UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

NIZAR TRABELSI,
Petitioner-Plaintiff,

v.

JEFFREY CRAWFORD, in his official capacity as Warden of the Farmville Detention Center, *et al.*

Respondents-Defendants.

Case No. 1:24-cv-01509-RDA-LRV

OPPOSITION TO PLAINTIFF'S MOTION FOR TIME TO CONDUCT DISCOVERY

Consistent with the plain language of the Federal Rule, litigants routinely come to Court and move for summary judgment at the threshold where the available record resolves an action. Indeed, Federal Respondents-Defendants' accompanying Reply Memorandum of Law in Support of their Motion to Dismiss and Motion for Summary Judgment highlights that what Plaintiff deems to be "outlandishly premature" is routinely commonplace. Specifically, litigants move for summary judgment at the outset and then courts resolve those cases where an uncontroverted and fulsome record provide a basis to resolve the legal questions before the court. That is the case here. As Federal Respondents-Defendants adduced in the declaration and documents accompanying their Memorandum in Law in Support of their Motion to Dismiss and Motion for Summary Judgment, *see* ECF No. 38 ("Memorandum" or "Mem."), the record regarding Plaintiff's conditions of confinement claims is readily available, voluminous, and sufficient to grant summary judgment to Federal Respondents-Defendants on those claims at the outset.

Specifically, the records of Plaintiff's conditions of confinement show that his conditions are hardly "punitive" because while at Farmville Detention Center ("FDC"), Plaintiff has been

afforded: access to recreation and leisure materials; thorough medical care; and access to religious worship, including possession of a Quran, a prayer rug, and access to two chaplains. Furthermore, those same records show the legitimate bases for Plaintiff's initial (and continued) placement in administrative segregation as well as the limited restrictions on his religious worship. In particular, those restrictions are justified by Plaintiff's prior violent history in his previous detention, his continued threats at FDC, and his continued willingness to evade restrictions at FDC. Furthermore, these records are not just scant or based on a few scattered materials—they are voluminous given the records of Plaintiff's care at FDC as well as records of Plaintiff's criminal history and repeated disciplinary issues at FDC.

In response to this, in two separate papers not authorized by the Local Rules of this Court, Plaintiff claims that he is entitled to discovery in his Motion for Time to Conduct Discovery, *see* ECF No. 45 (hereinafter "Motion" or "Mot.") and in the accompanying Memorandum in Opposition to Defendants' Combined Motions to Dismiss and for Summary Judgment & In Support of His Motion for Time to Conduct Discovery Under Rule 56(D), *see* ECF No. 46 (hereinafter "Opposition" or "Opp."). He is not so entitled, and this Court should not exercise its considerable discretion to authorize the fishing expedition that Plaintiff requests. A closer look at Plaintiff's Motion highlights that it does not actually identify how discovery will allow Plaintiff to obtain 1) new record evidence and/or 2) new record evidence that is *material* to his claims, and thus could assist him in successfully opposing the entry of summary judgment. Indeed, the Rule 56(d) declaration, *see* ECF No. 45-1 (hereinafter "Hallett Declaration" or "Hallett Decl.") attached to Plaintiff's Motion does not dispute, nor could it, the record evidence showing Plaintiff's treatment records, his frequent refusals to engage with FDC's treatment and access to recreation, and his prior history of violent conduct. At best, Plaintiff's Motion attempts to seize on immaterial

details, to raise points that are unrelated to the actual claims that Plaintiff pled, and to claim *ipse dixit* that the bases for Plaintiff's administrative segregation *could* possibly be inaccurate, all without any further explanation. Plaintiff's Motion thus requests discovery for the sake of discovery, which the Fourth Circuit has held insufficient to justify a continuance of summary judgment proceedings under Federal Rule of Civil Procedure 56(d). Accordingly, for the reasons discussed further herein, the Court should deny Plaintiff's Motion for Time to Conduct Discovery, and proceed to adjudicate the pending motion for summary judgment on the current briefing.

BACKGROUND

A. Factual Background

Federal Respondents-Defendants incorporate by reference here the undisputed material facts that they have already been developed in this case. *See* Mem. at 3-10. As explained in the simultaneously-filed reply memorandum, those facts have not been disputed by Plaintiff in the fashion required by well-established authority. *See* Opp. at 13 (providing Plaintiff's catch-all assertion that he "currently disputes the vast majority of the facts that Defendants have listed as 'undisputed'" without actually pointing to record evidence disputing those facts or addressing them one-by-one).

B. Procedural Background

In response to Plaintiff's Complaint and Petition, Federal Respondent-Defendants filed a motion to dismiss and motion for summary judgment in lieu of an answer on November 8, 2024, seeking dismissal of Plaintiff's habeas claims and summary judgment on his conditions of confinement. *See* ECF Nos. 38-39. As explained in the Memorandum in support of that motion, Federal Respondents-Defendants sought dismissal of Plaintiff's habeas claims for the same reasons as addressed in the briefing filed as a result of this Court's Order to Show Cause, *see* Mem.

at 1 n.1, and then Federal Respondents-Defendants explained how uncontroverted record evidence entitled them to summary judgment on Plaintiff's conditions of confinement claims, *see, e.g.*, *id.* at 12 n.4. Briefing on Federal Respondents-Defendants motion to dismiss and motion for summary judgment concludes with the reply brief being filed alongside this opposition memorandum.

In opposing Federal Respondents-Defendants' motion to dismiss and motion for summary judgment, Plaintiff filed the foregoing Motion[1] and Opposition, appending the Hallett Declaration, seeking discovery. However, the Hallett Declaration does not: identify the discovery requests that Plaintiff would presumably propound in discovery; identify what depositions Plaintiff believes he needs; or identify exactly how many discovery requests and of what kind Plaintiff would propound. Rather, the Hallett Declaration only vaguely claims that Plaintiff needs discovery on certain issues and that without "an opportunity to conduct discovery regarding these defenses or Defendants' evidence [Plaintiff] thus cannot adequately respond to them in his opposition to Defendants' Motion for Summary Judgment." Hallett Decl. ¶ 10.

[1] Plaintiff filed a separate motion for discovery, but there "no such thing as an independent motion under Rule 56(d)." *Mathewson v. Lincoln Nat'l Life Ins. Co.*, 518 F. Supp. 2d 657, 660 (D.S.C. 2007) (quoting *Arado v. Gen. Fire Extinguisher Corp.*, 626 F. Supp. 506, 508–09 (N.D. Ill. 1985)). Indeed, the only proper course for Plaintiff would have been to file the Hallett Declaration alongside his Opposition. *See, e.g.*, *Wright v. Pierce County*, 2013 WL 3777157, at *1 (W.D. Wash. July 17, 2013) ("Rule 56(d) only requires an affidavit or declaration, not a separate motion." (citation omitted)); *Sears, Roebuck & Co. v. Sears Realty Co.*, 932 F. Supp. 392, 410 n.5 (N.D.N.Y. 1996) ("The procedure prescribed in Rule 56(d), however, is designed to be *ancillary* to a motion for summary judgment, and is not to be invoked as an independent basis for relief." (citations omitted)).

That much is clear from the plain language of Fed. R. Civ. P. 56. *Compare* Fed. R. Civ. P. 56(a) ("(a) *Motion* for Summary Judgment or Partial Summary Judgment" (emphasis added)), *with* Fed. R. Civ. P. 56(d) ("(d) When Facts Are Unavailable to the Nonmovant. If a *nonmovant* shows by *affidavit or declaration* that, for specified reasons, it cannot present facts essential to justify its opposition, the court may . . . ." (emphasis added)). By filing a separate Motion, Plaintiff presumably seeks a chance to file a reply brief in support of his Motion that is arguably not permitted by the Federal Rules of Civil Procedure or the Local Rules.

STANDARD OF REVIEW

After a party moves for summary judgment, a court can defer ruling on or deny that motion, if the nonmovant shows with specified reasons as to why the court should allow discovery (in federal court). Fed. R. Civ. P. 56(d).[2] Two general principles are important for courts to bear in mind in exercising their discretion in deciding whether to grant or deny such motions. *See, e.g.*, *Strag v. Bd. of Trustees, Craven Cmty. Coll.*, 55 F.3d 943, 953 (4th Cir. 1995) (Rule 56(d) motion is ultimately reviewed under an abuse of discretion standard); *Landino v. Sapp*, 520 F. App'x 195, 199 (4th Cir. 2013) (same).

First, "discovery" under Federal Rule 56(d) "should not be used for fishing expeditions." *Delgado v. Prudential Ins. Cos. of Am.*, 1998 WL 738564, at *3 (4th Cir. 1998) (unpublished) (citing *R. Ernest Cohn, D.C. v. Bond*, 953 F.2d 154, 159 (4th Cir. 1991)); *see also Phillips v. Gen. Motors Corp.*, 1990 WL 117981, at *5 (4th Cir. 1990) (unpublished) ("[r]equests for broad additional discovery or 'fishing expeditions' will not suffice" to meet the Rule 56(d) standard (citations omitted)). In other words, "speculation and conjecture" as to what discovery could yield "are insufficient grounds for discovery." *Delgado*, 1998 WL 738564, at *3; *see also Nguyen v. CNA Corp.*, 44 F.3d 234, 242 (4th Cir. 1995) ("vague assertions" as to what discovery should be allowed does not equate to "legitimate needs for further discovery"). Thus, "the mere hope that something might turn up in further discovery does not" justify a Rule 56(d) request for discovery, and a court "must be concerned not to reward dilatory tactics with extended opportunities to continue what properly can be viewed as unfocused fishing expeditions." *Gen. Trucking Corp. v.*

[2] Fed. R. Civ. P. 56(d) was formerly Fed. R. Civ. P. 56(f). *See, e.g.*, Fed. R. Civ. P. 56(d) advisory committee's note to 2010 amendment ("Subdivision (d) carries forward without substantial change the provisions of former subdivision (f)."). For ease of reading, Federal Respondents-Defendants will treat cases that technically decided Rule 56(f) motions as if those motions were filed under Rule 56(d).

Westmoreland Coal Co., 979 F.2d 847, 1992 WL 344770, *7 (4th Cir. 1992) (unpublished) (citations and quotation marks omitted)).

Second, if the "the additional evidence sought for discovery would not . . . create[] a genuine issue of material fact sufficient to defeat summary judgment," then a request for discovery under Rule 56(d) must be denied. *Strag*, 55 F.3d at 954; *see also Pisano v. Strach*, 743 F.3d 927, 932 (4th Cir. 2014) (same); *McClure v. Ports*, 914 F.3d 866, 875 (4th Cir. 2019) (recognizing that while Rule 56(d) requests are favored when no discovery has occurred, the court "need not allow discovery unless a plaintiff identifies material, disputed facts"); *Dufau v. Price*, 703 F. App'x 164, 167 (4th Cir. 2017) (same); *Richard v. Leavitt*, 235 F. App'x 167, 167 (4th Cir. 2007) (no abuse of discretion in denying discovery where the plaintiff "failed to identify relevant information or demonstrate that information relevant to his claim actually existed").

ARGUMENT

Summary judgment should neither be delayed nor denied here. Plaintiff's Motion and the accompanying Hallett Declaration fail to justify an exercise of this Court's discretion under the above Rule 56(d) standard because: 1) the voluminous objective records submitted by Federal Respondents-Defendants provide a reliable evidentiary record for summary judgment on the actual material issues before the Court; and 2) further discovery would not alter or supplant those material undisputed facts and Plaintiff has not identified additional discovery that would create genuine issues of material fact. Indeed, Plaintiff's reflexive rejoinder that he needs "discovery" generally—*i.e.*, for the sake of it without more—is the exact argument that has been squarely *rejected* by the Fourth Circuit. *See Dufau*, 703 F. App'x at 167 ("While [the plaintiff] identified in an affidavit the discovery materials she sought, her blanket assertion that discovery would be beneficial does not fulfill the requirement that a Rule 56(d) motion identify which facts are relevant to opposing a

motion for summary judgment, and, particularly needed in this case, Dufau did not explain how discovery might lead to showing the existence of an adverse employment action or a hostile work environment." (footnote omitted)).

I. The Record Attached to the Memorandum Provides a Reliable Evidentiary Record for Summary Judgment on the Material Issues Before Court.

The materials accompanying the Memorandum—specifically Federal Respondents-Defendants' Declaration and 39 exhibits—contain the relevant and dispositive facts for this Court to resolve Plaintiff's conditions of confinement claims. That record highlighted that Plaintiff's conditions were not punitive under the Due Process Clause of the Fifth Amendment and that the very limited restrictions on Plaintiff's religious worship did not violate the Free Exercise Clause of the First Amendment of the United States Constitution or the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb (hereinafter "RFRA").

As to the substantive due process claim, Federal Respondents-Defendants provided records showing that Plaintiff had been able to place thousands of calls, had daily exercise time, had constant medical care, and had access to leisure materials and materials from a facility commissary. *See* Mem. at 12-13. Furthermore, as a legal matter, Federal Respondents-Defendants highlighted that Plaintiff's conditions could hardly be called "punitive" given caselaw upholding even more egregious conditions to be constitutional under the Due Process Clause. *See id.* at 17 (collecting cases). Meanwhile, Federal Respondents-Defendants provided records that explained why Federal Respondents-Defendants believed Plaintiff's administrative segregation was justified. Attached to the Memorandum were: records noting Plaintiff's prior history of terrorism; records of Plaintiff's prior history of violence in detention; and records highlighting Plaintiff's repeated threats and disciplinary infractions while at FDC. *See* Mem. at 3-5, 15-16. Thus, as a legal matter, Federal Respondent-Defendants provided a well-settled justification for Plaintiff's administrative

segregation and the various restrictions placed on him based on "the security risk that Plaintiff presented." *Contreras v. Kinkaid*, 2023 WL 3165116, at *11 (E.D. Va. Apr. 28, 2023) (Trenga, J.). Then, as to Plaintiff's religious rights claims, Federal Respondents-Defendants provided records showing that while Plaintiff's one-time requests for an imam and group prayer were denied, Plaintiff otherwise had access to religious texts, a prayer rug, and access to religious chaplains. *See* Mem. at 7. Thus, as a legal matter, Federal Respondents-Defendants were not coercing Plaintiff's religious beliefs so as to offend the Free Exercise Clause or substantially burdening his beliefs so as to offend RFRA, and Federal-Respondents Defendants had stated lawful penological justifications for any restrictions as well. *See id.* at 19-30.

As further discussed in accompanying reply memorandum, Plaintiff's Motion and Opposition have no rejoinder to or dispute with most of this *material* record evidence. In protesting, much of Plaintiff's argument instead is that it is "potentially self-serving," "one-sided," or "incomplete." Opp. at 1, 11. But Plaintiff fails to expound exactly what is self-serving or one-sided about objective records showing Plaintiff's failure to adhere to medical treatment, records recounting him violating restriction at FDC, and published reports and convictions regarding Plaintiff's violent behavior. In any event, courts have repeatedly denied requests for discovery under Rule 56(d) where plaintiffs claim discovery is needed just because they question, without more, the impartiality of record evidence introduced by their litigative opponent. *Krzywicki v. Del Toro*, 2024 WL 4598338, at *10 (D.D.C. Oct. 29, 2024) (rejecting "speculation[s] of potential bias and impartiality" as a basis for discovery with an otherwise developed record). Specifically, jurists within this District and the Fourth Circuit have repeatedly denied Rule 56(d) requests where plaintiffs have, without more, questioned the neutrality of records used by defendants in moving for summary judgment at the outset. *See, e.g.*, *McKinnon v. Blank*, 2013 WL 781617, at *11 (D.

Md. Feb. 28, 2013) (denying Rule 56(d) motion because an "ROI provides a wealth of information regarding the . . . [employment] decisions in question" and there were no "specific [material] facts that were 'not already available to [the plaintiff]' by virtue of the ROI" (citing *Boyd v. Guiterrez*, 214 F. App'x 322, 232 (4th Cir. 2007))); *James v. Schafer*, 2008 WL 11509706, at *5 (D. Md. Feb. 29, 2008) (granting summary judgment to federal defendant where there was "a wealth of material . . . available stemming from an investigation at the administrative level"). And at least one court has denied a Rule 56(d) request in a conditions of confinement case where there was otherwise a well-developed record of the plaintiff's treatment at a facility. *See Mullins v. United States*, 2007 WL 2471117, at *6 (N.D. W. Va. Aug. 30, 2007) (declining plaintiff's discovery request where medical records spoke for themselves and "conclusively establish[ed] that [plaintiff's] health care providers . . . ha[d] not been deliberately indifferent to any of his medical needs"), *aff'd*, 262 F. App'x 523 (4th Cir. 2008).

Plaintiff's unelaborated assertion that the record adduced is "hand-picked, potentially self-serving, and incomplete" is particularly hollow here. Opp. at 11. This is because much of the record evidence in this case is specific to Plaintiff's own experiences. That is, Plaintiff himself would *a fortiori* have personal knowledge to dispute the accuracy of any records regarding his infractions and access to religious materials, Plaintiff can dispute the accuracy of his treatment and recreation records, and Plaintiff can presumably dispute his past history of violence. But Plaintiff largely does none of this in the instant Motion and fails to dispute any material facts whatsoever in his Opposition. In sum, the existing, substantial record is neither cherry-picked nor insufficient for this Court to proceed to adjudicate the pending motion for granting summary judgment.

II. Plaintiff's Desired Discovery Would Not Create a Genuine Dispute Over the Material Facts.

Even assuming *arguendo* that the record before the Court were somehow insufficient,

Plaintiff must still show in his Rule 56(d) declaration that the additional evidence he seeks in discovery would be sufficient to create a material dispute of fact. *See Strag*, 55 F.3d at 954. A review of the Hallett Declaration demonstrates that Plaintiff is not seeking discovery on matters that would create a material dispute of fact so as to preclude summary judgment. At the outset, nothing the Hallett Declaration claims that further discovery is needed in light of record evidence showing Plaintiff's medical care, access to recreation and leisure materials, past history of violence, or alternative means of religious worship. Yet these are all material issues with respect to Plaintiff's claims. Instead, the Hallett Declaration: asserts that discovery is needed on immaterial points; raises legal theories never pleaded by Plaintiff; and suggests that discovery is merited because Federal Respondents-Defendants *might* be lying about Plaintiff's infractions at FDC and their bases for his administrative segregation. These are not grounds for granting discovery under Rule 56(d); this is especially so as a review of the Hallett Declaration shows.

Taking the bases for discovery in the Hallett Declaration in turn, Plaintiff first asserts that he needs to probe his disagreement with the severity of his restrictions applicable to him at FDC. *See* Hallett Decl. ¶ 4. Plaintiff asserts that while the Special Administrative Measures ("SAM") during his pre-trial detention "permitted him to have telephone calls with an approved list of contacts, receive and send mail that the facility reviewed, receive visits from an approved religious representative, have access to reading materials such as religious materials, newspapers, and books, and watch TV," "at the onset of Plaintiff's ICE detention, Defendants have restricted him from all of these things." *Id.* Thus, Plaintiff argues that he "needs discovery, including but not limited to, documents from Defendants regarding the restrictions imposed on detainees in administrative segregation to show that his current restrictions in Defendants' custody are not the same as other detainees in administrative segregation, go beyond the SAMs, and are otherwise

excessive, especially in light of his acquittal." *Id.*

This basis for discovery, however, is both unsupported as a factual matter but more importantly *immaterial* as a legal matter. At the outset, the nature of any *previous* restrictions that Plaintiff experienced while in immigration detention are completely irrelevant to whether he is *currently* facing unlawful conditions—which is the only relevant issue here, as Plaintiff only seeks equitable relief. Furthermore, this requested discovery is not material to the legal issues inherent in Plaintiff's claims for two reasons. For one, even if Plaintiff could burrow his head in the sand and falsely claim that he is denied leisure and religious materials, courts have upheld as constitutional even worse conditions. *See* Mem. at 17 (collecting cases). For another, any assertion that Plaintiff's conditions go beyond the SAMs or differ from those of other detainees is not legally material to his substantive due process claim. As noted in the Memorandum, Plaintiff does not allege that he is being punished intentionally by Federal Respondents-Defendants, and Federal Respondents-Defendants have explained the penological purpose for the specific limitations on Plaintiff's access to newspapers and television. *See* ECF No. 38-1 ¶¶ 52, 67. Plaintiff's assertion that these measures should track the SAMs identically or be lessened because of his acquittal is meaningless to the Court's legal analysis. *See Bell v. Wolfish*, 441 U.S. 520, 537 (1979) ("[T]hat such detention interferes with the detainee's understandable desire to live as comfortably as possible . . . does not convert the conditions or re-strictions of detention into 'punishment.'"). And to the extent that Plaintiff argues that his measures exceed that of other FDC detainees, that is a claim that sounds in the Equal Protection component of the Fifth Amendment. *See Weiler v. Purkett*, 137 F.3d 1047, 1051 (8th Cir. 1998) ("The heart of an equal protection claim is that similarly situated classes of inmates are treated differently, and that this difference in treatment bears no rational relation to any legitimate penal interest."). Plaintiff brought no such claim under the Fifth Amendment in his Complaint, *see, e.g.*, Compl. ¶¶ 121-124, and he may not constructively amend

his Complaint by way of his Motion.

Second, the Hallett Declaration claims that "Plaintiff needs discovery to determine why ICE concluded that, after he was acquitted of the criminal charges for which he was extradited to the United States, it needs to impose the same or even stricter conditions on him now that he is in immigration custody." Hallett Decl. ¶ 5. Plaintiff adds that in light of this he needs "to evaluat[e] Defendants' justification, as well as their internal inconsistency." *Id.* But Plaintiff could have made that argument in his summary judgment papers—*i.e.*, that his acquittal affected the penological interests for his conditions of confinement—but he did not do so, and he does not need discovery to make such an argument. However, as previously noted, Plaintiff's acquittal has no bearing on whether his current confinement violates the Due Process Clause. Furthermore, Plaintiff's suggestion that there *could* be inconsistencies in the justifications for his restrictions without actually indicating what inconsistencies could exist, does not present a basis for discovery. *See Dave & Buster's, Inc. v. White Flint Mall, LLLP*, 616 F. App'x 552, 562 (4th Cir. 2015) (affirming denial of discovery where "additional discovery was largely speculative as to any specific facts that might support a [material] finding"); *Delgado*, 1998 WL 738564, at *3; *Phillips*, 1990 WL 117981, at *5 (if discovery is "object of pure speculation," it may not be had); *Jenkins v. Culpeper*, 2022 WL 363583, at *3 (E.D. Va. Feb. 7, 2022) (no hesitation to deny vague Rule 56(d) motions that merely state what discovery "*might*" prove (citation omitted)).[3]

The Hallett Declaration next asserts that "Plaintiff also needs discovery to determine the facts underlying the Defendants' subsequent reviews of Plaintiff's classification and restrictions,

[3] Plaintiff's assertion that only the SAMs is a record of the basis for his prior segregation is also factually incorrect. The declaration appended to the Memorandum summarized other sources, and Federal Respondents-Defendants attached records of Plaintiff's violent behavior while he was incarcerated in Belgium. *See* Tab B.

all of which provide only boilerplate language regarding the classification decisions." Hallett Decl. ¶ 6. But Plaintiff fails to show how this is material to the substantive due process claim he raises and how discovery on this point would somehow elucidate anything different from the stated justifications for Plaintiff's administrative segregation. Indeed, while Plaintiff claims these reviews are "boilerplate" he does not challenge record evidence more fully explaining why Plaintiff was first placed in administrative segregation and why restrictions on his phone access were added in January 2024. *See* Tabs F, Q. Moreover, Plaintiff's reference to "boilerplate language," is more so a quibble with the sufficiency of his administrative segregation, but that quibble is a procedural due process claim, not a substantive due process claim. *See, e.g.*, Mem. at 15 n.6. Because Plaintiff never pled such a claim in his Complaint, he may not seek discovery on this point.

Switching matters, Plaintiff next takes issue with the fact that record evidence shows "Plaintiff is not restricted from sending personal mail, access to the law library, books and religious texts." Hallett Decl. ¶ 7. The Hallett Declaration therefore asserts that Plaintiff "needs discovery in order to show how Defendants' documentation inaccurately describes the restrictions imposed on him." *Id.* Once again, Plaintiff's conclusory ask for discovery without more does not help him. To succeed in his request for discovery under Rule 56(d) Plaintiff must "identify relevant information or demonstrate that information relevant to his claim actually exist[s]." *Leavitt*, 235 F. App'x at 167. Plaintiff has not done that here even though presumably he would have access to such information (if it existed). Nor could Plaintiff make this showing here. In contrast to meticulous record evidence of Plaintiff's requests for religious services, requests for certain kinds of meals, requests for newspapers, and commissary requests that Federal Respondents-Defendants produced, Federal Respondents-Defendants explained that Plaintiff's claims of materials being

restricted were incorrect because there was *no record* of these restrictions whatsoever. *See, e.g.*, ECF No. 38-1 ¶ 49 ("ICE keeps records of all detainees' requests and has no record that the Plaintiff has ever attempted to contact his alleged family by writing while in ICE detention."); ¶ 51 ("FDC and ICE records do not contain any evidence of any request from the Plaintiff for leisure written material outside of the records of one complaint about not having access to newspapers that is attached as Tab AM."); *see also* Tab S (describing Plaintiff's religious requests and which have been denied). Thus, Plaintiff is trying to prove a negative, attempting to claim that he is restricted from access to certain materials that there will be no record of him ever requesting.[4] Further, as a legal matter, restrictions on Plaintiff's access to certain materials are not necessarily constitutionally suspect given that much more egregious conditions of confinement have survived constitutional scrutiny. *See, e.g.*, *Smith v. Copeland,* 87 F.3d 265, 268-269 (8th Cir. 1996) (overflowed toilet in cell for 4 days was not unconstitutional); *Brown v. Withrow,* 985 F.2d 559, 559 (6th Cir. 1993) (having rats, roaches and ants present in the cell is not below the constitutional standard).

The Hallett Declaration then claims that "Plaintiff needs discovery to determine whether Defendants have restricted his access to television, the reason his cell was moved, and if he was moved in retaliation for his complaints or for some other reason." Hallett Decl. ¶ 8. Once again, Plaintiff is raising points immaterial to his legal claims. For one, Plaintiff's claim of "retaliation" is untethered to his Due Process, Free Exercise, or RFRA claims, and Plaintiff has eschewed any claim that Federal Respondents-Defendants' are punishing him. For another, courts have long held that even an outright denial of television in administrative segregation is not unconstitutional or

[4] Plaintiff offers no dispute whatsoever with record evidence that he has access to the digital law library at FDC but has refused to access it. ECF No. 38-1 ¶¶ 54-55.

unlawful. *See, e.g.*, *Coleman v. Governor of Michigan*, 413 F. App'x 866, 877 (6th Cir. 2011) ("It is beyond question that access to cable television is not a fundamental right."); *Moody v. Williams*, 2020 WL 7047788, at *12 (M.D. Fla. Dec. 1, 2020) ("Jails and prisons are not required under the Constitution to guarantee access to television and other forms of media as these simply are not necessities of life and are recreational in nature. As such, it cannot be said that not giving detainees access to these constitutes a deprivation of a basic human necessity."); *King v. Burgess*, 2024 WL 3493196, at *7 (W.D. Mich. July 22, 2024) ("Although it is clear that Plaintiff is denied certain privileges as a result of his time in administrative segregation at ECF, including the use of his television, he does not allege or show that he is being denied basic human needs and requirements."). And courts have likewise rejected claims that there is something unconstitutional about moving a detainee or a prisoner within a facility. *See, e.g.*, *Griffin v. Williams*, 2011 WL 3501787, at *7 (M.D. Pa. Aug. 10, 2011); *Gavalis v. Kurtz*, 1989 WL 118912, at *1 (E.D. Pa. Oct. 3, 1989) ("Prison officials may move prisoners as they see fit."). Thus, any further discovery on this point—particularly where Plaintiff is afforded other means of leisure or recreation that he often refuses—is immaterial to whether Plaintiff's substantive due process rights are being violated.

Following from this request for discovery, Plaintiff then argues that he needs "discovery to establish the conditions under which [FDC] is housing him," specifically regarding his claims that his "air conditioner routinely is non-functional in the summer heat and that the heat in his cell rises to above 90 degrees regularly." Hallett Decl. ¶ 9. Once again, Plaintiff does not identify what kind of discovery he would seek on this point. In any event, this point is legally immaterial as well. The claim regarding Plaintiff's air conditioning only relates to his substantive due process claim. In addition, Plaintiff's complaints of an "intermittently" working air conditioning are not

complaints that he is willfully subject to unreasonable conditions at FDC, but rather that the conditions are not to his liking.[5] Much like with Plaintiff's complaint regarding his television access, courts have held that similar (or far worse) complaints regarding air conditioning do not make a detainee's conditions of confinement punitive or unconstitutional. *See Saunders v. Sheriff of Brevard Cnty.*, 735 F. App'x 559, 570 (11th Cir. 2018) (rejecting a claim based on a prisoner's air conditioning being occasionally unavailable and remarking that the Eleventh Circuit had "held that a Florida prison did not violate the Eighth Amendment even when it provided no air conditioning whatsoever during the summer months"); *Owens v. Boyed*, 2023 WL 1069735, at *2 (E.D. Ark. Jan. 4, 2023), *report and recommendation adopted sub nom. Owens v. Boyd,* 2023 WL 1069879 (E.D. Ark. Jan. 27, 2023) (lack of air conditioning for 18 days not unconstitutional); *Benson v. Brown*, 2020 WL 4472972, at *5 (S.D. Ind. Aug. 4, 2020) (rejecting constitutional challenge to cold temperatures where plaintiff alleged his "hands were sometimes too cold to register a temperature or pulse reading from his finger, but that temporary discomfort does not reach the level of a constitutional violation").

Next, Plaintiff argues that he needs discovery on his history of disciplinary infractions that was appended by Federal Respondents-Defendants to their Memorandum. Specifically, Plaintiff argues that he "needs discovery to establish the facts underlying these disciplinary infractions and the extent to which these infractions influenced his subsequent classification reviews" and that Plaintiff needs discovery regarding allegations of his threats because "Defendants' own evidence calls into question the accuracy of these allegations, given that they have provided no evidence

[5] Plaintiff also alleged in his Complaint that "[t]he heat exacerbates his asthma and other medical conditions." Comp. ¶ 67. This allegation does not appear to be borne out by record evidence of Plaintiff's medical conditions, and Plaintiff is given medical treatment for his asthma. *See* Mem. at 8.

that Plaintiff was ever charged with these infractions." Hallett Decl. ¶¶ 11-12. In particular, Plaintiff tries to conclusorily impugn records establishing that Plaintiff has a continued history of violence at FDC, which are part of the justification for his administrative segregation and his restrictions.

As a legal matter though, further discovery on these points would not be material. Plaintiff's confinement status at FDC is based both on his *current* history of infractions but also his *prior* history of violence and infractions. And Plaintiff does not challenge, nor could he, that he had a history of violence in detention in Belgium and that he was previously subject to restrictive measures based on his history of terrorism and communicating with terrorists. That prior history, even apart from his current history of threats and infractions, would justify Plaintiff's administrative segregation. As a factual matter, Plaintiff's request for discovery is also baseless. Plaintiff once again fails to specific exactly how he will probe his disciplinary records and how discovery would somehow undermine those records. And Plaintiff's stated bases for needing discovery on these records is unavailing as well. While Plaintiff asserts that he "needs discovery to establish the facts underlying these disciplinary infractions," Hallett Decl. ¶ 11, the facts underlying the disciplinary infractions and the recommended disciplinary actions are spelled out in the records produced by Federal Respondents-Defendants. For instance, Plaintiff's disciplinary records show that at 10:08 PM on January 23, 2024, Plaintiff used a racial slur against an officer at FDC and that he admitted doing so while kicking the door of his cell. *See* Tab J at 9-10. It is therefore unclear what further information discovery would provide on near-contemporaneous records of Plaintiff's disciplinary infractions at FDC.

While Plaintiff claims that his infractions could be inaccurate because he was never charged for them, Plaintiff is incorrect. Plaintiff's disciplinary infractions repeatedly note that he

is charged under FDC's disciplinary rules and disciplined for these infractions internally. *See, e.g.*, Tab J at 32 (providing that Plaintiff would lose 7 days of commissary access for failing to obey the order of FDC staff). To the extent that Plaintiff believes that some of his threats catalogued by FDC should have resulted in disciplinary action or actual criminal charges, that does not undermine the credibility or accuracy of those threats. It is, in fact, unclear how discovery would somehow refute FDC officers' near-contemporaneous records of Plaintiff making threats to them. *See, e.g.*, *Malghan v. Evans*, 118 F. App'x 731, 734 (4th Cir. 2004) (affirming denial of Rule 56(d) motion because the plaintiff failed to demonstrate that additional discovery would rebut legitimate reason for employment decision). And courts have repeatedly rejected Rule 56(d) requests based on a plaintiff's mere suggestion that discovery *might* cause individuals to recant their previous statements. *See Sung Kun Kim v. Panetta*, 2012 WL 3600288, at *7 (E.D. Va. Aug. 21, 2012) (Brinkema, J.) (rejecting plaintiff relying on "purely speculative hope" that individuals "will recant their sworn testimony and reveal a long-running and intricately-planned conspiracy" to keep their unlawful animus hidden from view); *see also Bruette v. Montgomery County*, 70 F. App'x 88, 98 (4th Cir. 2003) (the plaintiff's "undocumented, personal belief that further discovery somehow would show Birch's malice . . . is an insufficient showing to warrant further discovery"). Plaintiff cannot seek discovery in the faint hopes that FDC staff will disavow their produced records.

Finally, the Hallett Declaration argues that discovery is needed simply because "Defendants make many allegations related to their defenses to Plaintiff's claims and provide evidence in support of their allegations" and because "Plaintiff has not had an opportunity to conduct discovery regarding these defenses or Defendants' evidence." Hallett Decl. ¶ 10. But this blank-check ask for discovery fails to specify exactly what allegations Plaintiff needs to probe and how discovery will help him do so. Such a broad ask for discovery without more does not satisfy

Plaintiff's burden under Rule 56(d) as courts have repeatedly rejected. *See McClure*, 914 F.3d at 875 (recognizing that while Rule 56(d) motions are favored when no discovery has occurred, the court "need not allow discovery unless a plaintiff identifies material, disputed facts"); *Estate of Parson v. Palestinian Auth.,* 715 F.Supp.2d 27, 35 (D.D.C.2010) (providing that a party seeking relief under Rule 56(d) cannot rely upon "a generalized request to conduct discovery" but must identify what "further specified discovery" is needed).

In sum, the Hallett Declaration fails to show that any additional evidence that Plaintiff seeks in discovery would be sufficient to create a material dispute of fact, and thus Plaintiff's Motion should be denied for this separate reason.

CONCLUSION[6]

For the foregoing reasons, Federal Respondents-Defendants respectfully request that the Court deny Plaintiff's Motion for Time to Conduct Discovery.

DATED: December 6, 2024

Respectfully submitted,

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[6] To the extent that Plaintiff offers any new arguments in his reply in support of his Motion for why the Court should defer or deny Federal Respondents-Defendants' motion to dismiss and motion for summary judgment, the Court cannot consider such arguments. It is axiomatic that parties cannot make new arguments for the first time in a reply brief, and that any such arguments would be waived. *See, e.g., SunTrust Banks, Inc. v. Robertson*, 2010 WL 11569432, at *5 n.5 (E.D. Va. July 1, 2010) ("The general rule in federal courts is that any arguments raised for the first time in a reply brief are deemed waived, and are thus not considered in adjudicating the motion." (citing cases)); *Bland v. Va. State Univ.*, 2007 WL 446122, at *4 (E.D. Va. Feb. 7, 2007) ("This Court will not consider an argument raised for the first time in a reply brief." (citing *United States v. Smith*, 44 F.3d 1259, 1266 (4th Cir. 1995))).

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CERTIFICATE OF SERVICE

I do hereby certify that on this 6th day of December, 2024, I have electronically filed the foregoing using the CM/ECF system.

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