

No. 20-40379

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

DENNIS WAYNE HOPE,

Plaintiff-Appellant,

v.

TODD HARRIS; CHAD REHSE; LEONARD ESCHESSA; JONI
WHITE; KELLY ENLOE; MELISSA BENET; B. FIVEASH,

Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Texas, Hon. Ron Clark,
No. 9:18-cv-00027

**BRIEF OF *AMICI CURIAE* PROFESSORS AND
PRACTITIONERS OF PSYCHIATRY, PSYCHOLOGY, AND
MEDICINE IN SUPPORT OF PLAINTIFF-APPELLANT**

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CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A), as well as 5th Cir. R. 28.2.1, the undersigned counsel for *amici curiae* presents the following Certificate of Interested Persons:

1. No. 20-40379, *Hope v. Harris*
2. The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.
 3. *Amici* are the following:
 - Stuart Grassian;
 - Craig W. Haney;
 - Terry A. Kupers;
 - Pablo Stewart; and
 - Brie Williams.
 4. Attorneys and law firms representing *amici* are the following:
 - Benjamin I. Friedman;
 - J. Manuel Valle; and

- Sidley Austin LLP.
5. The plaintiff-appellant in this case is Dennis Wayne Hope.
6. Attorneys representing plaintiff-appellant are the following:
- Amir H. Ali;
 - Easha Anand; and
 - Daniel M. Greenfield.
7. The defendants-appellants in this case are the following:
- Melissa Benet;
 - Kelly Enloe;
 - Leonard Eschessa;
 - B. Fiveash;
 - Todd Harris;
 - Chad Rehse; and
 - Joni White.
8. Attorneys representing defendants-appellants are the following:
- Jason T. Bramow; and
 - Amy L. Prasad

/s/ Benjamin I. Friedman

Attorney of record for *Amici Curiae*

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INTEREST OF *AMICI CURIAE*¹

Amici curiae are experts in psychiatry, medicine, and psychology who have spent decades studying solitary confinement including its psychological and physiological effects on prisoners. Based on their own work—which the Supreme Court has relied on frequently²—and an assessment of the professional literature, *amici* have concluded that solitary confinement has devastating, often irreversible effects on prisoners’ mental and physical health. Research shows that solitary confinement of more than ten days causes harms both different and greater than prisoners incur in the general population. And the devastating effects of solitary confinement only get worse with time. The

¹ Under Federal Rule of Appellate Procedure 29(a)(4)(E), *amici curiae* state that no counsel for a party authored this brief in whole or part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than *amici curiae* and their counsel made any monetary contribution to its preparation and submission. All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

² *See, e.g., Glossip v. Gross*, 576 U.S. 863, 926 (2015) (Breyer, J., dissenting) (citing scholarship by Dr. Craig Haney and Dr. Stuart Grassian); *Davis v. Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring) (citing scholarship by Dr. Grassian); *Apodaca v. Raemisch*, 139 S. Ct. 5, 9 & n.8 (2018) (Sotomayor, J., respecting denial of certiorari) (citing scholarship by Dr. Grassian); *Brown v. Plata*, 563 U.S. 493, 518 (2011) (citing scholarship by Dr. Haney).

longer the confinement, the more severe the harm will be and the greater the chance that such harm will be irreversible.

Amici's expertise and knowledge of solitary confinement's devastating effects give them a keen interest in this case. *Amici* believe that the decision below is emblematic of lower courts' all-too-common failure to recognize that solitary confinement causes unique psychological and physiological harm, especially for prisoners who suffer from preexisting mental illness. *Amici* further believe that, based on Supreme Court precedent and the scientific consensus regarding solitary confinement's harmful effects, Dennis Wayne Hope has stated plausible claims under the Fourteenth Amendment's requirement of procedural due process, *see Wilkinson v. Austin*, 545 U.S. 209, 222–23 (2005), and the Eighth Amendment's prohibition of "cruel and unusual punishments," *see Hutto v. Finney*, 437 U.S. 678, 685 (1978).

Amici are the following:

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.

Craig W. Haney, Ph.D., J.D., is Distinguished Professor of Psychology and UC Presidential Chair at the University of California, Santa Cruz. He has researched and published numerous articles on the psychological effects of solitary confinement and has provided expert testimony before numerous courts and the United States Senate.

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.

Pablo Stewart, M.D., is Clinical Professor of Psychiatry at the University of Hawaii. He has worked in the criminal justice system for decades and as a court-appointed expert on the effects of solitary confinement for more than thirty years.

Brie Williams, M.D., M.S., is a Professor of Medicine, Director of the Criminal Justice & Health Program, and Director of Amend: Changing Correctional Culture at the University of California, San Francisco. She has published numerous articles on the physical effects of solitary confinement.

ARGUMENT

More than a century ago, the Supreme Court first observed that solitary confinement—even for short periods—causes prisoners to become “violently insane.” *In re Medley*, 134 U.S. 160, 168 (1890). *Amici’s* decades of research and scholarship confirm what the Supreme Court observed long ago: Solitary confinement imposes an “immense amount of torture and agony” on prisoners. *Apodaca v. Raemisch*, 139 S. Ct. 5, 10 (2018) (Sotomayor, J., respecting denial of certiorari). Over the past 150 years, scientists have frequently studied the psychological and physical effects of solitary confinement. And in nearly *every* instance, these studies conclude that “subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies.” Kenneth L. Appelbaum, *American Psychiatry Should Join the Call to Abolish Solitary Confinement*, 43 J. Am. Acad. Psychiatry & L. 406, 410 (2015).

It’s not hard to understand why. Humans, by their nature, are social. Like food and water, social interaction and environmental stimulation are necessary for human wellbeing. Craig Haney, *Restricting the Use of Solitary Confinement*, 1 Ann. Rev. Criminology 285, 298 (2018)

(collecting studies). Without these necessities, solitary confinement³ subjects prisoners to conditions so harsh that they amount to torture, leaving prisoners with permanent psychological and physical scars.

I. Solitary Confinement Deprives Prisoners of Essential Social Interaction and Environmental Stimulation.

Some species are naturally solitary, seeking out community infrequently and often for limited purposes. Jared Edward Reser, *Solitary Mammals Provide an Animal Model for Autism Spectrum Disorders*, 128 J. Comp. Psychol. 99, 100–01 (2014). Humans are the opposite: The human brain “is literally wired to connect with others.” Haney, *Restricting the Use*, *supra*, at 296 (internal quotations marks omitted). Basic executive function and physical health depend on adequate exposure to positive environmental stimuli, which allows humans to maintain “an adequate state of alertness and attention.” Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol’y 325, 330 (2006); Craig Haney, *The Psychological Effects of*

³ The term “Solitary confinement,” as used in the scientific literature and this brief, describes imprisonment under conditions that severely restrict meaningful social interaction and positive environmental stimuli. The conditions of Hope’s imprisonment are consistent with the conditions of solitary confinement at the facilities that were the subjects of the studies discussed here.

Solitary Confinement: A Systematic Critique, 47 *Crime & Just.* 365, 374–75 (2018).

And yet, near total absence of social interaction and positive environmental stimulation are the hallmarks of solitary confinement. See Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinq.* 124, 125–27 (2003). Prisoners in the general population may leave their cells for up to ten hours a day—during which they can meaningfully interact with other human beings, have contact visits, and access prison libraries, worship services, and vocational programs. See Haney, *The Psychological Effects of Solitary Confinement*, *supra*, at 388 n.12; *Brown v. Or. Dep’t of Corr.*, 751 F.3d 983, 985 (9th Cir. 2014). Prisoners in solitary confinement, however, spend at least twenty-two hours every day alone in small, bare cells. Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement is Cruel and Far Too Usual Punishment*, 90 *Ind. L.J.* 741, 753 (2015). These cells contain only a bunk, a toilet, and a sink. *Id.* Within them, prisoners “sleep, eat, and defecate . . . in spaces that are no more than a few feet apart.” *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before*

the Subcomm. on the Constitution, Civil Rights, & Human Rights of the S. Comm. on the Judiciary, 112th Cong. 72, 75 (2012) (prepared statement of Dr. Craig Haney, Professor of Psychology, University of California, Santa Cruz).

The only sounds a prisoner will hear from his cell are the slamming of cell doors and intermittent screaming from other prisoners—nothing that constitutes “meaningful human communication.” Terry A. Kupers *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment’s Sake?*, in *The Routledge Handbook for Int’l Crime & Just. Studies* 213, 215–16 (Bruce A. Arrigo & Heather Y. Bersot eds., 2014). If anything, such noises exacerbate the other negative environmental stimuli—the stench of feces and urine, and the constant glare of fluorescent lights—that surround a prisoner in solitary confinement. *See, e.g.*, 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, 37–39, 39 n.217 (2012).

The short time prisoners spend outside their cells provides no respite from these conditions. Haney, *Mental Health Issues*, *supra*, at

126. Prisoners in solitary confinement may occasionally leave their cells to exercise, but they must do so alone “in caged-in or cement-walled areas that are so constraining they are often referred to as ‘dog runs.’” *Id.* Trips to the “dog runs” are usually preceded by strip and cavity searches so painful and intrusive that many prisoners forego exercise to avoid them. *See, e.g., Williams v. Sec’y Pa. Dep’t of Corr.*, 848 F.3d 549, 554 (3d Cir. 2017) (describing strip searches so invasive that a prisoner sacrificed the opportunity to exercise for nearly seven years to avoid them), *cert. denied sub nom. Williams v. Wetzel*, 138 S. Ct. 357 (2017); *Incumaa v. Stirling*, 791 F.3d 517, 531 (4th Cir. 2015) (noting that a prisoner in solitary confinement experienced “near-daily cavity and strip searches”). Apart from these strip and cavity searches, prisoners’ only human contact while in solitary confinement occurs when guards place them in restraints. Hafemeister & George, *supra*, at 17.

Thus, compared to the general population, prisoners in solitary confinement suffer, “to the fullest extent possible, complete sensory deprivation and social isolation.” *Id.*

II. Solitary Confinement Causes Uniquely Severe (Often Irreversible) Psychological And Physical Injuries.

The severe social isolation and sensory deprivation of solitary confinement cause injuries that are different in both kind and degree from those associated with ordinary incarceration.

Without environmental stimulation or social interaction, prisoners in solitary confinement endure a condition that “can be as clinically distressing as physical torture,” *see* 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), and is, in fact, “frequently used as a component of torture,” Haney, *The Psychological Effects of Solitary Confinement*, *supra*, at 373–75. This condition—especially when, as here, it is prolonged—imposes grave psychological and physical harms. *See id.* at 367–68, 370–75 (collecting studies); Grassian, *Psychiatric Effects*, *supra*, at 335–38.

Psychological injuries stemming from solitary confinement commonly include cognitive dysfunction, severe depression, memory loss, anxiety, paranoia, panic, hallucinations, and stimuli hypersensitivity. *See* Haney, *Mental Health Issues*, *supra*, at 130–31, 134–35 (collecting studies); Grassian, *Psychiatric Effects*, *supra*, at 335–36, 349, 370–71;

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).

Self-mutilation and suicidal ideation are characteristic of prisoners in solitary confinement. See Grassian, *Psychiatric Effects*, *supra*, at 336, 349; Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 *Am. J. Psychiatry* 1450, 1453 (1983). Explaining this phenomenon to Congress, Dr. Haney described how one prisoner “used a makeshift needle and thread from his pillowcase to sew his mouth completely shut,” and another “amputated one of his pinkie fingers and chewed off the other, removed one of his testicles and scrotum, sliced off his ear lobes, and severed his Achilles tendon.” *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, 80–81 (2012) (prepared statement of Dr. Craig Haney, Professor of Psychology, University of California, Santa Cruz).

Even when prisoners can overcome the psychological trauma of solitary confinement, they find themselves suffering from a host of

serious physiological injuries, which include hypertension, heart palpitations, gastrointestinal disorders, headaches, and severe insomnia. Haney, *Mental Health Issues*, *supra*, at 133; Smith, *The Effects of Solitary Confinement on Prison Inmates*, *supra*, at 488–90. Solitary confinement also causes “increased activation of the brain’s stress systems,” Bennion, *supra*, at 762 (quoting John T. Cacioppo & Stephanie Ortigue, *Social Neuroscience: How a Multidisciplinary Field Is Uncovering the Biology of Human Interactions*, *Cerebrum*, Dec. 19, 2011, at 7–8), which eventually kills brain cells and “rewire[s]” the brain. See Carol Schaeffer, “*Isolation Devastates the Brain*”: *The Neuroscience of Solitary Confinement*, Solitary Watch (May 11, 2016), <https://solitarywatch.org/2016/05/11/isolation-devastates-the-brain-the-neuroscience-of-solitary-confinement/>; Nicole Branan, *Stress Kills Brain Cells Off*, 18 *Sci. Am.* 10 (June 2007). These physiological changes can affect the hippocampus, a brain area important for emotion regulation and memory, see Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, *Sci. Am.* (Nov. 9, 2018), <https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/>, and it can also increase the size of the amygdala, which makes the brain more susceptible to stress, creating

a vicious cycle. See Bruce S. McEwen et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 *Neuropsychopharmacology* 3, 12–14 (2016).

Not only are these psychological and physical injuries devastating in their own right, studies have consistently shown that they are also more severe than the injuries associated with ordinary imprisonment. For instance, one study in Denmark found that prisoners who spent more than four weeks in solitary confinement were *twenty times* more likely to require psychiatric hospitalization. Bennion, *supra*, at 758 (citing Dorte Maria Sestoft et al., *Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody*, 21 *Int'l J.L. & Psychiatry* 99, 103 (1998)). Similarly, a California study by Dr. Haney concluded that the distress and suffering of general population prisoners bore “absolutely no comparison to the level of suffering and distress” experienced by prisoners in solitary confinement. Expert Report of Craig Haney at 81, *Ashker v. Brown*, No. 4:09-cv-05796-CW (N.D. Cal. Mar. 12, 2015) (available at https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted_Haney%20Expert%20Report.pdf). Instead, Dr. Haney’s study found on “nearly every single specific dimension . . . measured,”

prisoners in solitary confinement were “in significantly more pain, were more traumatized and stressed, and manifested more isolation-related pathological reactions.” *Id.* at 81–82.

Other studies have similarly concluded that prisoners “in solitary confinement suffered significantly more both physically and psychologically than the prisoners” in the general population. Smith, *The Effects of Solitary Confinement on Prison Inmates*, *supra*, at 477; Hafemeister & George, *supra*, at 46–47 (describing Washington study concluding that mental illness was twice as common for prisoners in solitary confinement). For example, rates of self-mutilation and suicide are far higher for prisoners in solitary confinement. Grassian, *Psychiatric Effects*, *supra*, at 336, 349; Haney, *Restricting the Use*, *supra*, at 294; Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 *Am. J. Pub. Health* 442, 445–47 (2014) (finding that inmates in solitary confinement were about 6.9 times as likely to commit acts of self-harm). Indeed, although prisoners in solitary confinement comprise less than 10% of the United States prison population, they generally account for 50% of all prisoner suicides. *See* Stuart Grassian &

Terry Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, 13 *Corr. Mental Health Rep.* 1, 9 (2011).⁴

The onset of adverse symptoms is almost immediate. Prisoners need not be in solitary confinement for months or years to realize these psychological and physiological injuries. *See, e.g.*, Grassian, *Psychiatric Effects, supra*, at 331 (noting measurable harm within days of solitary confinement). Within days of placement in solitary confinement, brain scans may reflect “abnormal pattern[s] characteristic of stupor and delirium.” *Id.*; U.N. Human Rights Council, *U.N. Special Rapporteur, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, at 9, U.N. Doc. A/66/268 (Aug. 5, 2011) (concluding that “harmful psychological effects of isolation can become irreversible” after only 15 days of solitary

⁴ *Accord* Lauren Brinkley-Rubinstein et al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, *JAMA Network Open*, Oct. 4, 2019, at 1, 5–6, 9, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350> (studying more than 225,000 prisoners in North Carolina and finding that compared “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”).

confinement). Thus, where, as in Hope's case, the deprivation is "prolonged,"⁵ some harms are inevitable, even if symptoms are not obvious or take time to manifest.

And the longer the time spent in solitary confinement, the more likely the psychological and physiological injuries will be irreversible. Haney, *Mental Health Issues, supra*, at 137–41. Prisoners often find the psychological dysfunctions caused by solitary confinement permanently disabling. *Id.* By transforming a person's emotions, personality, and cognition, solitary confinement may render prisoners permanently ill-suited to life in a less restrictive environment. Grassian, *Psychiatric Effects, supra*, at 332–33. For example, Kalief Browder, who spent seventeen months in solitary confinement, attempted suicide twice within six months of his release. Jennifer Gonnerman, *Before the Law*, *The New Yorker* (Oct. 6, 2014), <https://www.newyorker.com/magazine/2014/10/06/before-the-law>. Once released from isolation, Mr. Browder described himself as "mentally scarred" and fearful that the "things that changed" about his personality "might not go back" with time. *Id.* Less

⁵ Experts generally consider solitary confinement "prolonged" when it exceeds three months. See Kupers, *Isolated Confinement, supra*, at 214.

than two years later, he hanged himself. Jennifer Gonnerman, *Kalief Browder, 1993-2015*, *The New Yorker* (June 7, 2015), <http://www.newyorker.com/news/news-desk/kaliefbrowder-1993-2015>.

This overwhelming scientific evidence shows that the psychological and physical harms associated with solitary confinement are not endured by prisoners in the general population, are often irreversible, and are so severe that they can be debilitating or fatal.

CONCLUSION

For these reasons, *amici* respectfully request that this Court find in favor of Appellant Hope and reverse the district court's judgment.

Dated: September 28, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2020, an electronic copy of the foregoing was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system, and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin I. Friedman

Benjamin I. Friedman

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Dated: September 28, 2020

/s/ Benjamin I. Friedman

Benjamin I. Friedman