

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION**

WILLIAM THORPE, *et al.*,

Plaintiffs,

v.

VIRGINIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

CASE NO. 2:20-cv-00007-JPJ-PMS

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

Under Local Civil Rule 11(c)(1), and as supplemental authority in opposition to Defendants' Objections to Report and Recommendation (ECF No. 72), Class Plaintiffs respectfully move for leave to file notice of the Supreme Court's decision in *Taylor v. Riojas*, No. 19-1261, 2020 U.S. App. LEXIS 5193 (Nov. 2, 2020) ("Slip Op."), *vacating sub nom Taylor v. Stevens*, 946 F.3d 211, 222 (5th Cir. 2019). *Taylor* confirms that the Magistrate Judge properly applied the law of qualified immunity to Class Plaintiffs' detailed factual allegations. For the Court's convenience, the *Taylor* decision is attached hereto as Exhibit 1.

In *Taylor*, a per curiam Supreme Court vacated a Fifth Circuit decision holding prison officials qualifiedly immune from claims under the Eighth Amendment for knowingly housing a prisoner in unsanitary conditions for six days. Slip Op. 1-2. The Fifth Circuit found that although prison officials knew of Taylor's conditions and failed to intervene, Taylor's Eighth Amendment right "wasn't clearly established" because he "stayed in his extremely dirty cells for only six days," and prior decisions held only "that prisoners couldn't be housed in cells teeming with human waste for months on end." *Taylor*, 946 F.3d at 222. The Supreme Court disagreed, concluding that—

even absent prior circuit precedent on all fours—no reasonable official could have believed it was constitutionally permissible to knowingly house Taylor in these conditions. *See* Slip Op. 2 (“[A] general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question” (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002))). *Taylor* forecloses Defendants’ argument that they are entitled to qualified immunity unless a court previously held that their precise conduct was unconstitutional. *See* Class Pls.’ Surreply 2, ECF No. 79-1.

Dated: November 5, 2020

Respectfully submitted,

By: /s/ Alyson Cox Yates
Alyson Cox Yates (VSB No. 90646)
Daniel Levin (*pro hac*)
Kristen J. McAhren (*pro hac*)
Maxwell J. Kalmann (*pro hac*)
Timothy L. Wilson, Jr. (*pro hac*)
WHITE & CASE
701 Thirteenth Street, NW
Washington, DC 20005
T: (202) 626-3600
F: (202) 639-9355
alyson.cox@whitecase.com

Owen C. Pell (*pro hac*)
WHITE & CASE
1221 Avenue of the Americas
New York, New York 10020
(212) 819-8200

Vishal Agraharkar (VSB No. 93265)
Eden Heilman (VSB No. 93554)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA
701 E. Franklin St. Suite 1412
Richmond, Virginia 23219
(804) 644-8022
vagraharkar@acluva.org
eheilman@acluva.org

Counsel for Class Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2020, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

Dated: November 5, 2020

Respectfully submitted,

By: /s/ Alyson Cox Yates
Alyson Cox Yates (VSB No. 90646)
WHITE & CASE
701 Thirteenth Street, NW
Washington, DC 20005
T: (202) 626-3600
F: (202) 639-9355
alyson.cox@whitecase.com

Counsel for Class Plaintiffs