No. 17-1566

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

TIMOTHY FINLEY,

Appellant,

v.

ERICA HUSS, et al.,

Appellees.

On Appeal from the United States District Court for the
Western District of Michigan,
No. 2:16-cv-00253

BRIEF FOR APPELLANT

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

This appeal involves complex and novel issues of law. Oral argument would materially advance this Court's resolution of those issues. Appellant therefore respectfully requests that oral argument be granted.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983. Final judgment was entered on April 20, 2017, and the notice of appeal was timely filed on May 16, 2017. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether allegations that prison officials placed and held a severely mentally ill prisoner in solitary confinement—with knowledge that his mental health professional had recommended against such confinement—state a claim of deliberate indifference to the prisoner's medical condition under the Eighth Amendment.

2. Whether allegations that prison officials placed and held a severely mentally ill prisoner in solitary confinement as a sanction for possessing contraband—without making any modification to their policies to accommodate his disability—make out a prima facie case under the Americans With Disabilities Act and Rehabilitation Act.

3. Whether allegations that prison officials placed a severely mentally ill prisoner in solitary confinement state a claim for deprivation of a protected liberty interest under the Due Process Clause.

4. Whether a district court, having dismissed a prisoner's complaint *sua sponte*, should address the merits of a motion to amend the complaint instead of rejecting it out of hand on the basis of the prior dismissal.

STATEMENT OF THE CASE

Timothy Finley is a prisoner who was sent by prison officials to solitary confinement despite his severe mental illness and against the contrary recommendation of the mental health professional responsible for his treatment. Then, in the face of efforts by that mental health professional to get him transferred to a mental health facility, the officials left him to suffer in solitary confinement for several months. Those actions—made with full knowledge of Finley's illness—were a clear violation of his constitutional and statutory rights, and his civil-rights action to redress them should not have been dismissed.

A. Factual Background.

1. Timothy Finley is a prisoner confined in Marquette Branch Prison ("MBP") in Michigan. Finley suffers from severe mental illness, including bipolar disorder, borderline personality disorder, and antisocial personality disorder. Complaint, R. 1, Page ID # 2-3. He has a long history of suicide attempts and other self-harming behaviors while in MBP. Between August 30, 2016 and October 5, 2016 alone, Finley cut his arm 25 times, swallowed 9 razor blades, was hospitalized numerous times, and had several neck and stomach surgeries to remove a razor blade lodged

in his throat and razor blades lodged in his stomach. *Id.* at 3. He has also attempted to hang himself twice. Complaint Ex. A, R. 1-2, Page ID # 16.

Prison staff from all departments, including defendants Erica Huss, an MBP deputy warden, and Sarah Schroeder, an acting deputing warden, were well aware that Finley suffered from mental illness. Finley's condition had been discussed countless times during meetings between the prison custody staff, including the deputy wardens, and the prison's medical personnel. Complaint, R. 1, Page ID ## 4, 7. Those discussions made clear the severity of Finley's conditions and his ongoing need for proper treatment. *Id.*

2. The issues in this case arise out of prison officials' efforts to sanction Finley for possession of a razor blade that became lodged in his throat after he swallowed it. On September 12, 2016, prison officials placed Finley in administrative segregation (a form of solitary confinement) pending a hearing on the charge of misconduct. *See* Complaint Ex. E, R. 1-6, Page ID # 35; Complaint Ex. C, R. 1-4, Page ID # 21 (describing policy for temporary segregation placement); Complaint Ex. D, R. 1-5, Page ID # 33 (listing Finley as in a "base" cell at the time of the hearing). Prison officials requested a "misconduct sanction assessment" from the mental health professionals working at MBP. Mandi Salmi, the mental health professional primarily responsible for Finley's treatment, *see* Complaint, R. 1, Page ID # 5, responded that "[p]rolonged segregation placement is likely to deteriorate

his mental health status," Complaint Ex. E, R. 1-6, Page ID # 35. This response was hardly surprising. Administrative segregation at MBP consists of solitary confinement 24 hours per day, 7 days per week. Complaint, R. 1, Page ID # 6. There is no programming to distract prisoners in solitary confinement, who are allowed no congregate activity and very few possessions. *Id.* Prisoners in solitary confinement are closed behind solid cell doors and subjected to constant, intense social isolation and sensory deprivation. *Id.*

Two weeks later, on September 26, 2016, prison officials held a hearing to determine whether Finley should be officially classified to administrative segregation. Although prison rules specify that, for any prisoner receiving mental health services, prison officials should list the recommendation of a mental health professional about "whether the prisoner's mental health needs or limitations can be met in administrative segregation" on the classification notice, the officials did not do so in Finley's case. Rather, that portion of the notice was left blank. Complaint Ex. D, R. 1-5, Page ID # 33. Furthermore, although Salmi had previously warned that Finley's mental condition was likely to worsen in solitary confinement, Salmi was not present at the hearing to present her views. Complaint, R. 1, Page ID # 5. Following the hearing, defendant Huss classified Finley to administrative segregation based on his "possession of dangerous contraband," a razor blade that

he had obtained and swallowed because of his mental illness. Complaint Ex. D, R. 1-5, Page ID # 33.

Between September 29 and October 5, 2016, Finley was treated at a local hospital and airlifted to the University of Michigan Hospital for surgical removal of a razor blade lodged in his throat. Complaint Ex. B, R. 1-3, Page ID # 18. He was returned to MBP on October 5. On that date, Dr. Meden, an MBP physician, prescribed emergency involuntary treatment with Haldol, a powerful antipsychotic medication, and with Benadryl. *Id.* Dr. Meden described Finley's extensive history of self-injurious behavior, including "cutting, unstable relationships and self-image, affective instability, high impulsivity, and inappropriate anger." *Id.* Despite those post-hearing events, Finley was once again placed in administrative segregation, instead of a mental health facility, upon his return from the hospital.

Salmi then undertook an effort to get Finley released from solitary confinement. To that end, Salmi submitted an appeal challenging his placement and a recommendation urging his transfer to a mental health unit. Complaint, R. 1, Page ID # 8. Although defendant Schroeder, the acting deputy warden at the time, concurred with Salmi's recommendation, she did not implement the transfer as required by prison policy. Instead, she left Finley in solitary confinement for several more months. *Id.* Finley's period of solitary confinement exacerbated his mental illness. *Id.* at 7-8. He was finally transferred to a mental health unit in January 2017,

more than three months after his placement in administrative segregation. Opinion, R. 12, Page ID # 90.

B. Procedural History.

1. During his stay in solitary confinement, Finley filed a *pro se* complaint in the United States District Court for the Western District of Michigan against Huss and Schroeder, seeking, first, a declaration that defendants had violated his constitutional and statutory rights and, second, a permanent injunction against his future placement in administrative segregation.[1] Complaint, R. 1, Page ID # 1. Specifically, Finley alleged that his assignment to administrative segregation—despite defendants' knowledge of his severe mental illness—constituted deliberate indifference to his medical condition in violation of the Eighth Amendment and discriminated against him because of his disability in violation of Title II of the Americans With Disabilities Act of 1990 ("ADA") and § 504 of the Rehabilitation Act of 1973. Finley also alleged that, as a result of the inadequate hearing with respect to his assignment, he was deprived of his liberty without the due process required by the Fourteenth Amendment. Complaint, R. 1, Page ID # 5-6.

[1] Finley also sought a temporary restraining order and preliminary injunction. *See* Complaint, R. 1, Page ID # 1; Declaration in Support, R. 3, Page ID # 49. He withdrew his request for interim relief after his release from solitary confinement. Motion to Withdraw, R. 9, Page ID # 74.

The district court *sua sponte* dismissed the complaint for failure to state a claim. Opinion, R. 12, Page ID # 84. *See* 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C § 1997e(c). Rejecting Finley's Eighth Amendment claim, the court acknowledged that "[t]he Eighth Amendment . . . requires prison officials to provide medically necessary mental health treatment to inmates," Opinion, R. 12, Page ID # 87, but found no violation because Finley "has since been admitted to the mental health program," and because he was not denied "[mental health] treatment during his stay in administrative segregation." *Id.* at 88. To support its decision, the court also distinguished an Ohio district court case, *Easley v. Nixon-Hughes*, No. 1:06CV863, 2009 WL 237733 (S.D. Ohio Jan. 29, 2009), saying that, unlike the prisoner there, Finley did not "claim that he was encouraged to commit suicide or given the opportunity to do so by untrained corrections officers."[2] Opinion, R. 12, Page ID # 88.

The court also rejected Finley's due-process claim. Without discussing the risks of solitary confinement for prisoners with mental illness generally, or the risks of such confinement for Finley in particular, the court declared that placement in solitary confinement "is the sort of confinement that inmates should reasonably

[2] The court's conclusion that Finley had no opportunity to harm himself in segregation is inaccurate. Finley continued to commit acts of self-harm through October 5, 2016. *See* Complaint R. 1, Page ID # 3.

anticipate receiving at some point in their incarceration." Opinion, R. 12, Page ID # 89 (quoting *Hewitt v. Helms*, 459 U.S. 460, 468 (1983)). Based on that view, the court found that Finley's placement in confinement was not an "'atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.'" *Id.* (quoting *Sandin v. Connor*, 515 U.S. 472, 484 (1995)). The court thus concluded that Finley had not been deprived of a liberty interest protected by the Due Process Clause.

Finally, the district court dismissed Finley's discrimination claims under the ADA and Rehabilitation Act. The court did so without mentioning the claims or giving any reasons for dismissing them.

2. Finley moved to amend his complaint to add a damages claim to his request for a permanent injunction. *See* Motion to Amend, R. 14-1, Page ID ## 94, 108. Without addressing the merits of the motion, the district court ordered the clerk to reject the motion because "this case is now closed." Order Rejecting Motion to Amend, R. 14, Page ID # 93.

Finley filed a timely motion for reconsideration of the district court's judgment dismissing his claims. Motion for Reconsideration, R. 16, Page ID # 117. The district court denied the motion "for the reasons fully discussed in the opinion and judgment" previously issued. Order Denying Reconsideration, R. 18, Page ID # 142. Finley then filed a timely notice of appeal.

STANDARD OF REVIEW

This Court "review[s] de novo a judgment dismissing a suit for failure to state a claim upon which relief may be granted pursuant to §§ 1915(e)(2) and 1915A(b)," and it "view[s] all the facts alleged in the complaint, as well as any inferences reasonably drawn from those facts, in the light most favorable to the plaintiff." *Brown v. Bargery*, 207 F.3d 863, 867 (6th Cir. 2000). In addition, "*[p]ro se* complaints are to be held 'to less stringent standards than formal pleadings drafted by lawyers,' and should therefore be liberally construed." *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011).

SUMMARY OF ARGUMENT

Finley was confined for over three months in extreme conditions of solitary confinement despite an explicit recommendation by his mental health professional against that kind of isolation. Knowing that solitary confinement would likely cause Finley's mental health to deteriorate still further, defendants nevertheless sent and held him there as a sanction for possessing a razor blade that he had swallowed on account of his mental illness. Finley's allegations about defendants' disregard of his illness more than suffice to state viable claims under the Eighth Amendment, the Americans With Disabilities Act ("ADA") and Rehabilitation Act, and the Fourteenth Amendment, and the district court's cursory—at times nonexistent—

reasoning to the contrary wholly fails to justify its *sua sponte* dismissal of his complaint.

First, Finley more than adequately pleaded that the prison officials acted with "deliberate indifference" to his serious medical condition in violation of the Eighth Amendment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Defendants first sent Finley to solitary confinement against his mental health professional's recommendation and then held him there despite that mental health professional's attempts to get him transferred to a mental health unit for treatment. This Court has described deliberate-indifference claims as necessitating "a showing of objective and subjective components," *Phillips v. Roane Cty.*, 534 F.3d 531, 539 (6th Cir. 2008), and Finley's allegations about the severity of his mental illness—coupled with his mental health professional's admonition that solitary confinement posed significant risks to his mental well-being—satisfy the objective component. And his allegations that defendants acted despite their knowledge of the harm that solitary confinement was likely to cause him—both because of the specific medical recommendation against confining him and because of the obviousness of his mental health need—satisfy the subjective component.

The district court nonetheless dismissed Finley's Eighth Amendment claim, offering a series of reasons that are uniformly inadequate. First, the district court noted that Finley was no longer in solitary confinement, a fact that means nothing

because it neither erases the earlier violation nor prevents its recurrence. (Finley is seeking a permanent injunction against future placement in administrative segregation.) Second, the district court pointed out that Finley had received *some* treatment while in solitary confinement. But treatment is not an all-or-nothing proposition, and the administration of antipsychotic drugs is hardly an antidote for a prolonged period of solitary confinement. Third, the district court observed that—in contrast to the prisoner in an Ohio deliberate-indifference case—Finley was not encouraged to commit suicide or intentionally given opportunities to do so. As seems self-evident, however, the fact that prison officials might have treated a prisoner even more harshly does not magically transform deliberately indifferent treatment into constitutionally adequate care. The district court's justifications for its dismissal of Finley's Eighth Amendment claim thus fail at every turn.

Second, Finley adequately pleaded a violation of his right to be free from discrimination on account of his mental illness, a recognized disability under the ADA and Rehabilitation Act. Title II of the ADA and § 504 of the Rehabilitation Act not only protect state prisoners against overt forms of discrimination, they require state officials to reasonably accommodate prisoners' disabilities. Thus, in seeking to impose sanctions on Finley for possessing contraband, defendants were not free to ignore Finley's mental illness but were obligated to make reasonable modifications to their disciplinary policies and practices in light of his disability.

That they did not do, choosing instead to apply their disciplinary rules as though Finley's disability were beside the point. Laying out this lack of accommodation in his complaint, Finley established a prima facie case of discrimination, and the district court's unexplained (indeed, unmentioned) dismissal of the ADA and Rehabilitation Act claims cannot stand.

Third, defendant Huss violated Finley's right to due process under the Fourteenth Amendment by depriving him of adequate process at the hearing at which his proposed assignment to solitary confinement was addressed. Prison conditions are subject to scrutiny under the Due Process Clause if they impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484. And, to determine whether a given condition constitutes an "atypical and significant hardship," a court must analyze "the nature and duration of an inmate's segregation." *Harden-Bey v. Rutter*, 524 F.3d 789, 795 (6th Cir. 2008).

Here, the district court found that Finley's allegations were insufficient to show that his solitary confinement was an atypical and significant hardship. Once again, however, the district court failed to take full account of the fact that Finley is mentally ill. That critical fact necessarily changes the "nature" of his incarceration in solitary confinement, making it even more harmful to his mental condition than it would be to an ordinary prisoner. Yet the district court made no distinction among

types of prisoners, dismissing Finley's due-process claim as though liberty were a right to be measured *en masse*, rather than according to individual circumstances.

Finally, the district court made a critical procedural error in refusing to permit Finley to amend his complaint. There was no basis for that refusal, and Finley should be afforded the opportunity to file an amended complaint on remand from this Court.

ARGUMENT

It is well-established law that a district court may not dismiss a complaint unless the plaintiff has failed to "aver 'enough facts to state a claim that is plausible on its face.'" *Bennett v. MIS Corp.*, 607 F.3d 1076, 1091 (6th Cir. 2010) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Furthermore, in conducting that inquiry, the court "must also accept all well-pleaded factual allegations as true and construe the complaint in the light most favorable to [the plaintiff]." *Id.* Here, Finley alleged that defendant Huss assigned Finley to solitary confinement, and that defendant Schroeder kept him there, with full knowledge that the placement would be likely to exacerbate his mental illness and cause severe, potentially permanent harm. In particular, Finley alleged that defendants imposed that sanction even though the mental health professional responsible for his care expressly advised that "[p]rolonged segregation placement is likely to deteriorate his mental health status." Complaint Ex. E, R. 1-6, Page ID # 35. Finley further alleged that, in making the decision to send him to solitary confinement, defendant Huss left blank a section of

the assignment form requiring a recommendation from medical professionals and conducted a hearing without the participation of the mental health professional responsible for his care. Finally, Finley alleged that, once he was subjected to the isolating conditions of solitary confinement, defendants left him there for months in the face of efforts by his mental health professional to have him transferred to a mental health facility for proper care.

These allegations are more than sufficient to support Finley's claims under the Eighth Amendment, the ADA and Rehabilitation Act, and the Fourteenth Amendment. Although Finley's complaint was subject to screening under the Prison Litigation Reform Act ("PLRA"), *see* 28 U.S.C. § 1915(e)(2) ("[T]he court shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim."); *id.* § 1915A(b)(1); 42 U.S.C. § 1997e(c)(1), the PLRA does not alter the traditional standards for assessing the sufficiency of a claim, *see O'Brien v. Mich. Dep't of Corr.*, 592 F. App'x 338, 341 (6th Cir. 2014). And, measured by those standards, the district court's analysis of the claims—to the extent there was any analysis at all—was wholly inadequate. The court provided only meritless justifications for rejecting Finley's Eighth Amendment claim, failed entirely to address his ADA and Rehabilitation Act claims, and dismissed his Fourteenth Amendment claim without considering the unique liberty interests of mentally ill

prisoners. The district court's cursory reasoning was triply flawed, and its *sua sponte* dismissal of the complaint should be reversed.

I. Placing And Holding Finley In Solitary Confinement, Knowing The Heightened Risk Of Harm Presented By His Serious Mental Illness, Constituted Deliberate Indifference To His Medical Condition.

For more than 40 years, it has been established that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' proscribed by the Eighth Amendment." *Estelle*, 429 U.S. at 104 (internal citation omitted). As the Supreme Court has acknowledged, denial of appropriate care results in "[t]he infliction of . . . unnecessary suffering" that "is inconsistent with contemporary standards of decency." *Id.* at 103. That is because "[a]n inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." *Id.* As a result, "it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself." *Id.* at 104 (quoting *Spicer v. Williamson*, 132 S.E. 291, 293 (N.C. 1926)).

This Court has explained that a deliberate-indifference claim under the Eighth Amendment requires "a showing of objective and subjective components." *Phillips*, 534 F.3d at 539. First of all, "[t]he objective component requires a plaintiff to show the existence of a 'sufficiently serious' medical need." *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). And those serious medical needs are not limited

to physical injuries like cuts and broken bones. To the contrary, this Court has expressly held that "a prisoner's 'psychological needs may constitute serious medical needs, especially when they result in suicidal tendencies.'" *Comstock v. McCrary*, 273 F.3d 693, 703 (6th Cir. 2001) (quoting *Horn v. Madison Cty. Fiscal Court*, 22 F.3d 653, 660 (6th Cir. 1994)); *see Grabow v. Cty. of Macomb*, 580 F. App'x 300, 307 (6th Cir. 2014) ("[A] plaintiff meets the objective component of the Eighth Amendment analysis by demonstrating that the inmate exhibited suicidal tendencies during his or her detention.").

If the plaintiff carries that initial burden, the subjective component requires a plaintiff to "allege facts that show that 'the official being sued subjectively perceived facts from which to infer substantial risk to the prisoner, that he did in fact draw the inference, and that he then disregarded the risk.'" *Grabow*, 580 F. App'x at 308 (quoting *Comstock*, 273 F.3d at 703). The second component does not, however, require the plaintiff "show that the officer acted with the specific intent to cause harm." *Phillips*, 534 at 540. Here, the officials' actions—Huss's decision to send Finley to solitary confinement and Schroeder's decision to keep him there—readily satisfy both parts of the test.

A. Defendants Knowingly Disregarded the Risk of Harm Solitary Confinement Would Pose to Finley's Serious Medical Condition.

1. The objective component.

With respect to the objective component, it is clear that Finley was suffering from a serious mental illness and faced a substantial risk that his illness would be made worse by confinement in the isolating conditions of administrative segregation. Finley suffers from bipolar disorder, borderline personality disorder, and antisocial personality disorder. Complaint, R. 1, Page ID # 2-3. He has repeatedly cut himself, attempted to hang himself, and swallowed razor blades. *Id.* at 3. Given that history, a decision to worsen Finley's mental condition by putting him in solitary confinement is the very definition of deliberate indifference to a "sufficiently serious medical need." *See, e.g.*, *Estelle*, 429 U.S. at 103; *Gov't of the V.I. v. Martinez*, 239 F.3d 293, 302 (3d Cir. 2001); *Gregoire v. Class*, 236 F.3d 413, 417 (8th Cir. 2000); *Lay v. Norris*, 876 F.2d 104, 1989 WL 62498, at *4 (6th Cir. 1989) (per curiam).

It is also beyond serious dispute that placing a prisoner in administrative segregation is not a suitable, or even humane, method of dealing with his mental illness. Here, of course, Salmi, the mental health professional primarily responsible for Finley's care, specifically recommended against confining Finley, explicitly advising that "[p]rolonged segregation placement is likely to deteriorate his mental health status." Complaint Ex. E, R. 1-6, Page ID # 35. And, once Finley had been

placed in administrative segregation over her objection, Salmi appealed the placement and sought to have him transferred to a mental health facility. Complaint, R. 1, Page ID # 8.

Salmi's concerns about Finley's mental condition were fully in keeping with evidence showing that solitary confinement causes profound harm, especially to those who suffer from mental illness. Even for inmates without mental illness, a number of courts have recognized that solitary confinement can have drastic adverse effects on a prisoner's mental state. *See, e.g.*, *Williams v. Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 567-68 (3d Cir. 2017) (noting that both "psychological damage" and "[p]hysical harm" can result from solitary confinement, including "high rates of suicide and self-mutilation" as well as "more general physical deterioration"); *Incumaa v. Stirling*, 791 F.3d 517, 534 (4th Cir. 2015) ("Prolonged solitary confinement exacts a heavy psychological toll that often continues to plague an inmate's mind even after he is resocialized."); *Morris v. Travisono*, 499 F. Supp. 149, 160 (D.R.I. 1980) ("Even if a person is confined to an air conditioned suite at the Waldorf Astoria, denial of meaningful human contact for such an extended period may very well cause severe psychological injury."). Several Supreme Court Justices have expressed the same concern. Justice Kennedy has pointed out the horrors of solitary confinement, stating that "the penal system has a solitary confinement regime that will bring you to the edge of madness, perhaps to madness itself." *Davis*

v. Ayala, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring). And Justice Breyer has observed that "it is well documented that . . . prolonged solitary confinement produces numerous deleterious harms." *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting) (citing Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 Crime & Delinquency 124, 130 (2003); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Policy 325, 331 (2006)).

The overwhelming weight of scientific literature backs these conclusions. Several articles have recognized that "'[n]early every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies.'" Kenneth Appelbaum, *American Psychiatry Should Join the Call to Abolish Solitary Confinement*, 43 J. Am. Acad. Psychiatry & L. 406, 410 (2015) (quoting David H. Cloud, et al., *Public Health and Solitary Confinement in the United States*, 105(1) Am. J. Pub. Health 18, 18-26 (2015)) (alteration in original). As another article stated, "systematic research spanning multiple continents over more than a century is virtually unanimous in its conclusion: prolonged supermax solitary confinement can and does lead to significant psychological harm." Thomas L. Hafemeister & Jeff George, *The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax*

Solitary Confinement on Inmates with Mental Illness, 90 Denv. U. L. Rev. 1, 35 (2012); *see also* Haney, *supra*, at 130 ("Empirical research on solitary and supermax-like confinement has consistently and unequivocally documented the harmful consequences of living in these kinds of environments.").

The serious damage wrought by solitary confinement is particularly pronounced for prisoners with mental illness. As one court has observed, "the impacts of solitary confinement can be similar to those of torture and can include a variety of negative physiological and psychological reactions," effects that "are amplified in individuals with mental illness." *Latson v. Clarke*, No. 1:16CV00039, 2017 WL 1407570, at *3 (W.D. Va. Apr. 20, 2017). Another court has pointedly remarked that placing a mentally ill prisoner in solitary confinement "is the mental equivalent of putting an asthmatic in a place with little air to breathe." *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995); *see Scarver v. Litscher*, 434 F.3d 972, 977 (7th Cir. 2006) (conditions of solitary confinement "aggravated the symptoms of [a prisoner's] mental illness and by doing so inflicted severe physical and especially mental suffering"); *Braggs v. Dunn*, No. 2:14CV601-MHT(WO), 2017 WL 2773833, at *51 (M.D. Ala. June 27, 2017) (finding prison's segregation practices "placed prisoners with serious mental-health needs at a substantial risk of continued pain and suffering, decompensation, self-injurious behavior, and even death"); *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1095 (E.D. Cal. 2014) (finding that

"placement of seriously mentally ill inmates in [segregation] can and does cause serious psychological harm, including decompensation, exacerbation of mental illness, inducement of psychosis, and increased risk of suicide"); Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psychiatry Law 104, 104 (2010) ("The adverse effects of solitary confinement are especially significant for persons with serious mental illness[.]"). Indeed, rules developed by the United Nations specifically prohibit solitary confinement "in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures." U.N. Standard Minimum Rules for the Treatment of Prisoners, U.N. Econ. & Soc. Council Comm'n on Crime Prevention and Criminal Justice, 24th Sess., U.N. Doc. E/CN.15/2015/L.6/Rev.1 (May 21, 2015) (Rule 45(2)), *available at* http://bit.ly/2v3KDhT.

Given the documented effects of solitary confinement on prisoners suffering from mental illness, Finley amply demonstrated that he had a sufficiently serious medical need that solitary confinement would do nothing to alleviate and almost certainly make worse—as it in fact did. *See* Complaint, R. 1, Page ID # 7. He thus satisfied the objective component of the deliberate-indifference inquiry.

2. The subjective component.

With respect to the subjective component, Finley provided specific allegations about defendants' state of mind, *i.e.*, that defendants were fully aware of, but disregarded, the risks that solitary confinement posed for Finley. In the first place, his mental illness was well known to both defendants due to the numerous meetings they had with the prison's mental health professionals. *See* Complaint, R. 1, Page ID ## 4, 7. Finley was receiving treatment from Salmi, and, prior to his assignment to solitary confinement, his condition had been discussed repeatedly at staff meetings. *See id.* at 4. Dr. Meden, a prison physician, had also set out Finley's long history of illness in several contemporaneous reports. Indeed, based on his assessment, Dr. Meden recommended that Finley be involuntarily given medications for his illness. Complaint Ex. B, R. 1-3, Page ID # 18.

Defendants also knew that an assignment to solitary confinement was likely to exacerbate Finley's illness. Not only did they know that Salmi, the mental health professional responsible for his treatment, had counseled against any prolonged detention in such conditions, they knew that, even after the placement had occurred, Salmi was seeking to have it terminated. Complaint, R. 1, Page ID # 8. Such knowledge is sufficient to satisfy the subjective prong. *See, e.g.*, *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 550 (6th Cir. 2009). Nevertheless, Huss chose to send Finley to solitary confinement in the face of Salmi's recommendation to the contrary.

And once Finley was confined, Schroeder deliberately kept him in confinement notwithstanding the fact that Salmi had pressed for his transfer to the mental health unit. Complaint, R. 1, Page ID # 8. Both choices constituted deliberate indifference to Finley's medical condition.

B. The District Court's Reasons for Rejecting Finley's Claim Lack Merit.

The district court offered three reasons, all insufficient, to support its conclusion that Finley had failed to state an Eighth Amendment claim. First, the district court noted that Finley was no longer in solitary confinement because, after several months of isolation, he was finally moved to the mental health unit. Opinion, R. 12, Page ID # 88. But this explanation is a *non sequitur*. Nothing in Eighth Amendment jurisprudence excuses prison officials for an extensive period of deliberate indifference to a prisoner's medical needs on the ground that, at some later point, they finally offered care that they should have provided much earlier. The fact that Finley is not currently in solitary confinement does not change the fact that the initial decision to send him there—and the subsequent decision to keep him there for months despite Salmi's efforts—were a violation of his constitutional rights.

The district court's what's-done-is-done rationale also ignores the fact that Finley is seeking a permanent injunction to prevent Huss from sending him back to solitary confinement. As the Supreme Court has recognized, the Eighth Amendment protects prisoners not just against ongoing harm, but against "future harm" as well.

See Helling v. McKinney, 509 U.S. 25, 32-35 (1993). Here, two important facts indicate the likelihood of such future harm: First, Finley has shown an unfortunate pattern of behavior that involves obtaining contraband in order to harm himself; and second, defendants have exhibited a willingness to disregard his medical needs in favor of imposing punitive segregation for his possession of that contraband. Thus, while Finley is not in solitary confinement now, he remains entitled to a permanent injunction based on the prospect of future indifference to his medical needs.[3]

The district court also rejected Finley's Eighth Amendment claim on the ground that Finley had received some treatment while in segregation. *See* Opinion, R. 12, Page ID # 88. But a plaintiff need not allege that he received no treatment at all in order to have a claim under the Eighth Amendment. *See, e.g.*, *Estelle*, 429 U.S. at 104-05; *Quigley v. Tuong Vinh Thai*, 707 F.3d 675, 682-83 (6th Cir. 2013). Instead, the question is simply whether, in addressing a prisoner's medical needs, defendants disregarded a known risk of serious harm. And here, at least at the motion-to-dismiss stage, the answer to that question is clearly yes. Dr. Meden's sedation of Finley did not give defendants a license to ignore Salmi's recommendation against consigning Finley to solitary confinement in the first place. Nor could it eliminate the devastating harm that solitary confinement, by its very

[3] Finley is also seeking to amend his complaint to add a claim for damages. *See* Section IV *infra*.

nature, inflicts on mentally ill prisoners. In the end, therefore, that involuntary treatment of Finley does little to counteract the fact that Huss and Schroeder were deliberately indifferent when they classified Finley to solitary confinement and kept him there.

Finally, the district court appeared to believe that defendants' conduct fell within Eighth Amendment bounds because Finley was not treated even more harshly than he was. Drawing a contrast to the facts of an Ohio prison case, the court below noted that, unlike the prisoner in that case, Finley was not "encouraged to commit suicide or given the opportunity to do so by untrained corrections officers." Opinion, R. 12, Page ID # 88; *see Easley*, 2009 WL 237733, at *3 (holding a plaintiff had stated a claim for deliberate indifference under those particular circumstances). But, to state the obvious, it is hardly a prerequisite to a mentally ill prisoner's deliberate-indifference claim that prison officials have encouraged the prisoner to commit suicide or provided him with the opportunity to do so. To the contrary, deliberate indifference may present itself in many forms, and while the troubling actions noted by the district court may well be sufficient, they are anything but necessary. All in all, therefore, the district court offered no defensible justification for dismissing Finley's Eighth Amendment claims out of hand.

II. Placing Finley In Solitary Confinement Failed To Reasonably Accommodate His Disability.

The decision to commit Finley to solitary confinement not only constituted deliberate indifference to his serious medical needs, it also violated his rights under Title II of the Americans With Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 *et seq.*, and § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. The ADA "provide[s] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). In keeping with that goal, Title II of the ADA, which applies to state prison inmates, *see Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209 (1998), provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

To prove discrimination under the ADA, disabled plaintiffs proceed under a familiar three-part framework. First, "[t]o establish a prima facie case of intentional discrimination under Title II of the ADA, a plaintiff must show that: (1) [he] has a disability; (2) [he] is otherwise qualified; and (3) [he] was . . . subjected to discrimination under the program because of [his] disability." *Anderson v. City of Blue Ash*, 798 F.3d 338, 357 (6th Cir. 2015) (footnote omitted). Second, if a prima facie case has been established, "the defendant must then offer a legitimate,

nondiscriminatory reason for its challenged action." *Id.* (internal quotation marks omitted). Third, and finally, the plaintiff may then "present evidence allowing a jury to find that the . . . explanation is a pretext for unlawful discrimination." *Id.* For present purposes, however, only the first step—*i.e.*, whether Finley established a prima facie case—is at issue, since the district court dismissed his ADA claim at that point, without seeking any explanation from defendants.

Finley plainly satisfied that threshold requirement. To begin with, he indisputably has a disability within the terms of the ADA. As the Tenth Circuit has stated, "every appellate court which has considered the question has held or assumed that 'bipolar disorder' is a mental disability covered by the ADA." *Den Hartog v. Wasatch Acad.*, 129 F.3d 1076, 1081 (10th Cir. 1997). The governing regulations are to the same effect. Those regulations define one of the Act's critical terms—"[a] physical or mental impairment that substantially limits one or more of the major life activities," 28 C.F.R. § 35.108(a)(1)(i)—to specifically include "[m]ajor depressive disorder, bipolar disorder, . . . and schizophrenia," each of which "substantially limits brain function." *Id.* § 35.108(d)(2)(iii)(K). Finley is therefore entitled to the ADA's protections.

Those protections, in turn, shield the disabled, not just from overt discriminatory acts, but also from the refusal of state officials to provide reasonable accommodations for their disabilities. "The purpose of the ADA's reasonable

accommodation requirement is to guard against the facade of 'equal treatment' when particular accommodations are necessary to level the playing field." *McGary v. City of Portland*, 386 F.3d 1259, 1267 (9th Cir. 2004). Federal ADA regulations thus require public entities to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability," subject to certain defenses. 28 C.F.R. § 35.130(b)(7); *see Pierce v. Cty. of Orange*, 526 F.3d 1190, 1217 (9th Cir. 2008) (one element of a prima facie case under the ADA may be "'the existence of a reasonable accommodation'"); *Wright v. N.Y. State Dep't of Corr.*, 831 F.3d 64, 76 (2d Cir. 2016) (adopting the reasonable accommodation structure in the prison context). Furthermore, to make out a claim that state officials failed to accommodate his disability, the plaintiff bears only a "light burden of production as to the facial reasonableness" of the accommodation. *Wright*, 831 F.3d at 76 (internal quotation marks omitted).

Finley has met that "light burden" here. The complaint alleges that, despite their knowledge of his mental illness, defendants treated Finley just as though he were an ordinary prisoner instead of one affected by a significant disability. Far from placing Finley in a suitable mental health program or providing services that could address his mental health needs, defendants chose to assign him to, and keep him in, the prison's most restrictive environment as retribution for his possession of contraband—which, as a result of his mental illness, Finley used to harm himself.

To make matters worse, defendants pursued their inflexible application of prison disciplinary policies in the face of a contrary recommendation by Finley's mental health professional. *See Lonergan v. Fla. Dep't of Corr.*, 623 F. App'x 990, 994 (11th Cir. 2015) ("[T]he failure of the prison to give the Plaintiff the treatment prescribed by his dermatologist is sufficient for the Plaintiff to plead a prima facie ADA claim."). Ultimately, defendants' refusal to modify prison policies wound up subjecting Finley to a placement that was highly likely to aggravate the very disability that they were supposed to accommodate. Defendants' actions thus amounted to unlawful discrimination, pure and simple.

Given this factual and legal background, there was no basis for the district court to have dismissed the ADA claim. Finley expressly challenged his classification to solitary confinement under the ADA, and, as just discussed, his allegations were sufficient to state a viable claim. Complaint, R. 1, Page ID # 10. Yet the district court failed to address that claim at all, focusing solely on the Eighth and Fourteenth Amendment claims. For that failure alone, reversal of the district court's judgment is warranted.

The district court likewise erred in dismissing the Rehabilitation Act claims. In language similar to that of the ADA, the Rehabilitation Act provides that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be

subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794. Claims under the two statutes are analyzed similarly, *see McPherson v. Mich. High Sch. Athletic Ass'n*, 119 F.3d 453, 460 (6th Cir. 1997), except for the fact that the ADA does not include the Rehabilitation Act's "sole-cause standard," *Lewis v. Humboldt Acquisition Corp.*, 681 F.3d 312, 317 (6th Cir. 2012) (en banc). And here, that distinction is immaterial, because defendants' refusal to accommodate Finley's mental illness plainly satisfies both statutes' standards of causation. *See* 42 U.S.C. § 12112(a); 29 U.S.C. § 794(a). Thus, essentially parallel considerations govern Finley's ADA claim and his Rehabilitation Act claim, and the district court should not have summarily dismissed either of them without any reasoning or justification.

III. Placing Finley In Solitary Confinement Imposed An Atypical And Significant Hardship That Implicated A Protected Liberty Interest.

Defendant Huss also violated Finley's right to due process under the Fourteenth Amendment. The Due Process Clause protects prisoners' right to freedom from restraints that "impose[] atypical and significant hardship[s] on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484. And, as its general terms naturally suggest, that standard does not lend itself to a one-size-fits-all analysis. Whether a given restraint imposes an "atypical and significant hardship"—and thus infringes a cognizable liberty interest—ultimately

depends on multiple factors, including both "the nature and duration of an inmate's segregation." *Harden-Bey*, 524 F.3d at 795.

The district court cut off Finley's due-process claim at this first step because, in its view, his confinement did not amount to an atypical and significant hardship. Opinion, R. 12, Page ID # 90. But the court managed to reach that conclusion only by turning a blind eye to Finley's particular circumstances. Thus, while the court acknowledged that Finley had been placed in solitary confinement, it paid no attention at all to the specific conditions of that confinement, including Finley's exposure to the kind of extreme isolation and deprivation not faced by prisoners in the general population. *See* Complaint, R. 1, Page ID # 6. Even more fundamentally, the court failed to address a central aspect of the "nature" of Finley's confinement: the particular damage that solitary confinement might—and, in fact, did—cause to Finley as a direct result of his mental illness.[4]

Consideration of Finley's particular circumstances, however, is a necessary part of the inquiry. *See Harden-Bey*, 524 F.3d at 795 (requiring an analysis of the

[4] Finley detailed the adverse effects of solitary confinement in his complaint, noting the harm inflicted on mentally ill inmates generally and adding that his particular confinement "exacerbated [his] mental illness." *See* Complaint, R.1, Page ID # 6-7. At the motion to dismiss stage, of course, the district court was required to "view[] all the facts alleged in the complaint, as well as any inferences reasonably drawn from those facts, in the light most favorable to the plaintiff." *Bargery*, 207 F.3d at 867.

nature of the segregation); *Wheeler v. Butler*, 209 F. App'x 14, 16 (2d Cir. 2006) (noting that "medical need may bear upon the atypicality of [plaintiff's] punishment"); *Serrano v. Francis*, 345 F.3d 1071, 1079 (9th Cir. 2003) ("[T]he conditions imposed on [plaintiff] in the SHU, by virtue of his disability, constituted an atypical and significant hardship on him."). Mentally ill prisoners suffer more acutely in conditions of solitary confinement, *see* pp. 20-21 *supra,* and a court cannot accurately assess whether solitary confinement imposes an atypical and significant hardship for such prisoners without taking account of that important difference. Even though particular conditions may not constitute an atypical and significant hardship when borne by an ordinary prisoner, the much more extreme effects of those conditions when imposed against a mentally ill prisoner may "constitute[] the 'unnecessary and wanton infliction of pain.'" *Estelle*, 429 U.S. at 104 (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)). The district court thus should have recognized that, at least for a prisoner suffering from serious mental illness, long-term solitary confinement does implicate vital liberty interests protected by due process.

IV. The District Court Should Have Afforded Finley An Opportunity To Amend His Complaint.

In addition to the district court's several substantive errors, the district court made a critical procedural error. After being transferred to the mental health unit, Finley moved to amend his complaint to add a damages claim to his request for a

permanent injunction. *See* Motion to Amend, R. 14-1, Page ID # 94-95. Instead of docketing and ruling on that motion, however, the district court directed the clerk to return the motion and amended complaint because the "case is now closed." Order Rejecting Pleading, R. 14, Page ID # 93. That refusal to docket the motion was error.

It is true that this Circuit once prohibited prisoners from amending a complaint after it had been dismissed *sua sponte* under the PLRA. But that rule is extinct. Sixth Circuit precedent now explicitly permits a plaintiff to seek leave to amend in those circumstances. *See LaFountain v. Harry*, 716 F.3d 944 (6th Cir. 2013) (overruling *McGore v. Wrigglesworth*, 114 F.3d 601, 612 (6th Cir. 1997)). As the Court stated in *LaFountain*, "under Rule 15(a) a district court can allow a plaintiff to amend his complaint *even when* the complaint is subject to dismissal under the PLRA." *Id.* at 951 (emphasis added). The district court thus should have accepted Finley's motion to amend and issued a substantive ruling.

Furthermore, the district court should have granted the motion. The federal rules provide that a district court must "freely give leave to amend when justice so requires." Fed. R. Civ. P. 15(a). Here, amendment of the complaint would cause no prejudice to defendants because the original complaint was dismissed before service. The interests of justice thus favor granting Finley, a *pro se* litigant below, the opportunity to file an amended complaint.

CONCLUSION

For the reasons set forth above, this Court should reverse the district court's decision and remand for further proceedings.

Respectfully submitted,

s/Galen Bascom

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July 26, 2017

CERTIFICATE OF COMPLIANCE
WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 7789 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 with 14-point Times New Roman font.

Date: July 26, 2017

s/Galen Bascom
Galen Bascom

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Galen Bascom
Galen Bascom

Appellant's Designation of
Relevant Originating Court Documents

Appellant Timothy Finley hereby designates the following District Court documents as relevant to this matter:

Record Entry	Description of Document	Page ID #
1	Complaint	1-12
1-2	Complaint Exhibit A	14-16
1-3	Complaint Exhibit B	17-18
1-4	Complaint Exhibit C	19-31
1-5	Complaint Exhibit D	32-33
1-6	Complaint Exhibit E	34-35
3	Declaration in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction	49-51
9	Motion to Withdraw Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction	74-75
12	Opinion	84-91
13	Judgment	92
14	Order Rejecting Motion to Amend First Complaint	93
14-1	Motion to Amend First Complaint	94-113
16	Motion for Reconsideration	117-129
18	Order Denying Reconsideration	142
19	Notice of Appeal	143-144
20	Corrected Notice of Appeal	145-146