

**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), Class Plaintiffs respectfully move for leave to file notice of the Fourth Circuit's July 26, 2019 order denying the petition for rehearing and rehearing *en banc* with respect to *Porter v. Clarke*, 923 F.3d 348 (4th Cir. 2019). A copy of the Fourth Circuit's Order is attached to this Motion as Exhibit A. The Individual Defendants cited the *Porter* petition in their motion to dismiss in order to minimize the *Porter* decision. Defs.' Mem. Supp. Mot. Dismiss 26 n.15, ECF No. 22.

The Fourth Circuit's Order upholding the panel decision in *Porter* is directly relevant to Class Plaintiffs' claims under the Eighth Amendment. See Class Action Compl. ¶¶ 246-249, ECF No. 1; Class Pls.' Mem. Opp'n Defs.' Mot. Dismiss 17-23, ECF No. 26. *Porter* held that prisoners alleging similar but arguably less comprehensive harms caused by solitary confinement had amply satisfied the objective prong of the Eighth Amendment. ECF No. 26, at 17-23. Based on the Fourth Circuit Order, the panel opinion in *Porter v. Clarke* is binding precedent that defeats Defendants' arguments regarding Class Plaintiffs' Eighth Amendment conditions-of-confinement claim.

Dated: July 30, 2019

Respectfully submitted:

/s/ Alyson Cox
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2019, I electronically filed the foregoing 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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