

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

WILLIAM THORPE, *et al.*,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

CASE NO. 3:19-cv-332-REP

**CLASS PLAINTIFFS' MOTION FOR LEAVE
TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY**

Pursuant to Local Civil Rule 7(F)(1), and as supplemental authority in support of Class Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, July 9, 2019, ECF No. 26, Class Plaintiffs respectfully move for leave to file notice of the Fourth Circuit's per curiam decision filed last week in *Rivera v. Mathena*, No. 18-6615 (4th Cir. Nov. 19, 2019) ("Slip Op.") (unpublished), vacating the district court's summary judgment award to the defendants on a Red Onion prisoner's Eighth Amendment conditions-of-confinement claim. Applying *Porter v. Clarke*, the Fourth Circuit concluded that a prisoner affidavit describing conditions of solitary confinement in Red Onion was sufficient to establish a genuine dispute of material fact as to whether those conditions create a substantial risk of serious harm. *See* Slip Op. 3, 12 (quoting *Porter v. Clarke*, 923 F.3d 348, 357 (4th Cir. 2019) (reh'g denied)). The *Rivera* decision further demonstrates that Class Plaintiffs have adequately pleaded an Eighth Amendment conditions-of-confinement claim as to their solitary confinement in Red Onion and its twin, Wallens Ridge. For the Court's convenience, the *Rivera* decision is attached hereto as Exhibit 1.

Rivera also rejects Defendants’ theory that *Porter* is limited to prisoners placed in solitary confinement by virtue of their sentence, as opposed to their conduct in prison. *Compare* Slip Op. 4 (“A Red Onion prisoner is not sentenced to solitary confinement by a judge or jury but rather is placed in segregation by prison staff for disciplinary infractions.”), *with* Defs’ Mem. Supp. Mot. Dismiss 27, ECF No. 22 (“Because these Plaintiffs acknowledge that their in-prison conduct formed the basis of their assignment to security level ‘S,’ and because VDOC has provided them with a pathway out of restrictive housing, *Mickle*—rather than *Porter*—controls the Eighth Amendment analysis.”). If *Rivera*’s allegations and evidence were sufficient to deny summary judgment for the defendants in that case (one of whom is a named defendant here), this Court should find that Class Plaintiffs’ similar allegations are sufficient to state an Eighth Amendment conditions-of-confinement claim.

Dated: November 26, 2018

Respectfully submitted,

/s/ Alyson Cox

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of November, 2019, I electronically filed the foregoing Motion for Leave to File Notice of Supplemental Authority with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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