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

CHERELLE GLIMP
MARC SILVERMAN
DLA PIPER LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, New York, 10020-1104
Telephone: 212-335-4899

ANDREW VALENTINE
OLGA SLOBODYANYUK
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California 94303-2215
Telephone: 650-833-2264

Counsel for *Amici Curaie*

August 2, 2017

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 17-1566 Case Name: Timothy Finley v. Erica Huss

Name of counsel: DLA Piper LLP (US)

Pursuant to 6th Cir. R. 26.1, Terry A. Kupers
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Not to my knowledge

CERTIFICATE OF SERVICE

I certify that on August 2, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Olga Slobodyanyuk

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure**. With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed**.

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 17-1566 Case Name: Timothy Finley v. Erica Huss

Name of counsel: DLA Piper LLP (US)

Pursuant to 6th Cir. R. 26.1, Craig Haney
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Not to my knowledge

CERTIFICATE OF SERVICE

I certify that on August 2, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Olga Slobodyanyuk

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure**. With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed**.

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 17-1566 Case Name: Timothy Finley v. Erica Huss

Name of counsel: DLA Piper LLP (US)

Pursuant to 6th Cir. R. 26.1, Pablo Stewart
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Not to my knowledge

CERTIFICATE OF SERVICE

I certify that on August 2, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Olga Slobodyanyuk

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure**. With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed**.

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 17-1566 Case Name: Timothy Finley v. Erica Huss

Name of counsel: DLA Piper LLP (US)

Pursuant to 6th Cir. R. 26.1, Stuart Grassian
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

Not to my knowledge

CERTIFICATE OF SERVICE

I certify that on August 2, 2017 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Olga Slobodyanyuk

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure**. With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed**.

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

TABLE OF CONTENTS

Page

INTEREST OF THE AMICI CURIAE 1

ARGUMENT 3

1. Solitary Confinement Consists of Social Isolation and Restricted Environmental Stimulation, Violating Basic Human Needs 3

2. Solitary Confinement Causes Severe Psychological and Physical Harm in Prisoners 7

3. Solitary Confinement Imposes Atypical and Significant Hardships on Prisoners, Especially Those with Mental Illness 11

   A. Mentally Ill Prisoners Are Especially Vulnerable To Harms Caused by Solitary Confinement. 11

   B. Suicides Most Often Occur After Initial Placement Into Solitary Confinement. 15

   C. Solitary Confinement Increase Non-Suicidal Self-Mutilations. 15

4. Professional Norms Recognize the Harms of Solitary Confinement on Individuals with Mental Illness 18

5. Alternatives Exist to Solitary Confinement for Mentally Ill Inmates 20

CONCLUSION 21

TABLE OF AUTHORITIES

Page(s)

CASES

Davis v. Ayala,
135 S. Ct. 2187 (2015) (Kennedy, J., concurring) 4

Wilkinson v. Austin,
545 U.S. 209 (2005) 4

Williams v. Sec'y Pa. Dep't of Corrs.,
848 F.3d 549 (3d Cir. 2017) 9

RULES AND REGULATIONS

Federal Rule of Appellate Procedure 29(c)(4) 3

OTHER AUTHORITIES

A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas, AM. CIVIL LIBERTIES UNION OF TEX. (Feb. 2015), https://www.aclutx.org/sites/default/files/field_documents/SolitaryReport_2015.pdf. 17

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) 10

Alison Liebling, *Prison Suicide and Prisoner Coping*, 26 CRIME & JUST. 283-359 (1999) 14

ABA Standards for Criminal Justice Treatment of Prisoners, Standards 23.6 – 23.9, AM. BAR ASS'N (3d ed. 2011), http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html. 18

Angela Browne, et al., *Prisons Within Prisons: The Use of Segregation in the United States,* FED. SENT'G REP., at 49 (Oct. 2011) 20

Atul Gawande, *Hellhole*, NEW YORKER, Mar. 30, 2009, http://www.newyorker.com/magazine/2009/03/30/hellhole. 7

B.S. McEwen, *The neurobiology of stress: From serendipity to clinical relevance*, 996 (1-2) BRAIN RESEARCH, 172-189 (2000) 10

Bruce B. Way et. al., *Inmate suicide and time spent in special disciplinary housing in New York State Prison*, 58 PSYCHIATRIC SERVICES, 558–560 (2007) 5

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/ 10

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) 5, 7, 8, 15

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). 2

Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement,* 49 CRIME & DELINQ. 124, 126 (2003). ..... passim

David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 Am. J. Pub. Health 18, 21 (2015). 11

David Lovell et al., *Who Lives in Super-Maximum Custody? A Washington State Study*, 64 FED. PROB. 33, 36 (2000) 11

David Lovell & Rod Jemelka, *When Inmates Misbehave: The Costs of Discipline*, 76 THE PRISON J. 165-179 (1996)) 11

Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing*, 72–77 (Jan. 2016), https://www.justice.gov/dag/file/815551/ 19

Donald W. Morgan et al., *The Adaptation to Prison by Individuals with Schizophrenia*, 21 BULL. AM. ACAD. PSYCHIATRY & L., 427-433 (1993) 11

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) 4

Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442-47 (2013) 14, 17

Frank Rundle, *The Roots of Violence at Soledad, in* THE POLITICS OF PUNISHMENT: A CRITICAL ANALYSIS OF PRISONS IN AMERICA 167 (Erik Olin Wright, ed., 1973). 16

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). 5

Hans Toch, MEN IN CRISIS: HUMAN BREAKDOWNS IN PRISONS 54 (Aldine Publishing Co., Chicago 1975) 16

Health in Prisons: a WHO guide to the essentials in prison health, WHO (2007), 36 http://www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf. 18

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 20

Heriberto G. Sánchez, *Suicide Prevention in Administrative Segregation Units: What is Missing?*, 19 J. CORRECTION HEALTH CARE 93, 94-95 (2013). 14, 15

Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates,* 104 Am. J. Pub. Health 442, 445 (2014). 16

J. Casella & J. Ridgeway, *Scientists Discover How Social Isolation Damages Young Brains*, SOLITARY WATCH (September 18, 2012), http://solitarywatch.com/2012/09/18/ 10

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). 3

Jennifer R. Wynn and Alisa Szatrowski, *Hidden Prisons: Twenty-Three-House Lockdown Units in New York State Correctional Facilities*, 24 PACE L. REV. 497, 516 (2004) 13

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) 7

Kristin G. Cloyes et al., *Assessment of Psychosocial Impairment in a Supermaximum Security Unit Sample*, 33 CRIM. JUST. & BEHAV. 760, 773-74 (2006)..... 11, 12

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)..... 4

Lindsay M. Hayes, *National Study of Jail Suicide: 20 Years Later*, U.S. Dep't of Justice, Nat'l Inst. of Corr. (2010)..... 14, 17

Manabu Makinodan, et al., *A Critical Period for Social Experience–Dependent Oligodendrocyte Maturation and Myelination*, 337 (6100) SCIENCE 1357–60 (2012)..... 10

Maureen L. O'Keefe et al., *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation*, Nat'l Institute of Justice, Office of Justice Programs, U.S. Dep't of Justice (2010)..... 9

P. Gendreau, N. L. Freedman, and G. J. S. Wilde, *Changes in EEG Alpha Frequency and Evoked Response Latency during Solitary Confinement*, 79 (1) J. ABNORMAL PSYCHOL., 54–59 (1972)..... 10

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)..... 4, 8, 10, 12

Position Statement on Segregation of Prisoners with Mental Illness, AM. PSYCHIATRIC ASS'N (December 2012), https://www.psychiatry.org/file%20library/about-apa/organization-documents-policies/policies/position-2012-prisoners-segregation.pdf 11, 14, 18

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)..... 14, 17

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) (statement of Craig Haney, Professor of Psychology, University of California, Santa Cruz)..... 4, 6

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)..... 9

Solitary Confinement (Isolation), NAT'L COMM'N ON CORRECTIONAL HEALTH CARE (Apr. 2016), http://www.ncchc.org/solitary-confinement 18

Stuart Grassian, *Psychiatric Effects of Solitary Confinement,* 22 WASH. U. J.L. & POL'Y 325, 330-31 (2006) 7, 8, 13

Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450, 1452 (1983) 9, 16

Stuart Grassian & Terry Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, CORRECTIONAL MENTAL HEALTH REP., May/June 2011. ..... 10, 14

T. Kupers, T. Dronet 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)) 20

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) 4, 6, 7, 13

Thomas B. Benjamin & Kenneth Lux, *Solitary Confinement as Psychological Punishment*, 13 CAL. WESTERN L. REV. 265-296 (1977) 16

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) 6, 12, 13

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*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan E. Méndez). 18

United Nations Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. E/CN.15/2015/L.6/Rev.1, preliminary observation 1, Rule 45 (May 21, 2015). Case: 16-2726 Document: 003112402806 Page: 13 Date Filed: 09/08/2016. 19

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, especially among prisoners suffering from mental illness. 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 environmental stimulation—which causes grave damage to their mental and physical health.

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 Timothy Finley, 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 harms because they are deprived of the basic human needs of social interaction and normal environmental stimulation. Indeed, the price becomes unmeasurable when an inmate suffers from a mental illness.

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 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.

---

[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).

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.

The amici curiae state, pursuant to Federal Rule of Appellate Procedure 29(c)(4), 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 sensory 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]

"Solitary confinement," as typically used in the international medical and legal literature and throughout this brief, refers to the segregation of a prisoner

[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).

alone in a cell for twenty-two to twenty-four hours a day without meaningful social interaction or positive environmental stimulation.[3]

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 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

---

[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).

[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) (statement of Craig Haney, Professor of Psychology, University of California, Santa Cruz); 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).

socialize.[6] Brief recreation periods are most often spent alone "in caged-in or 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 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,

---

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

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 conscientiously imposed by prison staff to ensure that prisoners get no reprieve from these conditions. In the rare instances an inmate is permitted to leave his cell for occasional showers or "exercise," he may do so only after submitting to an invasive body cavity strip search and when bound by multiple shackles and restraints. Even if an inmate is allowed to leave his cell for an hour of "exercise", he is carefully isolated from any human contact other than the guards.[13] As a result, prisoners' sole physical contact with another person may be with a correctional officer when being placed in restraints.[14]

---

[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.
[13] *Reassessing Solitary Confinement supra* note 4 at 76-77.
[14] Hafemeister & George *supra* note 11 at 12.

The negative impact of solitary confinement on the mental health of a prisoner begins immediately, often within days or weeks of confinement. When deprived of adequate social interaction, together with a lack of environmental stimulation, people "soon become incapable of maintaining an adequate state of alertness and attention," and within days their brain scans may show "abnormal pattern[s] characteristic of stupor and delirium."[15] The scientific literature has shown that, 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.[16]

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

---

[15] Stuart Grassian, *Psychiatric Effects of Solitary Confinement,* 22 WASH. U. J.L. & POL'Y 325, 330-31 (2006).

[16] Haney & Lynch, *Regulating Prisons, 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, *Mental Health*, *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, *Psychiatric Effects*, *supra* note 15 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.

prisoners in solitary confinement. Studies of prisoners who have been held in solitary confinement reveal "strikingly consistent" psychological and physiological harms.[17] 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.[18]

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 insomnia, lethargy, and depression, as well as anxiety, panic, paranoia, hallucinations, loss of self-control, irritability, aggression, rage, and withdrawal.[19]

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, 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

---

[17] Grassian, *Psychiatric Effects*, *supra* note 15 at 335-38; Haney & Lynch, *supra* note 8 at 515-24.
[18] Haney *supra* note 5 at 130.
[19] *Id.* at 130-31 (2003) (collecting more than twenty studies); Grassian, *Psychiatric Effects*, *supra* note 15 at 335-37; Smith *supra* note 3 at 492.

emotional breakdown"; approximately 75% experienced chronic depression and mood swings; and almost half experienced perceptual distortions or hallucinations.[20]

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.[21] 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.[22]

A small minority of researchers have asserted that solitary confinement is not significantly detrimental to inmates.[23] 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

---

[20] Haney *supra* note 5 at 133-34.
[21] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450, 1452 (1983).
[22] *Id.* at 1452 (1983).
[23] *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) [hereinafter Quantitative Syntheses]; Maureen L. O'Keefe et al., *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation*, Nat'l Institute of Justice, Office of Justice Programs, U.S. Dep't of Justice (2010) [hereinafter Colorado Study].

literature, the 'dehumanizing effect' of solitary confinement is firmly established.") In addition, the methodology of these studies have been criticized as "very flawed."[24]

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 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 also often trigger detectable 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.[25] In addition to changes in their brain chemistry and morphology, many inmates segregated in

---

[24] *See* Stuart Grassian & Terry Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, CORRECTIONAL MENTAL HEALTH REP., May/June 2011.

[25] *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, and 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).

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.[26]

3. Solitary Confinement Imposes Atypical and Significant Hardships on Prisoners, Especially Those with Mental Illness

"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."[27] Because prisoners in the general 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. Research findings consistently show that solitary confinement causes distinct and more severe psychological and physiological harms than "ordinary" imprisonment.

A. Mentally Ill Prisoners Are Especially Vulnerable To Harms Caused by Solitary Confinement.

The negative impact of solitary confinement is magnified and accelerated for individuals with preexisting mental illness. Further, individuals with serious mental illness are more vulnerable to the potential harms of isolation in three respects. First, such individuals are more likely to have difficulty adapting to the rigidity of prison life, and, in turn, are more likely to run afoul of authorities and to

---

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

be placed in various forms of segregation.[28] Second, once placed in segregation units, such individuals are especially vulnerable to the stressors of isolation, which can aggravate symptoms, including suicidality and self-harm. Third, as a result of their heightened vulnerability to the painfulness and harmfulness of solitary confinement, many of them deteriorate and decompensate, behaviorally as well as emotionally, and this, in turn, can prolong the amount of time they spend in isolation.

A comprehensive study of prisoners in Washington state's supermax prisons concluded that mental illness was about twice as common in segregated prisoners; a Canadian study found "almost identical results."[29] Several methodologically rigorous European studies reveal similar mental health disparities between prisoners held in isolation and those in the general population.[30] For example, a large-scale Danish study found that psychiatric disorders were about twice as common in segregated prisoners as in prisoners in the general prison population and

---

[28] *Position Statement on Segregation of Prisoners with Mental Illness*, AM. PSYCHIATRIC ASS'N (December 2012), https://www.psychiatry.org/file%20library/about-apa/organization-documents-policies/policies/position-2012-prisoners-segregation.pdf (citing Donald W. Morgan et al., *The Adaptation to Prison by Individuals with Schizophrenia*, 21 BULL. AM. ACAD. PSYCHIATRY & L., 427-433 (1993); David Lovell & Rod Jemelka, *When Inmates Misbehave: The Costs of Discipline*, 76 THE PRISON J. 165-179 (1996)); *see also* David Lovell et al., *Who Lives in Super-Maximum Custody? A Washington State Study*, 64 FED. PROB. 33, 36 (2000) (finding that 29% of Washington's Supermax inmates evinced signs of serious mental illness, versus 10-15% in the state's general prison population); Kristin G. Cloyes et al., *Assessment of Psychosocial Impairment in a Supermaximum Security Unit Sample*, 33 CRIM. JUST. & BEHAV. 760, 773-74 (2006).

[29] Hafemeister & George *supra* note 11 at 42.

[30] Smith *supra* note 3 at 476-80 (summarizing similar findings across several clinical studies in Switzerland, Denmark, and Norway).

almost three times as common in prisoners segregated for over two months.[31] Unproblematic adjustment to prison requires conformity to strict rules and procedures, which may cause problems for mentally ill prisoners who lack capacity to comply with these demands. Consequently, they are more likely to get into trouble which can eventually lead to placement in segregation.[32]

When deprived of social interaction, many prisoners with mental illness experience catastrophic and often irreversible psychiatric deterioration.[33] Research shows that solitary confinement "exacerbates . . . mental illness and too often results in suicide."[34] Prisoners with mental illness are also at the greatest risk of suffering "permanent and disabling" harms.[35] They are "far less likely to be able to withstand the stress, social isolation, sensory deprivation, and idleness" of solitary confinement.[36]

By its very nature, solitary confinement impedes the delivery of mental health services on a 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.[37] This means mentally ill prisoners endure painful, dangerous, isolated confinement without

---

[31] *Id.* at 477-78.
[32] Haney *supra* note 5 at 142.
[33] Hafemeister & George *supra* note 11 at 39.
[34] Kupers *supra* note 5 at 215; Grassian, *Psychiatric Effects*, *supra* note 15 at 349.
[35] Haney *supra* note 5 at 142. *See also* Hafemeister & George *supra* note 11 at 38-39
[36] Hafemeister & George *supra* note 11 at 46-47.
[37] *Id. at* 42-43.

receiving the badly needed treatment that might help to at least alleviate some of the harm to which they are subjected.[38]

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 inmates occur among the 2-8% of prisoners who are housed in solitary confinement.[39] 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."[40] The authors concluded that "the conditions of deprivation in locked units and higher-security housing were a common stressor shared by many of the prisoners who committed suicide."[41]

Given those risks, there is widespread recognition that seriously mentally ill prisoners should not be consigned to isolation, or in the very rare situation where

---

[38] *Id.* at 43.

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

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

[41] Patterson & Hughes *supra* note 40 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).

isolation for a very limited period is unavoidable due to security exigencies, these prisoners require special care.[42] 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."[43]

B. Suicides Most Often Occur After Initial Placement Into Solitary Confinement.

Significant to Mr. Finley's appeal is the fact that suicides and attempted suicides most frequently occur during the initial period following placement into solitary confinement. One study, reviewing completed suicides in California prisons between 1999 and 2004, found that most attempts occurred within three weeks of placement.[44] A study in New York, reviewing 132 completed suicides, of which 32 occurred in segregation, found that the majority occurred within two months of placement.[45]

C. Solitary Confinement Increase Non-Suicidal Self-Mutilations.

---

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

[43] AM. PSYCHIATRIC ASS'N *supra* note 28.

[44] Patterson & Hughes *supra* note 40 at at 678 (finding that most attempts occurred within 3 weeks of placement); Patterson and Hughes further recommend "daily mental health assessments and suicide risk evaluations during the first 5 days and at critical decision points that could have significant impact on the prisoner's life, such as the outcome of a serious rule violation." *Id.*

[45] Bruce B. Way et. al., *Inmate suicide and time spent in special disciplinary housing in New York State Prison*, 58 PSYCHIATRIC SERVICES, 558–560 (2007) (studying 132 completed suicides, of which 32 occurred in segregation, and finding that majority occurred within two months of placement).

While the statistics regarding suicide for prisoners suffering from mental illness in solitary confinement are horrific, there is also an epidemic of non-suicidal self-harm, such as "cutting" or swallowing sharp-edged objects, in prison isolation units. Prisoners in solitary confinement are more likely to self-harm than general population prisoners. For example, "[a]n analysis of . . . 902 self-mutilation incidents in the North Carolina Department of Corrections occurring between 1958 and 1966 revealed that nearly half occurred in segregation units."[46] A similar study at a Virginia prison revealed "that 51% of the self-mutilation incidents . . . over the preceding year had taken place in isolation units."[47] A recent study examining self-harming behaviors in New York City jails similarly found that, even controlling for serious mental illness, prisoners assigned to solitary confinement were nearly seven times more likely to commit acts of self-harm.[48]

A long-time California prison psychiatrist reported that the extreme conditions of isolation have forced prisoners to "become so desperate for relief that they would set their mattresses afire… burst out in a frenzied rage of aimless destruction, tearing their sinks and toilets from the walls, ripping their clothing and bedding, and destroying their few personal possessions in order to alleviate the numbing sense of deadness or non-being and to escape the torture of their own

---

[46] Haney & Lynch, *supra* note 8 at 525.
[47] *Id.*
[48] *See* Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates,* 104 Am. J. Pub. Health 442, 445 (2014).

thoughts and despair."[49] Other studies have noted that prisoners held in isolation would often act in suicidal and irrational ways, suffering from isolation panic, massive anxiety, hallucinations, cognitive difficulties, and tension leading to self-mutilation.[50] For example, approximately 20% of the prisoners in the Massachusetts study reported losing control and engaging in random violence, such as deliberately cutting themselves.[51]

Self-harm is a very prevalent and very serious problem in solitary confinement units. In Texas solitary confinement units, where suicide is five times more likely than in the general prison population, self-harm is fully eight times more likely than it is in the community outside prison.[52] Moreover, because it lowers prisoners threshold for harming themselves and also can lead to accidental forms of suicide, self-harm places prisoners at risk of death.

Prison staff sometimes incorrectly conclude that prisoners commit non-suicidal self-harm are manipulating the system to get out of isolation. More

---

[49] *See* Frank Rundle, *The Roots of Violence at Soledad, in* THE POLITICS OF PUNISHMENT: A CRITICAL ANALYSIS OF PRISONS IN AMERICA 167 (Erik Olin Wright, ed., 1973).

[50] *See* Thomas B. Benjamin & Kenneth Lux, *Solitary Confinement as Psychological Punishment*, 13 CAL. WESTERN L. REV. 265-296 (1977) (finding that almost every prisoner held long-term solitary confinement in this small-scale study of Maine prisons attempted suicide); Hans Toch, MEN IN CRISIS: HUMAN BREAKDOWNS IN PRISONS 54 (Aldine Publishing Co., Chicago 1975) (finding in this large systematic study of prisoners subject to long-term isolation so-called "isolation panic," which included rage, panic, loss of control, psychological regression, and a build of tension which lead to incidents of self-mutilation). *See also* Grassian, *supra* note 21 at 1450-1454.

[51] Grassian, *supra* note 21 at 1453.

[52] *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, AM. CIVIL LIBERTIES UNION OF TEX. (Feb. 2015), https://www.aclutx.org/sites/default/files/field_documents/SolitaryReport_2015.pdf.

commonly, however, the acts of these desperate prisoners are involuntary reactions to painfully harsh conditions of isolation. Self-harming prisoners are often compelled by mental illness and a symptomatic response to the high anxiety induced by the deprivations and harshness of solitary confinement, and driven by the anxiety that isolation and idleness create. A prisoner who feels he has no other option short of cutting himself is experiencing a form of psychiatric crisis that requires mental health treatment. An effective mental health response to such a crisis is to remove the anxious, self-harming prisoner from isolation and to assess his level of depression, anxiety, or other forms of psychic trauma.[53]

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."[54] 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,

---

[53] Patterson & Hughes *supra* note 40 at 678. *See also* Kaba, et al., *supra* note 40 at 442-447; L.M. Hayes, *National Study of Jail Suicide: 20 Years Later*, U.S. DEP'T OF JUSTICE, Nat'l Inst. of Corrections (2010) (similar findings for jails).

[54] AM. PSYCHIATRIC ASS'N *supra* note 28. *See also Health in Prisons: a WHO guide to the essentials in prison health,* WHO (2007), 36 http://www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf.

and further oppose the use of solitary confinement except where no alternative means exist to address an extreme and current threat to security.[55]

These positions reflect a growing consensus among domestic and international actors, which increasingly view solitary confinement as 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, even short terms in solitary were tantamount to torture.[56]

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

---

[55] *See* AM. PSYCHIATRIC ASS'N *supra* note 28; *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*, AM. BAR ASS'N (3d ed. 2011), http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.

[56] *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*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan E. Méndez).

prisoners and prison management," take account of these developments and forbid long-term isolation of mentally ill persons.[57]

5. Alternatives Exist to Solitary Confinement for Mentally Ill Inmates

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.[58] Colorado and Illinois have 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, if inmates attempt to transition from solitary confinement back to general population—or back to the free world—many find that they have lost the ability to connect to other people and are significantly handicapped in their attempt to reenter society. Inmates emerge from solitary confinement units severely damaged and functionally disabled. Therefore,

---

[57] *United Nations Standard Minimum Rules for the Treatment of Prisoners*, U.N. Doc. E/CN.15/2015/L.6/Rev.1, preliminary observation 1, Rule 45 (May 21, 2015). Case: 16-2726 Document: 003112402806 Page: 13 Date Filed: 09/08/2016.

[58] *See* Department 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), https://www.justice.gov/dag/file/815551/ download (last visited June 21, 2017).

the recidivism rates of inmates who have endured solitary confinement are higher than those who remain in general population.[59]

Second, reduction or elimination of the use of solitary confinement can lead to a reduction in inmate behavior problems, both at an individual and systemic level. 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.[60] 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 inmates 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 inmates of basic human needs; produces severe, negative, and atypical psychological and physical symptoms and reactions;

---

[59] *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 (last visited July 18, 2017).

[60] *Id.* at 16 (citing T. Kupers, T. Dronet 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,* FED. SENT'G REP., at 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).

and increases the risk of imminent, grave, lasting, and irreversible harm to those who endure it.

Dated: August 2, 2017

Respectfully submitted,

s/ Olga Slobodyanyuk

Olga Slobodyanyuk
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California 94303-2215
Telephone: 650-833-2264

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with this Court's length limitation because it contains 5633 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)(a), 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 Century Schoolbook typeface, 12-point font.

Dated: August 2, 2017

Respectfully submitted,

s/ Olga Slobodyanyuk

Olga Slobodyanyuk
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California 94303-2215
Telephone: 650-833-2264

Counsel for Amici Curiae

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

I hereby certify that on August 2, 2017, I electronically filed the foregoing brief 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 the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system

Dated: August 2, 2017

Respectfully submitted,

s/ Olga Slobodyanyuk

Olga Slobodyanyuk
DLA PIPER LLP (US)
2000 University Avenue
East Palo Alto, California 94303-2215
Telephone: 650-833-2264

Counsel for Amici Curiae