

No. 16-2444

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

JWAINUS PERRY,

Plaintiff-Appellant,

v.

LUIS S. SPENCER, Commissioner; THOMAS DICKAUT, Former
Superintendent; ANTHONY MENDOSA, Former Deputy of Classification;
JAMES SABA, Superintendent; ABBE NELLIGAN, Deputy of Classification;
PATRICK TOOLIN, Correctional Program Officer; KRISTIE LADOU CER;
CAROL MICI; THOMAS NEVILLE,

Defendants-Appellees,

JENS SWANSON, Property Officer,

Defendant.

On Appeal from the United States District Court
for the District of Massachusetts (Boston)

**BRIEF FOR AMICI CURIAE TERRY KUPERS, CRAIG HANEY,
PABLO STEWART, AND STUART GRASSIAN AS AMICI CURIAE IN
SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

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CASES

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<i>In re Medley</i> , 134 U.S. 160 (1890).....	19

OTHER AUTHORITIES

Abramsky, Sasha & James Fellner, <i>Ill-Equipped: U.S. Prisons and Offenders with Mental Illness</i> , New York: Human Rights Watch (2003), https://www.hrw.org/sites/default/files/reports/usa1003.pdf	23
<i>Adoption of the Separate System in the States of Central Europe—and Its Prospects Else-Where</i> , 12 Pa. J. Prison Discipline & Philanthropy 79 (1857)	18
Arrigo, Bruce A. & Jennifer L. Bullock, <i>The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change</i> , 52 Int. J. Offender Ther. Comp. Criminol. 622 (2008)	16
Bennion, Elizabeth, <i>Banning the Bing: Why Extreme Solitary Confinement is Cruel and Far Too Usual Punishment</i> , 90 Ind. L.J. 741 (2015).....	6
Blanco-Suarez, Elena, <i>The Effects of Solitary Confinement on the Brain</i> , Psychology Today (Feb. 27, 2019).....	6, 15, 17
Brinkley-Rubinstein, Lauren et al., <i>Association of Restrictive Housing During Incarceration with Mortality After Release</i> , JAMA Network Open (Oct. 2019), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350	13, 14, 16, 23
Cacioppo, Stephanie, et al., <i>Toward a Neurology of Loneliness</i> , 140 Psych. Bull. 1464 (2014)	5
Cloud, David H. et al, <i>Public Health and Solitary Confinement in the United States</i> , 105 Am. J. Pub. Health 18 (2015).....	21

Cloud, David H. et al., *“We Just Needed to Open the Door:” A Case Study of the Quest to End Solitary Confinement in North Dakota*, Health & Justice (2021)3

Cormier, Bruno M. & Paul J. Williams, *Excessive Deprivation of Liberty*, 11 Canadian Psychiatric Ass’n J. 470 (1966)20

Correction Association of New York, *Lockdown New York: Disciplinary Confinement in New York State Prisons* (October 2003), <https://www.prisonpolicy.org/scans/lockdown-new-york-1.pdf>8, 10

DeVeaux, Mika’il, *The Trauma of the Incarceration Experience*, 48 Harv. C.R.-C.L. L. Rev. 257 (2013)7, 10

Dickens, Charles, *American Notes* (originally published 1842)18

Eisenberger, Naomi I. & Matthew D. Lieberman, *Why Rejection Hurts: A Common Neural Alarm System for Physical and Social Pain*, 8 Trends Cognitive Sci. 294 (2004)4

Eisenberger, Naomi I. et al., *Does Rejection Hurt? An fMRI Study of Social Exclusion*, 302 Science 290 (2003)4

Eisenberger, Naomi I., *The Pain of Social Disconnection: Examining the Shared Neural Underpinnings of Physical and Social Pain*, 13 Nature Revs.: Neuroscience 421 (2012)4

Eisenberger, Naomi I., *Social Pain and the Brain: Controversies, Questions, and Where to Go from Here*, 66 Ann. Rev. Psychol. 601 (2015)4

Elovainio, Marko et al, *Contribution of Risk Factors to Excess Mortality in Isolated and Lonely Individuals: An Analysis of Data from the UK Biobank Cohort Study*, 2 Lancet Pub. Health e260 (2017)4

Fellner, Jamie, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 Harv. C.R.-C.L. L. Rev. 391 (2006)27

Friedler, Brett et al., *One Is the Deadliest Number: The Detrimental Effects of Social Isolation on Cerebrovascular Diseases and Cognition*, 129 Acta Neuropathology 493 (2015)4

Gawande, Atul, *Hellhole*, New Yorker, Mar. 30, 2009, <http://www.newyorker.com/magazine/2009/03/30/hellhole>12

Gendreau, Paul et al., *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. Abnormal Psych. 54 (1972)20

Gilmour, Andrew, *The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty*, UN Chronicle, United Nations, <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty>17, 21, 22

Grassian, Stuart & Terry Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, Correctional Mental Health Rep. (May/June 2011)24

Grassian, Stuart, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Poly 325 (2006)11, 12, 13, 15

Grassian, Stuart, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry 1450 (1983)21, 25

Hafemeister, Thomas L. & 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 (2012)9, 23, 24

Haney, Craig & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev. L. & Soc. Change 477 (1997).....3, 25

Haney, Craig et al., *Consensus Statement from the Santa Cruz Summit on Solitary Confinement and Health*, 115 N.W. U. L. Rev. 335 (2020)22

Haney, Craig, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 Crime & Delinq. 124 (2003).....*passim*

Haney, Craig, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365 (2018)20

Haney, Craig, *The Science of Solitary: Expanding the Harmfulness Narrative*, 115 N.W. U. L. Rev. 211 (2020).....*passim*

Lobel, Jules & Huda Akil, *Law & Neuroscience: The Case of Solitary Confinement*, 147 *Daedalus* 61 (2018)6, 15, 17

Lobel, Jules, *Mass Solitary and Mass Incarceration: Explaining the Dramatic Rise in Prolonged Solitary in America’s Prisons*, 115 *N.W. U. L. Rev.* 159 (2020)21

Lovell, David et al., *Who Lives in Super-Maximum Custody? A Washington State Study*, 64 *Fed. Prob.* 33 (2000)23

Marcus, Andrea Fleisch et. al, *Relationships Between Social Isolation, Neighborhood Poverty, and Cancer Mortality in a Population-Based Study of US Adults*, *Plos One* (Mar. 8, 2017)5

Margulis, Stephen T., *Privacy as a Social Issue and Behavioral Concept*, 59 *J. Soc. Issues* 243 (2003)9

Metzner, Jeffrey L. & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 *J. Am. Academy Psychiatry & L.* 104 (2010)24

Meyer, Meghan L. et al., *Why Social Pain Can Live On: Different Neural Mechanisms Are Associated with Reliving Social and Physical Pain*, *Plos One* (June 10, 2015)4

O’Grady, Siobhán, *How did Nelson Mandela survive 27 years in prison? A new collection of letters sheds light*, *Wash. Post* (Jul. 18, 2018), <https://www.washingtonpost.com/news/worldviews/wp/2018/07/18/how-did-nelson-mandela-survive-27-years-in-prison-a-new-collection-of-letters-sheds-light/>17

Pantell, Matthew et al., *Social Isolation: A Predictor of Mortality Comparable to Traditional Clinical Risk Factors*, 103 *Am. J. Pub. Health* 2056 (2013)5

Patterson, Raymond F. & Kerry Hughes, *Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999 to 2004*, 59 *Psychiatric Services* 676 (2008)25

Pullen-Blasnik, Hannah et al., *The Population Prevalence of Solitary Confinement*, 7 *Sci. Adv.* 1 (2021)16

Redacted Expert Report of Craig Haney, *Ashker v. Brown*, No. 4:09
 CV 05796 CW (N.D. Cal. 2015), https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted_Haney%20Expert%20Report.pdf10

Schaeffer, Carol, “*Isolation Devastates the Brain*”: *The Neuroscience of Solitary Confinement*, *Solitary Watch* (May 11, 2016).....15

Scott, G.D. & Paul Gendreau, *Psychiatric Implications of Sensory Deprivation in a Maximum Security Prison*, 14 *Canadian Psychiatric Ass’n J.* 337 (1969).....9, 20

Smith, Dana G., *Neuroscientists Make a Case Against Solitary Confinement*, *Scientific American* (Nov. 9, 2018)15

Smith, Peter Scharff, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 *Crime & Just.* 441 (2006).....*passim*

Smith, Peter Scharff, National Institute of Corrections, *The Effects of Solitary Confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation* (2010).....17, 19

Standard Minimum Rules for the Treatment of Prisoners, First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf22

Tanskanen, Jussi & Timo Anttila, *A Prospective Study of Social Isolation, Loneliness, and Mortality in Finland*, 106 *Am. J. Pub. Health* 2042 (2016)5

Walters, Richard et al., *Effect of Solitary Confinement on Prisoners*, 119 *Am. J. Psychiatry* 771 (1963)20

Wynn, Jennifer R. & Alisa Szatrowski, *Hidden Prisons: Twenty-Three-Hour Lockdown Units in New York State Correctional Facilities*, 24 *Pace L. Rev.* 497 (2004)24

INTEREST OF 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 individuals who are in penal confinement, including solitary confinement. Based on their research and assessment of the professional literature, amici curiae have concluded that any amount of solitary confinement’s deprivation of social contact and adequate positive environmental stimulation—two basic human needs—can cause grave damage to prisoners’ mental and physical health; this damage can be exacerbated when the period of isolation is lengthy. This damage has long been recognized by experts and society at large. Research further shows that solitary confinement can be particularly harmful to those suffering from mental illness.

Amici are the following:

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

Craig Haney, Ph.D., J.D., is Distinguished Professor of Psychology and UC Presidential Chair at the University of California, Santa Cruz. One of the researchers in the “Stanford Prison Experiment,” he has been studying actual

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

Amici curiae state, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), that no counsel for a party 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 amici curiae or their counsel contributed money intended to fund preparing or submitting this brief.

ARGUMENT

Psychologists and psychiatrists agree that solitary confinement can have disastrous psychological and physical consequences for prisoners who are confined to a small cell without meaningful social interaction or positive environmental

stimulation.¹ The dangerous effects of solitary confinement are particularly grievous for prisoners with mental illness and prisoners who spend extended periods in solitary confinement. That is especially so where both conditions are present, as in the case of Appellant Jwainus Perry, who has been diagnosed with bipolar disorder and ADHD and spent more than 600 days isolated in a cell “so small that he could stand in the middle of it, stretch out his arms, and touch both sides of the cell.”²

I. FORCED SOLITARY EXISTENCES ARE DEHUMANIZING

Positive environmental stimulation and meaningful interactions with others are critical to mental health.³ Research on the effects of social isolation and exclusion—even outside the prison context—confirms the importance of human contact as a basic human need.⁴ Denying individuals contact with others

¹ See, e.g., Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 *Crime & Just.* 441, 443, 487 (2006); Cloud, et al., “*We Just Needed to Open the Door: A Case Study of the Quest to End Solitary Confinement in North Dakota*,” Health & Justice (2021).

² Appellant’s Petition for Rehearing and Rehearing En Banc at 3, No. 16- 2444, (1st Cir. Nov. 19, 2018) (noting that Mr. Perry has been diagnosed with bipolar disorder and ADHD).

³ See Haney & Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 *N.Y.U. Rev. L. & Soc. Change* 477, 504-507 (1997).

⁴ Haney, *The Science of Solitary: Expanding the Harmfulness Narrative*, 115 *N.W. U. L. Rev.* 211, 223 (2020).

dehumanizes them.⁵ It deprives them of affiliation—“the opportunity to have meaningful contact with others”—which research has shown plays a key role in reducing anxiety and helping humans regulate their emotions.⁶ Social isolation also deprives individuals of the social grounding that normally helps anchor them to socially appropriate thoughts and behaviors.⁷ It also causes “social pain” from “social deprivation, exclusion, rejection or loss,” a phenomenon that is observable in neural circuitry within the brain and is long remembered by those who experience it.⁸ Social isolation has also been shown to damage the human immune system and is correlated to increased mortality rates.⁹ Social exclusion—the forced

⁵ *Id.*; Lieberman, *Social: Why Our Brains Are Wired to Connect* 4-5 (2013) (human “brains evolved to experience threats to our social connections in much the same way they experience physical pain”).

⁶ Haney, *supra* note 4, at 223-224.

⁷ *Id.*

⁸ *Id.* at 224 (citing Eisenberger, *The Pain of Social Disconnection: Examining the Shared Neural Underpinnings of Physical and Social Pain*, 13 *Nature Revs.: Neuroscience* 421, 421 (2012); Eisenberger, *Social Pain and the Brain: Controversies, Questions, and Where to Go from Here*, 66 *Ann. Rev. Psychol.* 601, 621 (2015); Eisenberger et al., *Does Rejection Hurt? An fMRI Study of Social Exclusion*, 302 *Science* 290 (2003); Eisenberger & Lieberman, *Why Rejection Hurts: A Common Neural Alarm System for Physical and Social Pain*, 8 *Trends Cognitive Sci.* 294, 294 (2004); Meyer et al., *Why Social Pain Can Live On: Different Neural Mechanisms Are Associated with Reliving Social and Physical Pain*, *Plos One* (June 10, 2015)).

⁹ See Elovainio et al, *Contribution of Risk Factors to Excess Mortality in Isolated and Lonely Individuals: An Analysis of Data from the UK Biobank Cohort Study*, 2 *Lancet Pub. Health* e260 (2017); Friedler et al., *One Is the Deadliest Number: The Detrimental Effects of Social Isolation on Cerebrovascular Diseases and*

and intentional exclusion of individuals from society against their will—damages individuals’ self-esteem and can eventually lead to depression, anxiety, emotional numbness, and lethargy.¹⁰ Social exclusion has also been found to lead to violent and aggressive behavior.¹¹

Experimental animal studies have demonstrated that “social isolation...has significant effects on the brain structure and processes in adult social animals.”¹² When mice—which have similar neuroanatomy to humans—are subjected to isolation, their brains undergo dramatic changes: they lose neurons (nerve cells); their remaining neurons reduce in size; the number of connections between

Cognition, 129 *Acta Neuropathology* 493 (2015); Hawkley & T. Cacioppo, *Loneliness Matters: A Theoretical and Empirical Review of Consequences and Mechanisms*, 40 *Annals Behav. Med.* 218, 219 (2010); Pantell et al., *Social Isolation: A Predictor of Mortality Comparable to Traditional Clinical Risk Factors*, 103 *Am. J. Pub. Health* 2056 (2013); Tanskanen & Anttila, *A Prospective Study of Social Isolation, Loneliness, and Mortality in Finland*, 106 *Am. J. Pub. Health* 2042 (2016); Marcus et. al, *Relationships Between Social Isolation, Neighborhood Poverty, and Cancer Mortality in a Population-Based Study of US Adults*, *Plos One* (Mar. 8, 2017).

¹⁰ See, e.g., Leary et al., *Calibrating the Sociometer: The Relationship Between Interpersonal Appraisals and State Self-Esteem*, 74 *J. Personality & Soc. Psychol.* 1290, 1297-1298 (1998); Leary et al., *The Role of Low Self-Esteem in Emotional and Behavioral Problems: Why Is Low Self-Esteem Dysfunctional?*, 14 *J. Soc. & Clinical Psychol.* 297, 307 (1995).

¹¹ Haney, *supra* note 4, at 233.

¹² Cacioppo et al., *Toward a Neurology of Loneliness*, 140 *Psych. Bull.* 1464, 1485 (2014).

remaining neurons is reduced; and their brains undergo a loss of blood vessels.¹³ These chemical and physical changes can “precipitate depression-like” and “anxiety-like” behavior in experimental subjects, “suppress the animal immune response to illness,” “impair[] their working memory,” and “disrupt[] brain activity.”¹⁴

II. SOLITARY CONFINEMENT DEPRIVES PRISONERS OF BASIC HUMAN NEEDS

Prisoners in solitary confinement generally spend 22-23 hours each day alone in a cramped, stark cell, subjected to extreme social isolation and social exclusion.¹⁵ Those confined to solitary units “eat, sleep, and defecate in spaces within a few feet of each other.”¹⁶ Their cells are normally “no more than between sixty to eighty square feet in dimension—about the size of a king-sized bed or parking space.”¹⁷ Cells and cellblocks designed for solitary confinement are often constructed of concrete, cinderblock, and metal fencing; they frequently lack

¹³ James & Vanko *The Impacts of Solitary Confinement*, Vera Institute of Justice (2021) (citing Lobel & Akil, *Law & Neuroscience: The Case of Solitary Confinement*, 147 *Daedalus* 61 (2018); Blanco-Suarez, *The Effects of Solitary Confinement on the Brain*, *Psychology Today* (Feb. 27, 2019)).

¹⁴ Haney, *supra* note 4, at 225.

¹⁵ Smith, *supra* note 1, at 448-449.

¹⁶ Bennion, *Banning the Bing: Why Extreme Solitary Confinement is Cruel and Far Too Usual Punishment*, 90 *Ind. L.J.* 741, 743, 751 (2015).

¹⁷ Haney, *Solitary Confinement, Loneliness, and Psychological Harm*, in *Solitary Confinement: Effects, Practices, and Pathways toward Reform* 131 (Jules Lobel & Peter Scharff Smith eds.).

access to or even view of natural surroundings or natural light.¹⁸ Prisoners in solitary confinement usually endure long periods of idleness because “[f]ew[,] if any[,] rehabilitation or education programs exist” for segregated inmates.¹⁹ They are often prohibited from possessing books, watching television, or listening to the radio, limitations that further deprive them of mental stimulation and a way to distract themselves and pass the time.²⁰

The brief periods that segregated prisoners are typically allowed outside their cells do not provide opportunities for meaningful human contact or positive environmental exposure. For example, prisoners’ limited recreational time is typically also spent alone “in caged-in or cement-walled areas that are so constraining they are often referred to as ‘dog runs.’”²¹ Segregated prisoners are also rarely allowed contact visits (in which they are allowed to touch their visitors)

¹⁸ Haney, *supra* note 4, at 237.

¹⁹ 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, 214 (Bruce A. Arrigo & Heather Y. Bersot eds., 2014).

²⁰ Koffler, *What 43 Years of Solitary Confinement Does to the Mind*, *Time* (Jun. 9, 2015); *see also* DeVeaux, *The Trauma of the Incarceration Experience*, 48 *Harv. C.R.-C.L. L. Rev.* 257, 273 (2013) (describing prisoners’ efforts to “counter the idleness, lack of programs, and dearth of anything to read” during the author’s time in solitary confinement).

²¹ Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinq.* 124, 126 (2003).

and are generally not allowed to participate in group activities.²² Carceral facilities with solitary confinement units are often in remote locations, making it difficult for the loved ones of segregated prisoners to visit them. Many segregated prisoners are not allowed phone calls or are allotted very short periods of time on the phone.²³ When rare in-person visits do occur, they are generally only permitted through glass partitions and over phones.²⁴ Research has shown the human need for physical touch and its social and psychological benefits, as well as the considerable negative effects of touch deprivation.²⁵ But prisoners in solitary confinement are routinely denied the comfort of physical closeness to or physical contact with visitors.

When humans are deprived of positive environmental interactions such as human contact and exposure to natural light and outdoor sounds, cognitive functions like mental alertness and concentration deteriorate.²⁶ Solitary

²² James & Vanko, *supra* note 13; Haney, *supra* note 4, at 238, 252.

²³ James & Vanko, *supra* note 13; Haney, *supra* note 4, at 238, 252.

²⁴ *Id.*; Corr. Ass'n of N.Y., *Lockdown New York: Disciplinary Confinement in New York State Prisons* 7 (2003) (“Visits are conducted behind Plexiglas or mesh-wire barriers and limited to once a week Some inmates remain handcuffed throughout their visits (thus, they cannot embrace or hold hands with their visitors”).

²⁵ Haney, *supra* note 4, at 234-235.

²⁶ See, e.g., Scott & Gendreau, *Psychiatric Implications of Sensory Deprivation in a Maximum Security Prison*, 14 *Can. Psychiatric Ass'n J.* 337, 339 (1969).

confinement in prison magnifies the damage from underexposure to positive stimuli by simultaneously overexposing prisoners to negative stimuli such as the shouting of officers and inmates, banging of heavy doors, pounding on walls, foul smells, and the constant glare of fluorescent lights.²⁷ Exposure to uncontrollable negative conditions can cause many prisoners to suffer from chronic sleeplessness, which “intensifies psychiatric symptoms ... and magnifies cognitive problems, memory deficits, confusion, anxiety, and sluggishness.”²⁸

In addition to suffering the severe effects of social isolation and exclusion, many inmates in solitary confinement experience the adverse effects of hypervigilance due to an extreme lack of privacy.²⁹ Inmates are constantly monitored, undermining the human need for at least limited access to privacy.³⁰ In solitary confinement, inmates’ entire living areas are always visible and accessible to prison personnel. Some inmates are even placed in “stripped cells” which contain nothing more than a mattress and a blanket.³¹ Even when inmates are

²⁷ Hafemeister & 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); Haney, *supra* note 4, at 238.

²⁸ Kupers, *supra* note 18, at 218.

²⁹ Haney, *supra* note 4, at 240.

³⁰ Margulis, *Privacy as a Social Issue and Behavioral Concept*, 59 J. Soc. Issues 243, 246 (2003).

³¹ DeVeaux, *supra* note 19, at 272.

permitted to exit their cells for short periods of time to exercise or engage in no-contact visits, they remain under surveillance.³² They are often required to wear handcuffs, a waist chain and sometimes leg irons when removed from their cells.³³

III. SOLITARY CONFINEMENT CAUSES SEVERE, LONG-TERM PSYCHOLOGICAL AND PHYSICAL HARM TO PRISONERS

The harmful effects of solitary confinement are much more severe than the effects of imprisonment in the general prison population.³⁴ For example, research comparing prisoners in California’s Pelican Bay State Prison found that, although prisoners in the general population were suffering and in distress, inmates subjected to social isolation and exclusion in solitary confinement were “in significantly more pain, were more traumatized and stressed, and manifested more isolation-related pathological reactions.”³⁵ They also suffered isolation-related symptoms with more than twice the frequency as compared to prisoners who were not isolated.³⁶ Other studies have shown that PTSD, depression, emotional numbing, anxiety, and hypervigilance are as much as ten times more common

³² Haney, *supra* note 4, at 240.

³³ Corr. Ass’n of N.Y., *supra* note 23, at 7.

³⁴ See Smith, *supra* note 1, at 477 (noting that in studies “those in solitary confinement suffered significantly more both physically and psychologically than the prisoners in the [non-isolated] control group”).

³⁵ Redacted Expert Report of Craig Haney at 81-82, *Ashker v. Brown*, No. 09-CV-05796 (N.D. Cal. 2015).

³⁶ Haney, *supra* note 4, at 247-248.

among prisoners in solitary confinement than among prisoners in the general population.³⁷

Experts have described the harms of solitary confinement as including cognitive dysfunction, stimuli hypersensitivity, insomnia, memory loss, lethargy, severe depression, anxiety, paranoia, panic, hallucinations, rage, and withdrawal.³⁸ These harmful effects may manifest long after prisoners are released from isolation. Solitary confinement can have a long-term impact on prisoners' thinking, emotions, conduct, and personalities—potentially rendering them permanently ill-suited to life outside solitary confinement, let alone life outside prison.³⁹ In solitary confinement, prison staff tightly control nearly every aspect of a prisoner's existence. As a result, after release from solitary confinement, prisoners may “become uncomfortable with even small amounts of freedom.”⁴⁰ Many find it challenging to re-establish normalcy in their lives and struggle with returning to ordinary sleeping and eating patterns, or moving beyond the mental

³⁷ *Id.* at 244 & n.123.

³⁸ See Haney, *supra* note 20, at 130-131, 134-135 (collecting studies); Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 335-337 (2006); Smith, *supra* note 1, at 492.

³⁹ Grassian, *supra* note 37, at 354 (finding that individuals incarcerated in solitary confinement for several years “had become strikingly socially impoverished and experienced intense irritation with social interaction, patterns dramatically different from their functioning prior to solitary confinement.”).

⁴⁰ Haney, *supra* note 20, at 139.

“fog” often caused by solitary confinement.⁴¹ These effects have been documented by studies showing that individuals who experienced solitary confinement while incarcerated experience adjustment problems following release at higher rates than individuals who were housed in general population.⁴²

Prisoners’ limited opportunities for meaningful social interaction while in solitary confinement create a brutal paradox: “[A]s starved as people become for companionship, the experience typically leaves them unfit for social interaction.”⁴³ For example, after release from solitary confinement, prisoners can find it difficult to engage in face-to-face conversation or handle crowded spaces and may feel generally unable to lead non-solitary lives.⁴⁴ The common prohibition of contact visits and the difficulty of visiting inmates in solitary confinement often prevents isolated individuals from maintaining strong relationships on the outside that could help prisoners re-integrate and adapt upon release.⁴⁵ Moreover, as discussed in greater detail below, prisoners’ inability to acclimate to life outside of solitary confinement becomes more entrenched as the duration of that confinement

⁴¹ Gawande, *Hellhole*, New Yorker (Mar. 30, 2009); Grassian, *supra* note 37, at 331.

⁴² Haney, *supra* note 4, at 252.

⁴³ Gawande, *supra* note 40.

⁴⁴ *Id.*; Smith, *supra* note 1, at 484.

⁴⁵ Haney, *supra* note 4, at 252; James & Vanko, *supra* note 12.

increases.⁴⁶ These harmful effects may escape the attention of prison mental health staff, but can remain latent even if a prisoner does not overtly exhibit psychological trauma while in solitary confinement.⁴⁷

For example, one recent study analyzed outcomes for a cohort of 229,274 individuals who were incarcerated in the North Carolina prison system between January 2000 and December 2016.⁴⁸ The study revealed that, compared with individuals who were incarcerated but not placed in solitary confinement, those who spent any time in solitary confinement were 24% more likely to die in the first year after release. Moreover, they were 78% more likely to die from suicide and 54% more likely to die from homicide.⁴⁹ Those isolated prisoners were also 127% more likely to die of an opioid overdose in the first 2 weeks after being released from prison, and were also more likely to eventually return to prison.⁵⁰ These dramatic findings account for potential covariables such as number of prior incarcerations, drug-related convictions, violence-related convictions, mental

⁴⁶ Haney, *supra* note 20, at 138-141.

⁴⁷ Grassian, *supra* note 37, at 332-333; Haney, *supra* note 20, at 138 (explaining that prisoners who “are not identified by staff as having any noticeable psychological problems or needs, nonetheless have accommodated so profoundly to the supermax environment that they may be unable to live anywhere else”).

⁴⁸ Brinkley-Rubinstein et al., *Association of Restrictive Housing During Incarceration with Mortality After Release*, JAMA Network Open (Oct. 2019).

⁴⁹ *Id.*

⁵⁰ *Id.*

health treatment recommended and received, and number of days served in the most recent sentence.⁵¹

Solitary confinement can also result in long-term, non-obvious physical injury. Advances in neurobiology and brain imaging technologies have established that the traumatic psychological harms associated with solitary confinement often trigger physical changes in the neural pathways and neurochemistry of the brain. Researchers have observed that “even one week in solitary can lead to significant changes in electrical activity in the brain,” slowing brain activity and negatively impacting prisoners’ “performance on intellectual and perceptual-motor tests.”⁵² Solitary confinement can also lead to reduction in the size of the hippocampus, a brain structure that impacts learning, memory, and spatial awareness. Shrinking of the hippocampus can lead to “loss of emotional and stress control.”⁵³ Prisoners in isolation have also been observed to have increased activity in the amygdala—an area of the brain “responsible for mediating fear and anxiety.”⁵⁴ Changes to the brain caused by solitary confinement can also adversely affect the sufferer’s brain

⁵¹ *Id.*

⁵² James & Vanko, *supra* note 12.

⁵³ *Id.* (citing Lobel & Akil, *supra* note 12, at 69-70).

⁵⁴ *Id.* (citing Lobel & Akil, *supra* note 12, at 70; and Blanco-Suarez, *supra* note 12).

functions by impacting spatial perception and facial recognition.⁵⁵ In addition to changes in brain chemistry, many isolated inmates experience headaches, heart palpitations, and extraordinarily high rates of suicide and self-harm.⁵⁶

IV. LONG PERIODS IN SOLITARY CONFINEMENT RESULT IN MORE SEVERE HARMS

Inmates begin to feel the harmful impacts of solitary confinement almost immediately, often within days or weeks. When deprived of social interaction and 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.”⁵⁷

Research shows, however, that solitary confinement can result in additional harm when the isolation endures for long periods. Extended periods of solitary confinement have been shown to produce all the damaging psychological and physical effects discussed above, but to a greater degree.⁵⁸ For example, the North

⁵⁵ See Schaeffer, “Isolation Devastates the Brain”: *The Neuroscience of Solitary Confinement*, Solitary Watch (May 11, 2016); Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Scientific American (Nov. 9, 2018).

⁵⁶ Haney, *supra* note 20, at 133; Smith, *supra* note 1, at 488-489, *see also infra* section VI.

⁵⁷ Grassian, *supra* note 37, at 330-331.

⁵⁸ Pullen-Blasnik et al., *The Population Prevalence of Solitary Confinement*, 7 Sci. Adv. 1 (2021); Arrigo & Bullock, *The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and*

Carolina study found that individuals were more likely to die in the first year after being released from prison or more likely to return to prison if they had: (1) repeatedly been placed in solitary confinement; and/or (2) spent more than 14 consecutive days in solitary confinement.⁵⁹ The United Nations Standard Minimum Rules for the Treatment of Prisoners—known as the Nelson Mandela Rules—acknowledges these increased harms by prohibiting “*prolonged* solitary confinement,” which the Rules consider to be isolation for more than fifteen consecutive days.⁶⁰

In the rodent studies discussed above, a month of social isolation resulted in the loss of around 20% of the total number of neurons in the brain, but the remaining neurons branched out more.⁶¹ When isolation was extended to up to three months, however, that additional branching ceased and “spines (structures that neurons develop to replace the machinery that is required to communicate with

Recommending What Should Change, 52 Int. J. Offender Ther. Comp. Criminol. 622-640 (2008).

⁵⁹ Brinkley-Rubinstein et al., *supra* note 47.

⁶⁰ Pullen-Blasnik et al., *supra* note 57.

⁶¹ Blanco-Suarez, *supra* note 12, (citing Lobel & Akil, *supra* note 12); Gilmour, *The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty*, UN Chronicle, United Nations; O’Grady, *How did Nelson Mandela Survive 27 Years in Prison? A new Collection of Letters Sheds Light*, Wash. Post, Jul. 18, 2018, (Mandela “spent 27 years in prison, most of them isolated on Robben Island”).

each other) were greatly diminished.”⁶² This indicates that the brain may try to compensate for neural losses when isolation is limited to shorter periods of time, but that when isolation is extended neurons may experience long term losses of their communication abilities.⁶³

V. THE PSYCHOLOGICAL HARMS OF SOLITARY CONFINEMENT HAVE LONG BEEN RECOGNIZED

Researchers, experts, practitioners, and society at large have long understood that individuals subjected to solitary confinement suffer immensely.⁶⁴ Solitary confinement first became popular “with the rise of the modern penitentiary” in the early 1800s.⁶⁵ Since then, physicians, psychiatrists, psychologists, criminologists, anthropologists, and epidemiologists have studied and catalogued the deleterious effects of solitary confinement on those subjected to it.⁶⁶ In 1842, author Charles Dickens visited Cherry Hill Prison in Philadelphia, one of the first American prisons to make wide use of solitary confinement. After observing the system, he famously commented:

⁶² Blanco-Suarez, *supra* note 12 (citing Lobel & Akil, *supra* note 12).

⁶³ *Id.*

⁶⁴ Smith, National Institute of Corrections, *The Effects of Solitary Confinement: Commentary on One Year Longitudinal Study of the Psychological Effects of Administrative Segregation* (2010).

⁶⁵ Smith, *supra* note 1, at 441, 456.

⁶⁶ *Id.* at 457-461, 465-467; James & Vanko, *supra* note 12.

I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers; and in guessing at it myself, and in reasoning from what I have seen written upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow-creature. I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body.⁶⁷

By the mid-1800s, many state prison systems reached similar conclusions, determining that solitary confinement was “impracticable” and “inhuman.”⁶⁸ The United States, which had implemented the first modern solitary confinement systems in prison, was among the first in the international community to abandon it.⁶⁹ In 1890, the Supreme Court expressed its understanding of the unacceptable consequences of solitary confinement. Justice Samuel Miller wrote that:

[a] considerable number of the prisoners [subjected to solitary confinement] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.⁷⁰

⁶⁷ Smith, *supra* note 1, at 460 (quoting Charles Dickens, *American Notes* 146 (originally published 1842)).

⁶⁸ Haney, *supra* note 4, at 213 (quoting *Adoption of the Separate System in the States of Central Europe—and Its Prospects Else-Where*, 12 Pa. J. Prison Discipline & Philanthropy 79 (1857)).

⁶⁹ Smith, *supra* note 1, at 465.

⁷⁰ *In re Medley*, 134 U.S. 160, 168 (1890).

By the early 1900s, any “debate about the effects of solitary confinement was largely settled” and the practice fell into “a long period of relative disuse.”⁷¹ To the extent that solitary confinement was still used during this period, it was typically used “sparingly,” only “for relatively brief periods of time,” and generally only as punishment for failure to abide by prison rules.⁷²

Research into the effects of sensory deprivation and perceptual deprivation (similar in some ways to solitary confinement) reemerged in the 1950s, following stories of sensory deprivation and brainwashing of U.S. soldiers held as prisoners of war during the Korean War.⁷³ This new wave of interest and research relied very little on the history of solitary confinement in early modern penitentiaries discussed above. Experiments conducted during this period generally did not attempt to recreate the prison setting and subjects were subjected to isolation or sensory deprivation from minutes to a couple of weeks, but were not subjected to the much longer periods sometimes used in prisons (such as the more than 600 days Mr. Perry spent in solitary confinement).⁷⁴ The experiments’ findings could, however, be extrapolated to the penal solitary confinement setting. Many subjects

⁷¹ Smith, *supra* note 1, at 442; Haney, *supra* note 4, at 212-213.

⁷² Haney, *supra* note 4, at 212-213.

⁷³ Smith, *supra* note 63, at 1.

⁷⁴ Smith, *supra* note 1, at 469-470.

treated with sensory and perceptual deprivation experienced visual and auditory hallucinations; other common symptoms included “disturbed thought processes, concentration problems, and impaired memory.”⁷⁵ Some studies from this era focused more explicitly on the experience of solitary confinement itself. In the 1960s, researchers studying solitary confinement found that “[e]xcessive deprivation of liberty” or “near complete confinement to the cell, results in deep emotional disturbances.”⁷⁶

The use of solitary confinement in prisons increased in the 1990s as super-maximum or “supermax” prisons—which consistently utilized solitary confinement—spread.⁷⁷ Between 1995 and 2005, the number of inmates held in solitary confinement in the United States increased by 40%.⁷⁸ Despite the

⁷⁵ *Id.* at 470-471.

⁷⁶ Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 *Crime & Just.* 365 (2018) (quoting Cormier & Williams, *Excessive Deprivation of Liberty*, 11 *Canadian Psychiatric Ass’n J.* 470, 484 (1966)) (citing Gendreau et al., *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 *J. Abnormal Psych.* 54 (1972); Scott & Gendreau, *supra* note 25, at 337-341; Walters et al., *Effect of Solitary Confinement on Prisoners*, 119 *Am. J. Psychiatry* 771 (1963)).

⁷⁷ Cloud et al, *Public Health and Solitary Confinement in the United States*, 105 *Am. J. Pub. Health* 18, 18-19 (2015); Lobel, *Mass Solitary and Mass Incarceration: Explaining the Dramatic Rise in Prolonged Solitary in America’s Prisons*, 115 *N.W.U. L. Rev.* 159, 162 (2020) (fifty-seven new supermax prisons were constructed in the United States the 1980s and 1990s).

⁷⁸ Cloud et al, *supra* note 77 at 18.

expanded use of solitary confinement, the modern consensus view among experts remained that it caused grievous mental and physical health effects, and numerous new studies confirmed the harms.⁷⁹

For decades, international groups have issued statements and guidelines that reflect the research findings discussed above in an effort to influence the use of solitary confinement worldwide. In 1955, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the Treatment of Prisoners.⁸⁰ Those rules provided that “punishment by placing in a dark cell, and all cruel, inhuman, or degrading punishments shall be completely prohibited as punishments for disciplinary offen[s]es,” and “punishment that may be prejudicial to the physical or mental health of a prisoner” such as “close confinement ... shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it,” and “visit[s] daily prisoners undergoing such punishments and ... advise[s] the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.”⁸¹ As noted above,

⁷⁹ Smith, *supra* note 1, at 471-487 (reviewing studies); *see also, e.g.*, Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry 1450, 1450-1454 (1983).

⁸⁰ Gilmour, *supra* note 60.

⁸¹ *Standard Minimum Rules for the Treatment of Prisoners*, First United Nations Congress on the Prevention of Crime and the Treatment of Offenders

in 2015 the United Nations General Assembly adopted expanded rules that “restrict the use of solitary confinement as a measure of last resort, to be used only in exceptional circumstances,” in alignment with Nelson Mandela’s view that solitary confinement was “the most forbidding aspect of prison life.”⁸² In 2007, a group of prominent trauma, mental health, and prison experts issued the “Istanbul Statement on the Use and Effects of Solitary Confinement,” which also “concluded that [it] should be employed only in exceptional circumstances, as an absolute last resort, and then only for as short a time as necessary.”⁸³

VI. MENTALLY ILL PRISONERS ARE ESPECIALLY VULNERABLE TO HARMS CAUSED BY SOLITARY CONFINEMENT

Individuals with mental illness, like Mr. Perry, are at greater risk of both being placed in, and being harmed by, solitary confinement. A study of prisoners in Washington State’s supermax prisons concluded that mental illness was about twice as common in segregated prisoners,⁸⁴ a fact which becomes even more striking when one considers that mental illness is already at a high baseline among the American prison population overall.⁸⁵ Another study found that between 30%

⁸² Gilmour, *supra* note 60.

⁸³ Haney et al., *Consensus Statement from the Santa Cruz Summit on Solitary Confinement and Health*, 115 N.W.U. L. Rev. 335, 338 (2020).

⁸⁴ Lovell, et al., *Who Lives in Super-Maximum Custody? A Washington State Study*, 64 Fed. Prob. 33, 36 (2000).

⁸⁵ In 2002 the National Commission on Correction Health Care estimated that “[o]n any given day, between 2.3 and 3.9 percent of inmates in state prisons are

and 50% of inmates in isolation units in American prisons were mentally ill.⁸⁶ And the North Carolina study found that individuals who had been recommended for mental health treatment were more likely to be placed in solitary confinement.⁸⁷

When placed in solitary confinement mentally ill prisoners typically deteriorate more rapidly than inmates without mental illness.⁸⁸ This deterioration is often “permanent and disabling” because prisoners with mental illness are “far less likely to be able to withstand the stress, social isolation, sensory deprivation, and idleness” of solitary confinement.⁸⁹ For individuals who have “been diagnosed or identified as suffering from psychiatric disorders in free society,” solitary confinement may lead to “the persistence of delusional or psychotic beliefs, a lack of insight into one’s psychiatric symptoms, and a higher rate of hospitalization and rehospitalization.”⁹⁰ Individuals, like Mr. Perry, who have mental illnesses

estimated to have schizophrenia or other psychotic disorder, between 13.1 and 18.6 percent major depression, and between 2.1 and 4.3 percent bipolar disorder (manic episode. A substantial percentage of inmates exhibit symptoms of other disorders as well, including between 8.4 and 13.4 percent with dysthymia, between 22.0 and 30.1 percent with an anxiety disorder, and between 6.2 and 11.7 percent with posttraumatic stress disorder.” Abramsky & Fellner, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, New York: Human Rights Watch 17 (2003).

⁸⁶ Smith, *supra* note 1, at 455 (citing Abramsky & Fellner, *supra* note 85).

⁸⁷ Brinkley-Rubinstein et al., *supra* note 47.

⁸⁸ See Hafemeister & George, *supra* note 26, at 38-39.

⁸⁹ *Id.* at 41-42, 46-47; Haney, *supra* note 20, at 142.

⁹⁰ Haney, *supra* note 4, at 228-229.

“characterized by psychotic symptoms and/or significant functional impairments”—such as schizophrenia, bipolar disorder, or major depressive disorder—are particularly affected by solitary confinement.⁹¹

Suicide rates are disproportionately high among mentally ill prisoners in solitary confinement. On average, 50% of the completed suicides by inmates occur among the 2-8% of inmates in solitary confinement—the majority of whom are mentally ill.⁹² A study of completed suicides in California prisons found that “among the 154 suicides completed during the covered period, 87 (56%) involved prisoners on the mental health caseload.”⁹³ 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.”⁹⁴

There is also an epidemic of non-suicidal self-harm—such as “cutting” or swallowing sharp objects—among mentally ill inmates in solitary confinement.

⁹¹ Metzner & Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Academy Psychiatry & L. 104, 104-105 (2010).

⁹² Grassian & Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, Correctional Mental Health Rep. 1, 9 (May/June 2011); see also Wynn & Szatrowski, *Hidden Prisons: Twenty-Three-Hour Lockdown Units in New York State Correctional Facilities*, 24 Pace L. Rev. 497, 516 (2004).

⁹³ Patterson & Hughes, *Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999 to 2004*, 59 Psychiatric Services 676, 678 (2008).

⁹⁴ *Id.*

One 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.”⁹⁵ Approximately 20% of the prisoners in the 1983 Massachusetts study at MCI Walpole (now MCI Cedar Junction) reported engaging in random violence, such as deliberately cutting themselves, during periods of psychiatric decompensation.⁹⁶ A more recent study analyzing the medical records from 244,699 incarcerations in New York city jails from 2010 through 2013 found that although only 7.3% of those incarcerations involved solitary confinement, 53.3% of acts of self-harm and 45.0% of acts of potentially fatal self-harm occurred among those who had been subjected to solitary confinement.⁹⁷ After controlling for variables, researchers found a statistically significant relationship between self-harm and (1) being in solitary confinement at least once, (2) longer stays in solitary confinement, and (3) the inmate suffering from serious mental illness.⁹⁸

Prison staff sometimes incorrectly concludes that prisoners self-harm to manipulate the system to get out of isolation. To be sure, some prisoners do resort

⁹⁵ Haney & Lynch, *supra* note 3, at 525.

⁹⁶ Grassian, *supra* note 78, at 1453.

⁹⁷ See Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am. J. Pub. Health 442 (2014).

⁹⁸ *Id.*

to self-harm in the hope that they will be removed—even briefly—from solitary confinement. This fact alone speaks to the immense psychological and physical trauma that prisoners suffer while segregated.⁹⁹ In one study of self-harm among prisoners, “many inmates report[ed] ... that they have and will continue to do anything to escape” solitary confinement.¹⁰⁰ Often inmates’ acts of self-harm are not voluntary at all. Self-harming prisoners are often compelled by mental illness, compounded by the anxiety induced by the harsh conditions of isolation. A prisoner who feels compelled to self-mutilate is likely experiencing psychiatric crisis that requires mental health treatment. But the restrictive manner in which solitary confinement units are typically run greatly limits access to mental health staff and the quality of treatment they can provide.¹⁰¹ For example, mental health treatment in isolation often consists of “cell front therapy” wherein “[inmates] can

⁹⁹ Inmates often so dread the prospect of solitary confinement that they have to be forcibly removed from their general population cells in order to be transferred into isolation cells. Such forcible removals often include the use of special tactical units of correctional officers wearing body armor and using pepper spray and tasers. Haney, *supra* note 4, at 236.

¹⁰⁰ Kaba et al., *supra* note 96, at 442, 446.

¹⁰¹ Human Rights Watch, *Mental Illness, Human Rights, and US Prisons* at 4 (Sept. 22, 2009) (“The psychological harm of supermaximum security confinement is exacerbated because mental health professionals are not permitted to provide the full range of mental health treatment services to the prisoners.”); *see also* Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 Harv. C.R.-C.L.L. Rev. 391, 404 (2006) (“In many segregation units, mental health services are so poor that even floridly psychotic prisoners receive scant attention.”).

[only] discuss intimate, personal problems with mental health staff who cannot easily see or hear them through the cell doors (unless they speak so loudly that other prisoners in the housing unit can also listen in).”¹⁰²

CONCLUSION

Overwhelming and long-standing scientific and professional consensus firmly establish that solitary confinement deprives inmates of basic human needs; produces severe, negative, and atypical psychological and physical symptoms; and risks imminent, severe, lasting, and irreversible harm to those who endure it, particularly those with mental illness. Accordingly, the case should be decided with due regard for the serious harms that solitary confinement has been shown to cause.

Respectfully submitted.

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¹⁰² Haney, *supra* note 20, at 143.

CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B).

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