence of deliberate indifference by Warden Miller to a serious risk of harm to any plaintiff. Warden Miller testified that, as warden of RCI from April 2015 to November 2017, he was "pretty accessible to -- to all the inmates," and that he "talk[ed] to hundreds of inmates a week." Miller Dep. at 310. He was familiar with or saw on a regular basis several of the plaintiffs, in particular Johnnie James, Sedric Holley, Steven Brown, and Robert Wilson, Miller Dep. at 311, and while some of the inmates made requests for auxiliary aids and raised issues regarding other institutional matters, *see id.* at 94, 361, none complained to him that they were at risk of harm from other inmates. Mr. Miller also testified that he was familiar with RCI's "walker," or blind inmate escort program, a paid assignment in which sighted inmates assist visually impaired inmates by escorting them within the institution. *See* Miller Dep. at 358. Warden Miller testified that walkers were screened by case management prior to commencing the assignment, and visible to staff as they performed their escort duties. Miller Dep. at 301. He also testified that assisting visually impaired inmates in preparing correspondence and

[11] As noted, Secretary Moyer had no communication with any of the plaintiffs, and the sole evidence in the record of any communication between Commissioner Corcoran and any of the plaintiffs, while not concerning any claim by a plaintiff of a purported risk of harm by a fellow inmate, demonstrates that the commissioner was responsive to their concerns. In 2016, in response to a letter from Congressman Elijah Cummings concerning plaintiff Wilson's allegations that he had been mistreated by a correctional officer, Commissioner Corcoran informed Congressman Cummings that the Department's Internal Investigations Division "would fully investigate Mr. Wilson's allegations," and that any necessary corrective action would be taken. *See* Exhibit 29. The IID conducted an investigation into Mr. Wilson's allegations and did not sustain his claims. *See* Exhibit 30.

other written materials was part of the walker's duties, *id*. at 226-227, but that visually impaired inmates could ask other inmates or staff for assistance if they preferred. *Id.* at 224, 227. During his tenure as warden, none of the plaintiffs ever raised any objections to him about their walker or the walker program, *id*. at 305, and the only complaint of which he was aware of any type regarding the program was that a walker stated he could not get along with the inmate whom he was assigned to escort, which resulted in the walker's reassignment. *Id.* at 305. Thus, absent from Warden Miller's testimony is any evidence of knowledge of a risk of harm to a plaintiff.

A review of Fourth Circuit cases in which prisoners *were* found to have adequately supported their allegations of deliberate indifference to a substantial risk of harm further demonstrates the inadequacy of plaintiffs' claims. For example, in *Odom v. S.C. Dept. of Corr.,* 349 F.3d 765, 771 (4th Cir. 2003), the prisoner provided "uncontradicted" evidence that the defendant correctional officers "ignored [his] requests for protection against an assault committed by fellow inmates," that they "knew the inmates intended to kill or seriously injure him," and that they "even watched as [the] inmates worked for at least forty-five minutes to break into an outdoor recreational cage in which [plaintiff] was being held, yet ignored [his] pleas for help." And in *Cox v. Quinn*, 828 F.3d 227, 237 (4th Cir. 2016), the prisoner submitted numerous written complaints "that he was being threatened and robbed by [named inmates]" in his housing pod, and "repeatedly informed the [defendants] that he feared for his safety and wished either to be moved from the pod or to have the other inmates moved."

Absent from the record in this case is any comparable evidence that would indicate defendants were "'aware of facts from which the inference could be drawn that a substantial risk of serious harm [to plaintiffs exist[ed]," and "in fact drew such an inference but disregarded it." *Odom*, 349 F.3d at 770–71 (quoting *Farmer,* 511 U.S. at 837). Accordingly, this Court should grant summary judgment to defendants under Count II of the amended complaint.

## IV. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY FROM PLAINTIFFS' CONSTITUTIONAL CLAIMS.

Defendants are entitled to qualified immunity from plaintiffs' claims under the First, Eighth, and Fourteenth, amendments. Qualified immunity "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

Typically, "[d]etermining whether qualified immunity is appropriate is a two-step inquiry." *Jones v. Chandrasuwan*, 820 F.3d 685, 691 (4th Cir. 2016) (citing *Pearson,* 555 U.S. at 232)). "First, a court must decide whether the facts that a plaintiff has shown make out a violation of a constitutional right." *Id.* "Second, the court must consider whether the right at issue was 'clearly established' at the time of the alleged misconduct." *Id.* Judges are "permitted to exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first in light of the circumstances in the particular case at hand." *Pearson*, 555 U.S. at 236.

Ultimately, the lodestar for whether a right was clearly established is whether the law "gave the officials 'fair warning' that their conduct was unconstitutional." *Ridpath v. Bd. of Governors Marshall Univ*., 447 F.3d 292, 313 (4th Cir. 2006) (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002)). The contours of the constitutional right "must be sufficiently clear that a reasonable official would understand what he is doing violates that right." *Hope*, 536 U.S. at 753 (quotation omitted). Although "'[c]learly established' does not mean that 'the very action in question has previously been held unlawful' . . . it does require that, 'in the light of pre-existing law the unlawfulness [of the official's conduct] must be apparent.'" *Owens v. Lott*, 372 F.3d 267, 278 (4th Cir. 2004) (quoting *Wilson v. Layne*, 526 U.S. 603, 615 (1999)) (brackets in original); s*ee also Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (finding that "clearly established" does not "require a case directly on point . . . but existing precedent must have placed the statutory or constitutional question beyond debate.").

Defendants are entitled to qualified immunity under both prongs of the qualified immunity standard. First, as shown above, plaintiffs have failed to demonstrate that any right of plaintiffs protected by the First, Eighth, or Fourteenth Amendment is implicated in this case. Plaintiffs have also failed to establish the existence of personal conduct by any defendant in alleged constitutional violations. Thus, the record "do[es] not make out a constitutional violation at all" against the defendants. *Pearson,* 555 U.S. at 236.

Even if plaintiffs had been able to establish actionable claims that the defendants violated a constitutional right, defendants would still be entitled to qualified immunity because "the right's contours were [not] sufficiently definite that any reasonable official in

[the defendants'] shoes would have understood that [they were] violating it." *City & County of San Francisco, Cal. v. Sheehan*, 135 S. Ct. 1765, 1774 (2015). As demonstrated above, plaintiffs' First, Eighth, and Fourteenth Amendment claims are devoid of any "controlling authority," *al-Kidd*, 563 U.S. at 742, that adopts plaintiffs' expansive and extraordinary theories of a prisoner's constitutional right to access the courts and to be free from unreasonable risk of harm. Nor do plaintiffs cite a "consensus of cases of persuasive authority" that has "placed the . . . constitutional question[s] beyond debate." *Id.* at 741-2. Accordingly, defendants are entitled to qualified immunity.

## V. PLAINTIFFS' ADA CLAIM IS BARRED BY THE ELEVENTH AMENDMENT.

Summary judgment should be granted to defendants under Count III of the amended complaint because the State enjoys Eleventh Amendment immunity from suit. In *United States v. Georgia*, 546 U.S. 151, 159 (2006), the Supreme Court held that the ADA abrogates state sovereign immunity for conduct that also violates the Fourteenth Amendment to the United States Constitution. The Supreme Court has not, however, held that state sovereign immunity is abrogated for conduct that does not rise to the constitutional level. *See id.*; *see also Spencer v. Earley*, 278 F. App'x 254, 257-58 (4th Cir. 2008). Indeed, the Fourth Circuit has upheld the dismissal of an ADA claim on the basis of state sovereign immunity where the conduct did not violate the Fourteenth Amendment. *Barnes v. Young*, 565 F. App'x 272, 273 (4th Cir. 2014). Because the undisputed record evidence demonstrates that no constitutional violations have occurred in this case, the State is immune from suit for the purported ADA violations alleged in the amended complaint.

Accordingly, summary judgment should be granted to the Department and Secretary Moyer under Count III. [12]

## VI. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT WITH REGARD TO PLAINTIFFS' REQUEST FOR INJUNCTIVE RELIEF BECAUSE PLAINTIFFS CANNOT DEMONSTRATE ENTITLEMENT TO AN INJUNCTION.

This Court should grant summary judgment to defendants on plaintiffs' requests for a permanent injunction, *see* Am. Compl. at 31 ¶ (requesting injunctive relief), because plaintiffs cannot demonstrate that they are entitled to the remedy of an injunction. First, the releases of plaintiffs Polley, Hammond, Delano, Hopkins, and Holley have rendered moot their claims for any equitable relief. *See Rendelman v. Rouse*, 569 F.3d 182, 186 (4th Cir. 2009) ("[A]s a general rule, a prisoner's transfer or release from a particular prison moots his claims for injunctive and declaratory relief with respect to his incarceration there"); *Williams v. Griffin*, 952 F.2d 820, 823 (4th Cir. 1991) (transfer of prisoner mooted claims for injunctive and declaratory relief). *See also Scott v. District of Columbia*, 139 F.3d 940, 941 (D.C. Cir.) ("Normally, a prisoner's transfer or release from a prison moots any claim he might have for equitable relief arising out of the conditions of his confinement in that prison."); *Thompson v. Carter*, 284 F.3d 411 (2nd Cir. 2002)

[12] Although plaintiffs do not specify whether they bring their ADA claim against Secretary Moyer in his official or individual capacity, Title II of the ADA does not permit individual capacity suits against a state official. *Barnes v. Young*, 565 F. App'x 272, 273 (4th Cir. 2014). Moreover, "a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) (internal quotation omitted). Thus, although plaintiffs assert their ADA claim against Secretary Moyer in addition to the Department, it should be construed as asserted only against the State.

(prisoner's transfer to a different correctional facility mooted his request for injunctive relief against employees of the transferor facility). *See also Abdul–Akbar v. Watson,* 4 F.3d 195, 206–07 (3d Cir.1993) (vacating injunctive relief granted by district court to inmate who had been released from prison five months prior to trial).

"Under 'well-established principles of equity,' a plaintiff seeking a permanent injunction must demonstrate:

> (1) that [he] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

*Legend Night Club v. Miller*, 637 F.3d 291, 297 (4th Cir. 2011) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)).

The Court's authority to award prospective equitable relief is further restricted by the Prisoner Litigation Reform Act ("PLRA"). Under the PLRA, "[p]rospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs," and a court may not grant or approve any prospective relief unless it "finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A).[13] Thus, any prospective relief in this action could do no more than

[13] The PLRA broadly defines "civil action with respect to prison conditions" as "any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison," with

"correct the violation of [a] Federal right" of one of the four prisoner-plaintiffs. *See Ball v. LeBlanc*, 792 F.3d 584, 599 (5th Cir. 2015) (holding that in prison conditions case that was not a class action, "the PLRA limit[ed] relief to the [three] particular plaintiffs before the court"). *See also Brown v. Plata*, 563 U.S. 493, 523 (2011) ("[T]the scope of the order must be determined with reference to the constitutional violations established by the specific plaintiffs before the court.")

Here, plaintiffs Snead, Brown, Wilson, and James cannot establish that they are currently being deprived of the protection of any federal right. As demonstrated above, all of plaintiffs' constitutional claims lack merit, and plaintiffs thus have no entitlement to an order correcting the purported violation of any constitutional right. Plaintiffs Snead, Brown, Wilson, and James also cannot demonstrate a present violation of their rights under the ADA or Rehab Act. To do so, they must demonstrate that they are being denied the benefits of a service, program, or activity "due to discrimination solely on account of [a] disability." *Koenig v. Maryland*, No. Civ.A. CCB-09-3488, 2010 WL 148706, at *1 (D. Md. Jan. 13, 2010), *aff'd*, 382 F. App'x 273 (4th Cir. 2010); 29 U.S.C. § 794(a) (Rehab Act case).[14]

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the exception of "habeas corpus proceedings challenging the fact or duration of confinement in prison." 18 U.S.C. § 3626(g)(2).

[14] As noted in defendants' motion to dismiss, ECF No. 100-1 n. 4 which is incorporated herein by reference, plaintiffs' ADA claims, were they permitted to proceed, would be analyzed under the same standard as their Rehab Act claims. For the purposes of this motion only defendants assume that plaintiffs are "qualified individuals with a disability" under the disability rights statutes. *See supra* n. 1.

The undisputed evidence demonstrates that plaintiffs Snead, Brown, Wilson, and James are not being denied the benefits of any of the DOC's programs as a result of a disability. The auxiliary aids, services, and accommodations currently being provided to the plaintiffs, permit them to participate fully in programs and services offered by RCI, and a review of their depositions confirms that they are currently suffering no injuries with regard to access to programs or services as a result of a visual impairment, much less irreparable ones warranting the issuance of a permanent injunction. *See* Brown Dep. 41, 107, 109, 134 (acknowledging that he has been provided an audio player and a magnifier with a light, a walker who assists him in getting to the dining hall and reading, and that the computer in the library has a device that converts printed words to audio); James Dep. 79-80, 82, 114, 129, 134 (James uses a cane to walk within the facility, and has a walker who shows up when called and takes him where he has to go, assists him in obtaining his medication, and does not require payment; he has an audio player that reads books to him, and the institution now has a scanner; his tutor helps him reading braille; and the institution is training tutors to be certified blind aides); Snead Dep. 18, 19, 30, 32, 33, 59 (Snead has been learning to read braille through the Hadley school, uses a machine in the library that reads written materials to him, had a book published in 2018, and two other inmates are assisting him in writing the second volume of the book; he uses a cane to walk, has a walker to assist him, and his only complaint is that the walker "take[s] a long time to . . . get over there to get to me"); Wilson Dep. 13, 15-16, 65 (Wilson is currently working on his GED, reads with bifocals, another pair of glasses and a magnifier; he uses a cane to walk not as a result of vision issues but due to a foot injury; and does not need a walker) (deposition

taken when Wilson was confined at ECI, now confined at RCI). Plaintiffs thus cannot demonstrate entitlement to any injunction that would comport with the narrow scope of relief permissible under the PLRA. Accordingly, this Court should grant summary judgment to defendants, dismiss all claims for equitable relief filed by plaintiffs Polley, Hammond, Delano, Hopkins, and Holley, and deny plaintiffs' request for an injunction.

## CONCLUSION

Defendants' motion for summary judgment should be granted.

Respectfully submitted,

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