

**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

**REPLY IN SUPPORT OF CLASS PLAINTIFFS’
MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY**

Pursuant to Local Civil Rule 7(F)(1), Class Plaintiffs respectfully submit this reply in support of their Motion for Leave to File Notice of Supplemental Authority (ECF No. 36), to which Defendants have responded in opposition (ECF No. 37) (“Opposition”). Defendants’ Opposition—rather than casting doubt on the persuasive weight of the Fourth Circuit’s decision in *Rivera*—serves instead to highlight two important points about the Class Action Complaint.

First, Defendants effectively concede that this class action presents a facial constitutional and statutory challenge to VDOC’s Step-Down Program. *See* Opp’n 1-2 (stating that “Plaintiffs challenge” “the constitutionality of VDOC’s administrative segregation policy”). This concession underscores the centrality of VDOC and its leaders *in Richmond*, who devised, formulated, implemented, and oversaw the solitary-confinement policies that violate Class Plaintiffs’ rights. *See* Reply Statement Supp. Venue 3, ECF No. 35. *Second*, compared to the verified pro se complaint in *Rivera*, the sworn allegations of which the Fourth Circuit concluded were sufficient to survive summary judgment (*see* Slip Op. 14), the Class Action Complaint marshals even more exhaustive evidence regarding VDOC’s Step-Down Program, its predecessor

policies at VDOC facilities throughout Virginia, and the harms inflicted by such policies upon Class Plaintiffs. These allegations must be taken as true at this stage (*see Brown v. Mitchell*, 308 F. Supp. 2d 682, 690-91 (E.D. Va. 2004) (Payne, J.)) and *Rivera* is thus persuasive authority for denying Defendants' motions to dismiss.

Dated: December 6, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2019, I electronically filed the foregoing Reply in Support of Class Plaintiffs' 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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