No. 17-6922

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Dustin Robert Williamson,

Plaintiff-Appellant,

v.

Brian Sterling, et al.,

Defendants-Appellees.

On Appeal From The United States District Court
For The District of South Carolina
Case No. 15-cv-04755
The Honorable Mary Geiger Lewis, Presiding

BRIEF OF AMICI CURIAE PROFESSORS AND PRACTITIONERS OF PSYCHOLOGY AND PSYCHIATRY IN SUPPORT OF PLAINTIFF-APPELLANT FOR REVERSAL

Andrew P. Valentine
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California
94303-2215
(650) 833-2065
andrew.valentine@dlapiper.com

Kenneth L. Schmetterer
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois
60606-0089
(312) 368-2176
kenneth.schmetterer@dlapiper.com

Counsel for Amici Curiae

November 27, 2017

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

RULES AND REGULATIONS

OTHER AUTHORITIES

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES

Page(s)

INTEREST OF THE AMICI CURIAE

Amici curiae are professors and practitioners of psychiatry and psychology with extensive experience studying the psychological and physiological effects of imprisonment and/or treating prisoners who are in penal confinement, including solitary confinement. Many prisoners with mental illness experience catastrophic and often irreversible deterioration when they are deprived of social interaction and adequate levels of environmental stimulation. Amici curiae are professionally knowledgeable about the psychological and physiological effects of a range of different prison conditions in the United States and many foreign countries. More specifically, amici curiae have background, experience, and expertise in analyzing the special psychological and physiological problems that arise in the course of isolated confinement. Based on their research and assessment of the professional literature, amici curiae have concluded that solitary confinement deprives prisoners of two basic human needs—social contact and adequate positive environmental stimulation—which causes grave damage to their mental and physical health. These deprivations can be

particularly harmful to adolescents and young adults whose brains are still developing.

Amici curiae are committed to understanding and addressing the effects of solitary confinement on human health and welfare. Accordingly, amici curiae respectfully submit this brief in support of Plaintiff-Appellant Williamson, to provide this Court with a comprehensive review of the scientific literature and the overwhelming evidence establishing that solitary confinement deprives prisoners of basic human needs and exposes them to atypical and severe psychological and physiological harms. The scientific consensus establishes that many prisoners held in solitary confinement experience serious, often debilitating, and even irreparable, mental and physical harm because they are deprived of the basic human needs of social interaction and normal environmental stimulation.

Amici curiae are the following:

Terry A. Kupers, M.D., M.S.P., a Distinguished Life Fellow of The American Psychiatric Association, is Professor Emeritus at The Wright Institute. He has provided expert testimony in several lawsuits about prison conditions and published books and articles on related subjects.

Craig Haney, Ph.D., J.D., is Distinguished Professor of Psychology and UC Presidential Chair at the University of California, Santa Cruz. One of the researchers in the "Stanford Prison Experiment,"[1] he has been studying actual prison conditions for more than forty years. Mr. Haney has toured and inspected numerous prisons, including numerous confinement units, in the United States and has written extensively about the psychological effects of solitary confinement.

Pablo Stewart, M.D., is Clinical Professor of Psychiatry at the University of California, San Francisco. He has worked in the criminal justice system for decades and as a court-appointed expert on the effects of solitary confinement for over twenty-five years.

Stuart Grassian, M.D., is a psychiatrist who taught at Harvard Medical School for almost thirty years. He has evaluated hundreds of prisoners in solitary confinement and published numerous articles on the psychiatric effects of solitary confinement.

---

[1] Craig Haney, Curtis Banks & Philip Zimbardo, *Interpersonal dynamics in a simulated prison*, INT'L J. CRIMINOLOGY & PENOLOGY, 1, 69-97 (1973); *see also* Craig Haney, REFORMING PUNISHMENT: PSYCHOLOGICAL LIMITS TO THE PAINS OF IMPRISONMENT (2006).

The amici curiae state, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than the amicus curiae, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

ARGUMENT

1. Solitary Confinement Consists of Social Isolation and Restricted Environmental Stimulation, Violating Basic Human Needs

The medical and mental professions have well established that solitary confinement, the deprivation of human contact and other meaningful perceptual and intellectual stimulation, can have disastrous consequences. Solitary confinement poses severe risks to any prisoner, since "psychological stressors such as isolation can be as clinically distressing as physical torture."[2]

[2] Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & L. 104, 104 (2010); *see also* Craig Haney & Shirin Bakhshay, *Contexts of Ill-Treatment: The Relationship of Captivity and Prison Confinement to Cruel, Inhuman, or Degrading Treatment and*

"Solitary confinement," as typically used in the international medical and legal literature and throughout this brief, refers to the segregation of a prisoner alone in a cell for twenty-two to twenty-four hours a day without meaningful social interaction or positive environmental stimulation.[3] Maximum Security Units ("MSU") and Restricted Housing Units ("RHU") are common names for solitary confinement.

Solitary confinement is marked by almost total deprivation of meaningful social contact and positive environmental stimulation. Prisoners spend nearly all their time in windowless (or nearly windowless) cells that may be as small as sixty to eighty square feet. As a result, they "sleep, eat, and defecate in their cells, in spaces that

---

Torture, in TORTURE AND ITS DEFINITION IN INTERNATIONAL LAW: AN INTERDISCIPLINARY APPROACH, 139 (Metin Başoğlu ed., 2017).

[3] *See, e.g.*, *Wilkinson v. Austin,* 545 U.S. 209, 223-24 (2005); Letter from Thomas E. Perez, Assistant Att'y Gen., U.S. Dep't of Justice, to Hon. Tom Corbett, Governor of Pa., at 5 (May 31, 2013); Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature,* 34 CRIME & JUST. 441, 443 (2006). Solitary confinement may be referred to as "administrative segregation" or by other terms. *See Davis v. Ayala,* 135 S. Ct. 2187, 2208 (2015) (Kennedy, J., concurring).

are no more than a few feet apart."[4] In their cells, prisoners endure sustained periods of idleness since access to library books and work is limited or prohibited, and "[f]ew, if any, rehabilitation or education programs exist."[5]

The brief periods that solitary-confinement prisoners are allowed outside their cells do not provide opportunities for any meaningful human contact or positive environmental exposure. Prisoners in solitary confinement are typically not allowed contact visits and are denied opportunities to participate in group activities or to socialize.[6] Brief recreation periods are most often spent alone "in caged-in or

---

[4] *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 72, 75 (2012) [hereinafter *Reassessing Solitary Confinement*] (statement of Craig Haney, Professor of Psychology, University of California, Santa Cruz), https://www.judiciary.senate.gov/imo/media/doc/CHRG-112shrg87630.pdf; Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement is Cruel and Far Too Usual Punishment,* 90 IND. L.J. 741, 742-43, 753 (2015).

[5] Terry A. Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?, in* THE ROUTLEDGE HANDBOOK FOR INTERNATIONAL CRIME AND JUSTICE STUDIES 213, 213 (Bruce A. Arrigo & Heather Y. Bersot eds., 2014); *see also* Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement,* 49 CRIME & DELINQ. 124, 126 (2003).

[6] Haney, *supra* note 5, at 126.

cement-walled areas that are so constraining they are often referred to as 'dog runs.'"[7]

Just as food and shelter are necessary to maintain physical health, meaningful contact with others and positive interactions with one's environment are critical to maintaining mental health.[8] Extensive scientific research demonstrates that people consistently suffer "a number of dysfunctional psychological states and outcomes" when deprived of social contact and a normal range of sensory input for long periods of time.[9] Without normal and positive environmental interactions (such as, for example, exposure to natural light, outdoor sounds, and varying colors), certain cognitive functions can atrophy. Mental alertness, concentration, and the ability to plan often suffer.[10]

Solitary confinement units magnify the damage that results from underexposure to positive stimuli by simultaneously overexposing

---

[7] *Id.* at 126.
[8] *See* Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement,* 23 N.Y.U. REV. L. & SOC. CHANGE 477, 504-07 (1997).
[9] *See id.* at 505, 507.
[10] *See, e.g.*, G.D. Scott & Paul Gendreau, *Psychiatric Implications of Sensory Deprivation in a Maximum Security Prison,* 14 CAN. PSYCHOL. ASS'N J. 337, 337, 339 (1969).

prisoners to noxious stimuli. These negative stimuli can include the shouting of officers and inmates, and other loud noises, offensive smells and sights such as feces, urine, blood, decaying garbage, and constant fluorescent lights.[11] Prisoners' inability to control or escape from these noxious stimuli adds to their aversive, harmful effects. Exposure to this constant, uncontrollable negative stimulation causes many prisoners to suffer from chronic sleeplessness, which "intensifies psychiatric symptoms . . . [and] creates fatigue and magnifies cognitive problems, memory deficits, confusion, anxiety, and sluggishness."[12]

Most importantly, solitary confinement deprives prisoners of meaningful social contact in ways that are extremely damaging to their health and well-being. Social deprivation is the essence of solitary confinement and it is rigidly imposed by prison staff to ensure that prisoners get no reprieve from these conditions. In the rare instances a prisoner is permitted to leave his cell for occasional showers or

---

[11] Thomas L. Hafemeister & Jeff George, *The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax Solitary Confinement on Inmates with a Mental Illness,* 90 DENV. U. L. REV. 1, 39 n.217 (2012); Kupers, *supra* note 5, at 216.

[12] Kupers, *supra* note 5, at 216.

"exercise,"[13] he typically may do so only after submitting to an invasive body cavity strip search and when bound by multiple shackles and restraints. Even if a prisoner is allowed to leave his cell for an hour of "exercise", human contact other than with correctional officers occurs rarely, if at all.[14] As a result, prisoners' sole physical contact with another person may be with a correctional officer when being placed in restraints.[15]

The negative impact of solitary confinement on the mental health of a prisoner begins immediately, often within days or weeks of confinement. Persons who are deprived of adequate social interaction as well as positive environmental stimulation "soon become incapable of maintaining an adequate state of alertness and attention," and within days their brain scans can show "abnormal pattern[s] characteristic of stupor and delirium."[16] The scientific literature has shown that,

---

[13] Exercise is an overly generous description of what a prisoner can actually do in extremely small confined exercise areas.
[14] *Reassessing Solitary Confinement*, *supra* note 4, at 76-77 (statement of Craig Haney, Professor of Psychology, University of California, Santa Cruz).
[15] Hafemeister & George, *supra* note 11, at 12.
[16] Stuart Grassian, *Psychiatric Effects of Solitary Confinement,* 22 WASH. U. J.L. & POL'Y 325, 330-31 (2006).

because feedback from meaningful social interaction and social contact shapes and affirms who we are, severe social isolation erodes one's sense of self and connection to reality.[17]

2. Solitary Confinement Causes Severe Psychological and Physical Harm in Prisoners

Extreme social isolation and the deprivation of positive environmental stimulation combine to inflict grave psychological and physiological harms on prisoners in solitary confinement. Studies of prisoners who have been held in solitary confinement reveal "strikingly

---

[17] Haney & Lynch, *supra* note 8, at 504-06; Kupers, *supra* note 5, at 215. Researchers have also recorded symptoms in a variety of settings outside prison. *See* Haney, *supra* note 5, at 130. For example, workers isolated over the winter in small group settings in Antarctica experienced progressively worsening depression, hostility, sleep disturbance, impaired cognitive functioning, and paranoia. Grassian, *supra* note 16, at 358-59. Accounts from former hostages and political prisoners who endured solitary confinement likewise illustrate the harmful psychological and physiological effects. American soldiers imprisoned in North Vietnam described social isolation and inactivity as "among the most serious problems" they faced. *See* John E. Deaton et al., *Coping Activities in Solitary Confinement of U.S. Navy POWs in Vietnam*, 7 J. APPLIED SOC. PSYCHOL. 239, 241 (1977). Terry Anderson, a journalist captured and held hostage in Lebanon for seven years, reported that, after just weeks in solitary confinement, his mind went "dead"—"There [was] nothing there, just a formless, gray-black misery." *See* Atul Gawande, *Hellhole*, NEW YORKER, Mar. 30, 2009, http://www.newyorker.com/magazine/2009/03/30/hellhole.

consistent" psychological and physiological harms.[18] These robust findings come from scientific studies that employed diverse methods (including, for example, historical accounts, personal accounts, observational studies, and systematic and direct research on prisoners in "supermax" confinement or the equivalent) and were conducted over many decades by researchers on several different continents.[19]

In a wide range of case studies and personal accounts provided by mental health and prison staff, experts have described the psychological harms as including anxiety, panic, paranoia, hallucinations, loss of self-control, irritability, aggression, explosive rage, withdrawal, insomnia, lethargy, and depression.[20]

For example, in a 1993 study involving a random, representative sample of one hundred prisoners housed at California's Pelican Bay supermax prison for varying lengths of time ("Pelican Bay Study"), almost all the isolated prisoners were found to have experienced some "psychopathological symptoms," including intrusive thoughts,

---

[18] Grassian, *supra* note 16, at 335-38; Haney & Lynch, *supra* note 8, at 515-24.
[19] Haney, *supra* note 5, at 130.
[20] *Id.* at 130-31 (collecting more than twenty studies); Grassian, *supra* note 16, at 335-37; Smith, *supra* note 3, at 492.

hypersensitivity to stimuli, and irrational anger. More than 90% experienced nervousness and anxiety; headaches and chronic tiredness were common to 88% and 84%, respectively; 70% "felt themselves on the verge of an emotional breakdown"; approximately 75% experienced chronic depression and mood swings; and almost half experienced perceptual distortions or hallucinations.[21]

Likewise, in a 1983 in-depth study of fourteen prisoners held in solitary confinement in Massachusetts, eleven reported hypersensitivity to external stimuli such as noise and smells.[22] Ten reported experiencing "massive free-floating" anxiety, and eight of those also experienced physical symptoms such as sweating, shortness of breath, and tachycardia. Half suffered from visual or auditory hallucinations or illusions, and over half reported suffering from an inability to concentrate, disorientation, and memory failures.[23]

---

[21] Haney, *supra* note 5, at 133-34.
[22] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450, 1452 (1983).
[23] *Id.* at 1452.

A small minority of researchers have asserted that solitary confinement is not significantly detrimental to prisoners.[24] However, these conclusions are at odds with the overwhelming scientific consensus that has established the significant harms caused by solitary confinement. *See Williams v. Sec'y Pa. Dep't of Corrs.*, 848 F.3d 549, 567 (3d Cir. 2017) ("Now, with the abundance of medical and psychological literature, the 'dehumanizing effect' of solitary confinement is firmly established.") In addition, the methodology of these studies has been criticized as "very flawed."[25]

The damage caused by solitary confinement can extend beyond psychological harm. Physical injury can also occur. There is a growing consensus in the fields of psychology and psychiatry that a general distinction between psychological illness and physical illness is no

---

[24] *See* Robert D. Morgan et al., *Quantitative Syntheses of the Effects of Administrative Segregation on Inmates' Well-Being,* 22 PSYCHOL. PUB. POL'Y & L. 439 (2016); Maureen L. O'Keefe et al., *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation*, Nat'l Inst. of Justice, Office of Justice Programs, U.S. Dep't of Justice (2010), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/232973.pdf.

[25] *See* Stuart Grassian & Terry Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, CORRECTIONAL MENTAL HEALTH REP. (2011).

longer accurate or appropriate. An advanced understanding of brain functions and advances in brain scans and other brain imaging technologies, advances in neurobiology and brain chemistry and other studies of the brain, have established that the types of traumatic psychological harms associated with solitary confinement is associated with changes in neural pathways, the morphology and the neurochemistry of the brain. These changes can be accurately characterized as a physical injury or illness because they adversely affect the nature and functioning of the sufferer's brain.[26] In addition to changes in their brain chemistry and morphology, many prisoners

---

[26] *See* A. Vyas et al., *Effect of chronic stress on dendritic arborization in the central and extended amygdala*, 965 (1-2) BRAIN RESEARCH 290-294 (2003); B.S. McEwen, *The neurobiology of stress: From serendipity to clinical relevance*, 996 (1-2) BRAIN RESEARCH 172-189 (2000); Carol Schaeffer, *"Isolation Devastates the Brain": The Neuroscience of Solitary Confinement*, SOLITARY WATCH (May 11, 2016), http://solitarywatch.com/2016/05/11/isolation-devastates-the-brain-theneuroscience-of-solitary-confinement/; P. Gendreau, N. L. Freedman, & G. J. S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency during Solitary Confinement*, 79 (1) J. ABNORMAL PSYCHOL. 54–59 (1972); J. Casella & J. Ridgeway, *Scientists Discover How Social Isolation Damages Young Brains*, SOLITARY WATCH (September 18, 2012), http://solitarywatch.com/2012/09/18/; and Manabu Makinodan et al., *A Critical Period for Social Experience–Dependent Oligodendrocyte Maturation and Myelination*, 337 (6100) SCIENCE 1357–60 (2012).

segregated in solitary confinement experience other forms of physiological and medical harm. These include headaches, heart palpitations, digestive problems and weight loss, not to mention an extraordinarily high rate of suicide.[27]

3. Solitary Confinement Imposes Atypical and Significant Hardships on All Prisoners, Especially Juveniles and the Mentally Ill

"Nearly 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."[28] Because prisoners in the general prison population are given opportunities to socialize and engage in group activities, they are not subjected to the extreme social isolation and deprivation of positive environmental stimuli that characterize solitary confinement. In addition to social interaction, general population prisoners have opportunities for meaningful activities that are purposeful and engaging, such as games, sports, and sometimes even work. Research

---

[27] Haney, *supra* note 5, at 133; Smith, *supra* note 3, at 488-89.
[28] David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 AM. J. PUB. HEALTH 18, 21 (2015).

findings consistently show that solitary confinement causes distinct and more severe psychological and physiological harms than "ordinary" imprisonment.

The negative impact of solitary confinement is magnified and accelerated with adolescents and young adults whose brains are still developing, likely resulting in irreversible cognitive and behavioral impairment. Adolescents and young adults are especially vulnerable to the stressors of prolonged isolation. Because adolescents and young adults are at more fragile stages of physical and psychological development, solitary confinement puts them at much greater risk of significant, psychological, physical, and developmental harm and can have especially profound negative effects. The American Academy of Child and Adolescent Psychiatry has found that "[d]ue to their developmental vulnerability juvenile offenders are at particular risk" of possible adverse psychiatric consequences from "prolonged solitary confinement." Youth may experience adverse symptoms such as paranoia, anxiety, and depression after being isolated for only a fairly

short period.[29] Tragically, although adolescents and young adults represent the prison population that typically has a greater capacity for reform, they are disproportionally placed in solitary confinement where no such rehabilitation can occur and they are at heightened risk of harm.[30]

By its very nature, solitary confinement impedes the delivery of mental health services on an effective, timely basis. The location of the units themselves and the extremely restrictive manner in which they are run greatly limit the access of mental health staff and the nature and timeliness of the treatment they can provide.[31] This means mentally ill prisoners endure painful, dangerous, isolated confinement

---

[29] *See* Letter from Preet Bharara, U.S. Att'y for SDNY, to Bill de Blasio, New York City Mayor, Joseph Ponte, Commissioner, New York City Dep't of Corrections, and Zachary Carter, Cooperation Counsel of the City of New York, at pp. 46-51 (August 4, 2014) (regarding Civil Rights of Institutionalized Persons Act investigation of the New York City Department of Correction Jails on Rikers Island) (citing *Solitary Confinement of Juvenile Offenders*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY (April 2012), http://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx).

[30] *See* Brief for the American Psychiatric Association, et al. as Amici Curiae Supporting Petitioners, *Miller v. Alabama*, 567 U.S. 460 (Nos. 10–9646 and 10–9647), at 19-25 [hereinafter Brief for the Petitioners, *Miller*, 567 U.S. 460 (Nos. 10–9646 and 10–9647)].

[31] Hafemeister & George, *supra* note 11, at 42-43.

without receiving the badly needed treatment that might help to at least alleviate some of the harm to which they are subjected.[32]

Suicide rates are also disproportionately high among prisoners with mental illness in solitary confinement settings and in isolation housing units. On average, 50% of completed suicides by prisoners occur among the 2-8% of prisoners who are housed in solitary confinement.[33] A large-scale study of completed suicides in California found that "46% of completed suicides occurred in single cells in administrative segregation or secure housing units and 12% occurred in mental health crisis beds."[34] The authors concluded that "the conditions

---

[32] *Id.* at 43.

[33] Grassian & Kupers, *supra* note 25, at 1, 9; *see also* Jennifer R. Wynn & Alisa Szatrowski, *Hidden Prisons: Twenty-Three-House Lockdown Units in New York State Correctional Facilities*, 24 PACE L. REV. 497, 516 (2004).

[34] Raymond F. Patterson & Kerry Hughes, *Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999 to 2004*, 59 PSYCHIATRIC SERVICES 676, 678 (2008); *see also* Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442-47 (2013) (analyzing data from medical records on 244,699 incarcerations in the New York City jail system, and concluding that "[a]lthough only 7.3% of admissions included any solitary confinement, 53.3% of acts of self-harm and 45.0% of acts of potentially fatal self-harm occurred within this group."); Lindsay M. Hayes, *National Study of Jail Suicide: 20*

of deprivation in locked units and higher-security housing were a common stressor shared by many of the prisoners who committed suicide."[35]

Given those risks, there is widespread recognition that seriously mentally ill prisoners should not be placed in isolation. In the very rare situation where very limited stays in isolation are unavoidable, due to security-related or other emergency circumstances, seriously mentally ill prisoners require special care.[36] In 2012, the American Psychiatric Association issued a position statement that "[p]rolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential harm to such inmates."[37]

Years Later, Nat'l Inst. of Corr., U.S. Dep't of Justice (2010) (similar findings for jails).

[35] Patterson & Hughes, *supra* note 34, at 678; *see also* Alison Liebling, *Prison Suicide and Prisoner Coping*, 26 CRIME & JUST. 283-359 (1999) (finding that, among 50 inmates who had attempted suicide, 24% had recently experienced punishment or were in segregation).

[36] *See generally* Heriberto G. Sánchez, *Suicide Prevention in Administrative Segregation Units: What is Missing?*, 19 J. CORRECTION HEALTH CARE 93, 94-95 (2013).

[37] Brief for the Petitioners, *Miller*, 567 U.S. 460 (Nos. 10–9646 and 10–9647), *supra* note 30.

4. Professional Norms Recognize the Harms of Solitary Confinement on Individuals with Mental Illness

Professional bodies, such as the American Psychiatric Association, as well as international organizations, including the World Health Organization, have called for the general exclusion of individuals with serious mental illness from solitary confinement "due to the potential for harm to such inmates."[38] The American Public Health Association and the National Commission on Correctional Health Care call for the exclusion of individuals with serious mental illness from restricted housing, and further oppose the use of solitary confinement except where no alternative means exist to address an extreme and current threat to security.[39]

---

[38] *Id.* *See also Health in prisons: a WHO guide to the essentials in prison health,* WORLD HEALTH ORGANIZATION (2007), at 36, http://www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf.

[39] *See* Brief for the Petitioners, *Miller*, 567 U.S. 460 (Nos. 10–9646 and 10–9647), *supra* note 30; *Solitary Confinement (Isolation)*, NAT'L COMM'N ON CORRECTIONAL HEALTH CARE (Apr. 2016), http://www.ncchc.org/solitary-confinement. The American Bar Association has issued similar guidelines. ABA Standards for Criminal Justice Treatment of Prisoners, Standards 23.6 – 23.9 (3d ed. 2011), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf.

These positions reflect a growing consensus among domestic and international professional, human rights, and legal organizations and their representatives that solitary confinement constitutes cruel, inhuman or degrading treatment and, in some circumstances, torture. For example, Juan Méndez, U.N. Special Rapporteur on Torture and Cruel, Inhuman and Degrading Treatment, after examining solitary confinement at length and across countries, concluded that prolonged solitary confinement, *i.e.*, longer than 15 days, constituted cruel, inhuman and degrading treatment. For certain vulnerable groups, such as mentally ill persons and juveniles, even short terms in solitary can be tantamount to torture.[40]

The newly revised U.N. Standard Minimum Rules for the Treatment of Prisoners, which reflect "the general consensus of contemporary thought and the essential elements of the most adequate systems of today [and] set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison

---

[40] *See* U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Juan E. Méndez, U.N. Doc. A/66/268 (Aug. 5, 2011).

management," take account of these developments and forbid long-term isolation of mentally ill persons.[41]

Similarly, the American Academy of Child and Adolescent Psychiatry opposes the use of solitary confinement in correction facilities for juveniles and directs that any youth who is confined for more than 24 hours must be evaluated by a mental health professional.[42]

5. Alternatives Exist to Solitary Confinement for Prisoners

In reaction to the growing recognition that solitary confinement is dangerous, expensive, and counterproductive, numerous states and the federal government are investigating options to reduce the use of solitary confinement. Efforts at state reforms have been attempted both by legislatures and state agencies.[43] Colorado and Illinois have

---

[41] United Nations Standard Minimum Rules for the Treatment of Prisoners, May 18-21, 2015, U.N. Doc. E/CN.15/2015/L.6/Rev.1, preliminary observation 1, Rule 45, (May 21, 2015).

[42] *Solitary Confinement of Juvenile Offenders*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY (April 2012), http://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx.

[43] *See* U.S. Dep't of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing*, 72–77 (Jan. 2016) (noting several States' self-reported claims to be undertaking reform efforts),

closed entire supermax prisons, and Colorado stopped automatically classifying death-sentenced prisoners to solitary confinement.

Voluntary state-level reforms of this sort are increasingly common in light of contemporary scientific knowledge about the harmful, damaging psychological and physical consequences of solitary confinement. First, as discussed above, solitary confinement subjects prisoners to psychologically-damaging experiences without providing meaningful rehabilitative services. Thus, many prisoners who are attempting to transition from solitary confinement back to the general prison population—or back to the free world—find that they have lost the ability to socially connect to others and are significantly handicapped in their attempt to reenter mainline prisons or society at large. Many report that the close proximity of other people has become anxiety-arousing and that they have lost the capacity to cope with the unpredictable, uncontrollable sensory overload encountered in the outside world. Prisoners can emerge from solitary confinement units severely damaged and functionally disabled. Not surprisingly, some

---

https://www.justice.gov/dag/file/815551/ download (last visited November 26, 2017).

studies have found that the recidivism rates of prisoners who have endured solitary confinement are higher than those who remain in general population.[44]

Second, there is no evidence that the use of solitary confinement accomplishes any legitimate penological goals. In fact, some studies have suggested that the reduction or elimination of solitary confinement leads to a reduction in inmate behavior problems, both at an individual and systemic level.[45] Thus, the significant risks of serious psychological

---

[44] *Hearing on Solitary Confinement Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Right*, 112th Cong. 4 (2012) (statement of Craig Haney, Professor of Psychology, University of California, Santa Cruz) at 15, https://www.judiciary.senate.gov/download/testimony-of-craig-haney-pdf.

[45] For example, Mississippi's prison system experienced an overall reduction in misconduct and violence system-wide when it drastically reduced the number of prisoners whom it housed in solitary confinement by transferring them to mainline prisons. *Id.* at 16 (citing Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs,* 36 CRIM. JUST. & BEHAV. 1037–50 (2009)); *see also* Angela Browne et al., *Prisons Within Prisons: The Use of Segregation in the United States,* 24 FED. SENT'G REP. 49 (Oct. 2011) (noting in the mid-2000s, Ohio and Mississippi reduced their supermax populations by 89% and 85%, respectively, while decreasing violence and disruption).

harm to which solitary confinement subjects prisoners are not compensated for or counterbalanced by tangible correctional gains.

In sum, solitary confinement, even for relatively short periods of time, does significantly more harm than good. Prisons should mitigate that harm by providing meaningful, regular opportunities for prisoners in solitary confinement to progress out of solitary confinement before suffering irreversible harm.

CONCLUSION

In light of the extensive research summarized above, the overwhelming scientific and professional consensus now firmly establishes that solitary confinement (regardless of length) deprives prisoners of basic human needs; produces severe, negative, and atypical psychological and physical symptoms and reactions; and increases the risk of imminent, grave, lasting, and irreversible harm to those who endure it.

Dated: November 27, 2017

Respectfully submitted,

s/ Kenneth L. Schmetterer
Kenneth L. Schmetterer
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606-0089
(312) 368-2176
kenneth.schmetterer@dlapiper.com

Andrew P. Valentine
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California 94303-2215
(650) 833-2065
andrew.valentine@dlapiper.com

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with this Court's length limitation because it contains 4,74**8** words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). As permitted by Federal Rule of Appellate Procedure 32(g)(1), the word count feature of this word processing system was relied upon in preparing this certification. In addition, this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) because this brief has been prepared in proportionally spaced Century Schoolbook typeface, 14-point font.

Dated: November 27, 2017

Respectfully submitted,

s/ Kenneth L. Schmetterer

Kenneth L. Schmetterer
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606-0089
(312) 368-2176
kenneth.schmetterer@dlapiper.com

Andrew P. Valentine
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California 94303-2215
(650) 833-2065
andrew.valentine@dlapiper.com

Counsel for Amici Curiae

CERTIFICATE OF SERVICE
PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 25(D)

I hereby certify that on November 27, 2017, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 27, 2017

Respectfully submitted,

s/ Kenneth L. Schmetterer

Kenneth L. Schmetterer
DLA PIPER LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois 60606-0089
(312) 368-2176
kenneth.schmetterer@dlapiper.com

Andrew P. Valentine
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California 94303-2215
(650) 833-2065
andrew.valentine@dlapiper.com

Counsel for Amici Curiae