

No. 18-2181

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

---

Charles Hamner,

*Plaintiff-Appellant,*

v.

Danny Burls, et al.,

*Defendants-Appellees.*

---

Appeal from The United States District Court for the Eastern District of Arkansas  
Case No. 5:17-CV-79 JLH-BD  
The Honorable Judge James Leon Holmes

---

**BRIEF OF AMICI CURIAE PROFESSORS AND PRACTITIONERS  
OF PSYCHIATRY AND PSYCHOLOGY IN SUPPORT OF  
PLAINTIFF-APPELLANT'S PETITION FOR REHEARING BY PANEL  
AND REHEARING *EN BANC***

---

Christin Jaye Eaton  
Julie Wahlstrand  
FAEGRE BAKER DANIELS LLP  
90 S. 7th St., Ste. 2200  
Minneapolis, MN 55402  
(612) 766-7000  
christin.eaton@faegrebd.com  
julie.wahlstrand@faegrebd.com

*Counsel for Amici Curiae*

October 22, 2019

**TABLE OF CONTENTS**

	<u>Page</u>
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	3
Psychological harm .....	5
Self-harm .....	5
Physical harm .....	6
Mental illness.....	9
Lasting harm.....	10
Professional consensus .....	10

**TABLE OF AUTHORITIES**

**Page(s)**

**FEDERAL CASES**

*Glossip v. Gross*,  
135 S. Ct. 2726, 192 L. Ed. 2d 761 (2015) (Breyer, J., dissenting) .....6

**OTHER AUTHORITIES**

*ABA Standards for Criminal Justice: Treatment of Prisoners*. Washington,  
DC: Am. Bar. Ass’n 3<sup>rd</sup> ed.....11

Alison Shames, Jessa Wilcox & Ram Subramanian, *Solitary Confinement:  
Common Misconceptions and Emerging Safe Alternatives*, New York,  
NY: VERA Institute of Just., 2 (May 2015).....4, 5

Am. Pub. Health Ass’n, *Solitary Confinement as a Public Health Issue*  
(2013) .....9

Atul Gawande, *Hellhole, The United States holds tens of thousands of  
inmates in long-term solitary confinement. Is this torture?*, *The New  
Yorker* (Mar. 30, 2009).....2, 10

Brie A. Williams et al., *The Cardiovascular Health Burdens of Solitary  
Confinement*, *J. Gen. Internal Med.* (June 21, 2019).....8

Carol Schaeffer, “*Isolation Devastates the Brain*”: *The Neuroscience of  
Solitary Confinement*, *Solitary Watch* (May 11, 2016).....7

Cloud et al., *Public Health and Solitary Confinement in the United States*,  
*105 Am. J. Pub. Health*, 18, 18-26 (2015).....5

Craig Haney, Curtis Banks & Philip Zimbardo, *Interpersonal Dynamics in a  
Simulated Prison*, *1 Int’l J. Criminology & Penology*, 69 (1973).....1

Craig Haney et al., *Examining Jail Isolation: What We Don’t Know Can Be  
Profoundly Harmful*, *96 Prison J.* 126, 141 (2016) .....9, 10

Craig Haney, *The Psychological Effects of Solitary Confinement: A  
Systematic Critique*, *47 Crime & Just.* 365, 367-68, 370-75 (2018).....4, 8

Craig Haney, *Restricting the Use of Solitary Confinement*, *1 Ann. Rev.  
Criminology*, 285 (2018) .....passim

Craig Haney, *The Social Psychology of Isolation: Why Solitary Confinement is Psychologically Harmful*, 181 Prison Serv. J. 12, 16 (2009).....passim

Diana Arias & Christian Otto, NASA, *Defining the Scope of Sensory Deprivation for Long Duration Space Missions*, 7 (2011).....4, 7

Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Unusual Punishment*, 90 Ind. L.J. 741, 758 (2015) .....6, 9

Jamie Ducharme, *Loneliness Can Actually Hurt Your Heart. Here’s Why*, Time Health (March 26, 2018) .....8

Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics.*, 38 J. Acad. of Psychiatry & Law, 104, 104-05 (2010). .....3, 4, 6

Jules Lobel & Huda Akil, *Law & Neuroscience: The Case of Solitary Confinement*, 147 Daedalus 61, 63 (2018) .....6, 7

Lauren Brinkley-Rubinstein, et al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, JAMA Network Open, 1, 5-6, 9 (Oct. 4, 2019) .....9

Léon Digard, Elena Vanko & Sara Sullivan, *Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems*, New York, NY: VERA Institute of Just., 18 (May 2018).....3

*Louisiana on Lockdown*, Solitary Watch, American Civil Liberties Union of Louisiana, Jesuit Social Research Institute/Loyola University New Orleans (June 2019).....2

Nat’l Alliance on Mental Illness, *Public Policy Platform of the National Alliance on Mental Illness*, 201 (2016).....9

Nat’l Comm’n Corr. Health Care, *Position statement: solitary confinement (isolation)*, 22 J. Corr. Health Care 257, 260 (2016).....9, 11

Nat’l Research Council/Nat’l Acad. of Sci., *The growth of incarceration in the United States: Exploring the causes and consequences*, 201 (2014) .....10

Nick Kanas, *Psychological and Interpersonal Issues in Space*, 144 Am. J. Psychiatry, 703 (1987).....3

Nina Grant et al., <i>Social Isolation and Stress-Related Cardiovascular, Lipid, and Cortisol Responses</i> , 37 <i>Annals Behav. Med.</i> 29, 35-36 (2009) .....	8
Peter Scharff Smith, <i>The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature</i> , 34 <i>Crime &amp; Just.</i> 441, 488-90 (2006).....	8
R. Patterson & K. Hughes, <i>Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999–2004</i> 59 <i>Psychiatr. Serv.</i> , 676, 676–82 (2008) .....	2
<i>Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on Constitution, Civil Rights &amp; Human Rights of the S. Comm. on the Judiciary</i> , 112th Cong. 72, 21 (June 19, 2012).....	6
Richard Kozar, <i>John McCain (Overcoming Adversity)</i> , 53 (2002).....	2
Rosalind Dillon, <i>Banning Solitary for Prisoners with Mental Illness: The Blurred Line Between Physical and Psychological Harm</i> , 14 <i>Nw. J. L. &amp; Soc. Pol’y</i> 265, 279 (2019) .....	7, 8
Stuart Grassian, <i>Psychiatric Effects of Solitary Confinement</i> , 22 <i>Wash. U. J.L. &amp; Pol’y</i> , 325, 327 (2006).....	passim
Stuart Grassian, <i>Psychopathological Effects of Solitary Confinement</i> , 140 <i>Am. J. Psychiatry</i> , 1450, 1452-53 (November 1983).....	5, 6
Terry A. Kupers, <i>Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment’s Sake?</i> in <i>The Routledge Handbook of International Crime and Justice Studies</i> , 213, 216 (Arrigo and Bersot, Ed., 2014) .....	passim

## INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici curiae* teach and practice psychiatry and psychology, and for decades have worked to address the profound psychological and physiological harms caused by solitary confinement.

Stuart Grassian, M.D., a Board-certified psychiatrist who taught at Harvard Medical School from 1974-2002, has evaluated hundreds of prisoners in solitary confinement, and published numerous articles on its effects.

Craig Haney, Ph.D., J.D., is Distinguished Professor of Psychology and UC Presidential Chair at the University of California, Santa Cruz. A researcher in the “Stanford Prison Experiment,”<sup>2</sup> he has studied prison conditions for more than forty years and has written extensively about the psychological effects of solitary confinement.

Terry A. Kupers, M.D., M.S.P., a Distinguished Life Fellow of The American Psychiatric Association, is Professor Emeritus at The Wright Institute. His published work includes in-depth assessments of solitary confinement.

Pablo Stewart, M.D., is Clinical Professor of Psychiatry, John A. Burns

---

<sup>1</sup> This brief has not been authored, in whole or in part, by counsel to any party in this appeal. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than the *Amici* or their counsel, contributed money that was intended to fund preparation or submission of this brief.

<sup>2</sup> Craig Haney, Curtis Banks & Philip Zimbardo, *Interpersonal Dynamics in a Simulated Prison*, 1 Int’l J. Criminology & Penology, 69 (1973).

School of Medicine, University of Hawaii. He has worked as a court-appointed expert on the effects of solitary confinement for over twenty-five years.

### SUMMARY OF ARGUMENT

Solitary confinement inflicts atypical and significant hardships, compared to ordinary prison life. One stunning illustration: “of all successful suicides that occur in a correctional system, approximately 50 percent involved the 3-8 percent of prisoners who are in some form of isolated confinement at any given time.”<sup>3</sup>

Senator John McCain wrote that solitary confinement “crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.”<sup>4</sup>

Solitary confinement deprives prisoners of essential human needs to an extent that destabilizes identity and promotes mental breakdown.<sup>5</sup> A “robust

---

<sup>3</sup> Terry A. Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment’s Sake?* in *The Routledge Handbook of International Crime and Justice Studies*, 213, 216 (Arrigo and Bersot, Ed., 2014) (“Kupers, *Isolated Confinement*”) (citing, *inter alia*, R. Patterson & K. Hughes, *Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999–2004*, 59 *Psychiatr. Serv.*, 676, 676–82 (2008) (“Patterson/Hughes”)).

<sup>4</sup> Atul Gawande, *Hellhole, The United States holds tens of thousands of inmates in long-term solitary confinement. Is this torture?*, *The New Yorker* (Mar. 30, 2009), available at <http://www.newyorker.com/magazine/2009/03/30/hellhole> (last visited 10/9/2019) (“Gawande”) (citing Richard Kozar, *John McCain (Overcoming Adversity)*, 53 (2002)).

<sup>5</sup> Kupers, *Isolated Confinement*, 213, 215-216; Craig Haney, *The Social Psychology of Isolation: Why Solitary Confinement is Psychologically Harmful*, 181 *Prison Serv. J.* 12, 16 (2009) (“Haney, *Social Psychology*”); *Louisiana on Lockdown*, Solitary Watch, American Civil Liberties Union of Louisiana, Jesuit Social Research Institute/Loyola University New Orleans (June 2019).

scientific literature has established the negative psychological effects of solitary confinement.”<sup>6</sup> Indeed, solitary confinement “emerged as a common feature in torture and so-called ‘brainwashing’ protocols.”<sup>7</sup>

Mentally ill prisoners are particularly vulnerable to deterioration.<sup>8</sup>

Profound psychological and physiological harms occur in weeks or months,<sup>9</sup> forming the basis of widespread consensus that, if used, “solitary confinement must be limited to very short periods.”<sup>10</sup>

## ARGUMENT

Solitary confinement (including administrative segregation<sup>11</sup>) entails “confinement to an isolated cell for the overwhelming portion of each day, often

---

<sup>6</sup> Craig Haney, *Restricting the Use of Solitary Confinement*, 1 Ann. Rev. Criminology, 285 (2018) (“Haney, *Restricting the Use*”); see also Nick Kanas, *Psychological and Interpersonal Issues in Space*, 144 Am. J. Psychiatry, 703 (1987) (noting that NASA documents “present issues that are remarkably consistent with findings from Earth-bound studies”).

<sup>7</sup> Haney, *Social Psychology*, 12; see also Haney, *Restricting the Use*, 295.

<sup>8</sup> Haney, *Restricting the Use*, 293-94; see also Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics.*, 38 J. Acad. of Psychiatry & Law, 104, 104-05 (2010) (“All too frequently, mentally ill prisoners decompensate in isolation, requiring crisis care or psychiatric hospitalization.”) (“Metzner/Fellner, *Solitary Confinement*”).

<sup>9</sup> Kupers, *Isolated Confinement*, 222-223; Haney, *Restricting the Use*, 300 (collecting sources).

<sup>10</sup> Haney, *Restricting the Use*, 301.

<sup>11</sup> See Léon Digard, Elena Vanko & Sara Sullivan, *Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems*, New York, NY: VERA Institute of Just., 18 (May 2018) (“People held in restrictive housing for reasons other than punishment for violating rules are held in what is typically referred to as administrative segregation.”)



23 hours a day, with limited human interaction and minimal, if any, constructive activity.”<sup>12</sup>

A “broad and deep” empirical consensus<sup>13</sup> has emerged, across multiple disciplines, that profound psychological and physical harm results from deprivations of solitary confinement.<sup>14</sup> It has been established through “numerous empirical studies that report robust findings – that is, consistent and corroborative data collected by researchers and clinicians from diverse backgrounds and perspectives, amassed over a period of many decades.”<sup>15</sup> This consensus has grown substantially in recent years.

A seven-month confinement falls squarely within the duration known to cause harm.<sup>16</sup> The VERA Institute for Justice references a “long-established

---

<sup>12</sup>Alison Shames, Jessa Wilcox & Ram Subramanian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, New York, NY: VERA Institute of Just., 2 (May 2015) (“VERA, *Common Misconceptions*”).

<sup>13</sup> Haney, *Restricting the Use*, 285-89, 295 (collecting studies).

<sup>14</sup> *Id.* at 286, 294; Haney, *Social Psychology*, 12, n 1, 18; Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol’y, 325, 327 (2006) (“Grassian, *Psychiatric Effects*”); Metzner/Fellner, *Solitary Confinement*, 104-108.

<sup>15</sup> Haney, *Restricting the Use*, 285, 286; see also Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365, 367-68, 370-75 (2018) (“Haney, *Psychological Effects*”) (collecting studies); Diana Arias & Christian Otto, NASA, *Defining the Scope of Sensory Deprivation for Long Duration Space Missions*, 7 (2011) (compiling research regarding the effects of long-duration sensory deprivation, isolation, and confinement across several analogous environments) (“Arias/Otto”); Haney, *Social Psychology*, 13.

<sup>16</sup> Kupers, *Isolated Confinement*, 214 (“Long-term confinement (greater than three months) in an isolated confinement unit . . . is well known to cause severe

consensus among researchers that solitary confinement damages, often irreparably, those who experience it for even brief periods of time.”<sup>17</sup> “According to one report, ‘[n]early every scientific inquiry into the effects of solitary confinement . . . 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.’”<sup>18</sup>

### ***Psychological harm***

The constellation of psychological harms experienced by persons subjected to solitary has been characterized as a clinically distinguishable syndrome,<sup>19</sup> with symptoms that are “strikingly consistent” and “strikingly unique.”<sup>20</sup> Isolated prisoners “are literally at risk of losing their grasp on who they are.”<sup>21</sup>

### ***Self-harm***

Responses to solitary confinement can include “grotesque forms of self-

---

psychiatric morbidity, disability, suffering and mortality.”) (internal citations omitted); *see also* Haney, *Restricting the Use*, 301.

<sup>17</sup> VERA, *Common Misconceptions*, 17.

<sup>18</sup> *Id.* (citing Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 Am. J. Pub. Health, 18, 18-26 (2015)).

<sup>19</sup> Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry, 1450, 1452-53 (November 1983) (“Grassian, *Psychopathological Effects*”).

<sup>20</sup> Grassian, *Psychiatric Effects*, 325, 335, 337.

<sup>21</sup> Haney, *Social Psychology*, 15-16; *see also* Haney, *Restricting the Use*, 285, 296.

harm and mutilation,” such as amputation,<sup>22</sup> and “[s]uicides occur disproportionately more often in segregation units than elsewhere in prison.”<sup>23</sup>

### ***Physical harm***

A growing consensus among researchers from neuroscience and medical disciplines is that solitary confinement causes other physical harm too, with detectable harmful physiological effects on the brain that parallel psychological effects<sup>24</sup> and that can occur almost immediately after placement in solitary.<sup>25</sup>

Neuroscience research has shown that isolation and the conditions of solitary confinement affect brain structure and function.<sup>26</sup> The human “brain needs to

---

<sup>22</sup> *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 72, 21 (June 19, 2012) (statement of Craig Haney); see also Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Unusual Punishment*, 90 Ind. L.J. 741, 758 (2015) (“Bennion, *Banning the Bing*”).

<sup>23</sup> Metzner/Fellner, *Solitary Confinement*, 104-105; Haney, *Restricting the Use*, 293-94 (citing Patterson/Hughes, 678); Grassian, *Psychiatric Effects*, 325, 349; Grassian, *Psychopathological Effects*, 1454.

<sup>24</sup> Jules Lobel & Huda Akil, *Law & Neuroscience: The Case of Solitary Confinement*, 147 *Daedalus* 61, 63 (2018) (“Neuroscience research at least muddies the distinction between bodily injury and mental harm, and, in the future, it might negate it entirely.”); *id.* at. 64 (noting “clear biological evidence of the overlap between physical and mental distress”) (“Lobel & Akil, *Law & Neuroscience*”).

<sup>25</sup> *Glossip v. Gross*, 135 S. Ct. 2726, 2765, 192 L. Ed. 2d 761 (2015) (“[E]ven a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern toward an abnormal pattern characteristic of stupor and delirium.”) (Breyer, J., dissenting) (quoting Grassian, *Psychiatric Effects*, 325, 331).

<sup>26</sup> Lobel & Akil, *Law & Neuroscience*, 69 (“[N]euroscience studies suggest that solitary confinement can fundamentally alter the structure of the human brain in

interact in the world,”<sup>27</sup> and to be provided with stimuli bearing “meaningful information,” deprivation from which “causes neural atrophy.”<sup>28</sup> Indeed, “each of the key features of solitary confinement – lack of meaningful interaction with others and the natural world and lack of physical activity and visual stimulation – is by itself sufficient to change the brain . . . dramatically depending on whether it lasts briefly or is extended.”<sup>29</sup>

Physical harms beyond the brain also consistently result from the conditions of solitary. “[T]he human brain is literally ‘wired to connect’ to others,” and isolation “not only undermines psychological well-being but increases physical morbidity and mortality.”<sup>30</sup> Social isolation has been correlated with negative cardiovascular, metabolic, and neuroendocrine processes, and has been found to

---

profound and permanent ways.” (citation and quotation omitted)); *id.* at 69-70 (“[U]nder conditions of severe and sustained stress, the hippocampus loses this neuroplasticity: it physically shrinks, the rate of birth of new cells diminishes or ceases, the arbors regress, and the opportunity for contacts with neighboring cells decreases.”).

<sup>27</sup> Carol Schaeffer, “*Isolation Devastates the Brain*”: *The Neuroscience of Solitary Confinement*, Solitary Watch (May 11, 2016) (discussing “the evidence on the neurological damage caused by isolation”).

<sup>28</sup> Arias/Otto, 20, 22, 37-38, 41.

<sup>29</sup> Lobel & Akil, *Law & Neuroscience*, 70 (citation and quotation omitted); *see also* Rosalind Dillon, *Banning Solitary for Prisoners with Mental Illness: The Blurred Line Between Physical and Psychological Harm*, 14 Nw. J. L. & Soc. Pol’y 265, 279 (2019) (“Dillon, *Banning Solitary*”).

<sup>30</sup> Haney, *Restricting the Use*, 285, 296 (citations omitted).

increase the risk of heart attack or stroke.<sup>31</sup> Cardiovascular symptoms, headaches, and digestive problems are common among isolated inmates.<sup>32</sup> The lack of physical activity is detrimental and can lead to increased risk of chronic pain, joint pain and arthritis, hypertension, and heart disease.<sup>33</sup>

A recent study found that “individuals in solitary confinement experienced an absolute 31% higher hypertension prevalence than those in maximum security” in the same prison, which correlated with projected “increased adverse cardiovascular outcomes [such as more heart attacks and strokes].”<sup>34</sup> Another study followed over 225,000 individuals who were incarcerated and released from North Carolina prisons from 2000 to 2015, finding that “[c]ompared with individuals who were incarcerated and not placed in restrictive housing, those who spent time in restrictive housing were more likely to die in the first year after release of all causes” and that there was an even higher mortality after release for those with

---

<sup>31</sup> Dillon, *Banning Solitary* 265, 281-82 (2019) (citing Nina Grant et al., *Social Isolation and Stress-Related Cardiovascular, Lipid, and Cortisol Responses*, 37 *Annals Behav. Med.* 29, 35-36 (2009); Jamie Ducharme, *Loneliness Can Actually Hurt Your Heart. Here’s Why*, *Time Health* (March 26, 2018), available at <http://time.com/5212558/loneliness-social-isolation-heart-health/> (last visited 10/3/2019).

<sup>32</sup> Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 *Crime & Just.* 441, 488-90 (2006); Haney, *Psychological Effects*, 365, 368.

<sup>33</sup> Haney, *Restricting the Use*, 294.

<sup>34</sup> Brie A. Williams et al., *The Cardiovascular Health Burdens of Solitary Confinement*, *J. Gen. Internal Med.* (June 21, 2019).

more than one placement in restrictive housing or more than 14 consecutive days spent there.<sup>35</sup>

### ***Mental illness***

People with mental illness may experience severe exacerbation in segregation.<sup>36</sup> An “issue on which there is widespread agreement is that solitary confinement should never be used for certain vulnerable groups of prisoners,” and many correctional and health organizations have recommended that mentally ill prisoners should never be subjected to solitary confinement or have at a minimum called for the duration to be limited significantly.<sup>37</sup>

---

<sup>35</sup> Lauren Brinkley-Rubinstein, et al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, JAMA Network Open, 1, 5-6, 9 (Oct. 4, 2019), available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350> (last visited 10/8/2019).

<sup>36</sup> See Grassian, *Psychiatric Effects*, 325, 333; Bennion, *Banning the Bing*, 776.

<sup>37</sup> Haney, *Restricting the Use*, 285, 301-02 (noting recommendations by, *inter alia*, Nat’l Comm’n Corr. Health Care, *Position statement: solitary confinement (isolation)*, 22 J. Corr. Health Care 257, 260 (2016) (“Nat’l Comm’n Corr. Health Care, *Position statement*”) (mandating that mentally ill individuals should be “excluded from solitary confinement of any duration”)); Nat’l Alliance on Mental Illness, *Public Policy Platform of the National Alliance on Mental Illness*, 201 (2016), available at <https://www.nami.org/About-NAMI/Policy-Platform> (last visited 10/21/2019) (“oppos[ing] the use of solitary confinement and equivalent forms of extended administrative segregation for persons with mental illnesses”); Am. Pub. Health Ass’n, *Solitary Confinement as a Public Health Issue* (2013), available at <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/%2007/14/13/30/solitary-confinement-as-a-public-health-issue> (last visited 10/21/2019) (recommending categorically that “[p]risoners with serious mental illness should be excluded from placement in solitary confinement”)); Craig Haney et al., *Examining Jail Isolation: What We*

### *Lasting harm*

The psychological harms and brain effects<sup>38</sup> can be lasting, even irreversible.<sup>39</sup> “Across all [isolation and confinement] environments examined, post-isolation effects were recorded. While they each vary in intensity and duration, the symptomatology resembles [PTSD].”<sup>40</sup> Adapting to the unhealthy environment in solitary confinement can lead to long-term harm, if changed behavioral patterns are deeply internalized.<sup>41</sup> In this way, confinement units may “[destroy] a prisoner’s ability to cope in the free world.”<sup>42</sup>

### *Professional consensus*

Professional consensus has been to “limit the use of solitary confinement to an absolute minimum,”<sup>43</sup> with the American Bar Association issuing standards in

---

*Don’t Know Can Be Profoundly Harmful*, 96 *Prison J.* 126, 141 (2016) (citing Nat’l Research Council/Nat’l Acad. of Sci., *The growth of incarceration in the United States: Exploring the causes and consequences*, 201 (2014) (stating that “[l]ong-term segregation is not an appropriate setting for seriously mentally ill inmates”)).

<sup>38</sup> Gawande (“[F]ifty-seven prisoners of war, released after an average of six months in detention camps [had EEG-like tests revealing] brain abnormalities months afterwards; the most severe were found in prisoners who had endured either head trauma sufficient to render them unconscious or, yes, solitary confinement.”).

<sup>39</sup> Haney, *Restricting the Use*, 298-99; Kupers, *Isolated Confinement*, 213, 227; Grassian, *Psychiatric Effects*, 325, 332-33.

<sup>40</sup> Arias/Otto, 42.

<sup>41</sup> Haney, *Social Psychology*, 17; see also Haney, *Restricting the Use*, 285, 297.

<sup>42</sup> Kupers, *Isolated Confinement*, 227.

<sup>43</sup> Haney, *Restricting the Use*, 300.

2011 that “[s]egregated housing should be for the briefest term and under the least restrictive conditions practicable” (Standard 23-2.6(a)).<sup>44</sup> The National Commission on Correctional Health Care in 2016 stated that solitary confinement longer than 15 days constitutes “cruel, inhumane, or degrading treatment of inmates” and should not be employed.<sup>45</sup>

*Amici* ask that this scientific consensus be taken into consideration.

DATE: October 22, 2019

Respectfully submitted,

/s/ Christin Jaye Eaton

Christin Jaye Eaton

Julie Wahlstrand

FAEGRE BAKER DANIELS LLP

90 S. 7th St., Ste. 2200

Minneapolis, MN 55402

(612) 766-7000

christin.eaton@faegrebd.com

julie.wahlstrand@faegrebd.com

*Counsel for Amici Curiae*

---

<sup>44</sup> *ABA Standards for Criminal Justice: Treatment of Prisoners*. Washington, DC: Am. Bar. Ass’n 3<sup>rd</sup> ed., available at [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/Treatment\\_of\\_Prisoners.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/Treatment_of_Prisoners.authcheckdam.pdf) (last visited 10/11/2019).

<sup>45</sup> Nat’l Comm’n Corr. Health Care, *Position statement*, 260.



## CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limit of Fed. R. App. P. 29(b)(4) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 2,596 words.

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

In accordance with Circuit Rule 28A(h), I certify that this brief has been scanned for viruses and is virus-free.

/s/ Christin Jaye Eaton  
Counsel for *Amici Curiae*

## CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the Court's 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.

/s/ Christin Jaye Eaton  
Counsel for *Amici Curiae*