

No. 22-01716

IN THE
United States Court of Appeals
for the First Circuit

JERRY CINTRON

Plaintiff-Appellee,

v.

PAUL BIBEALT; RUI DINIZ; MATTHEW KETTLE; PATRICIA A. COYNE-FAGUE;
STEVE CABRAL; JEFFREY ACETO; LYNNE CORRY;

Defendant-Appellant.

On Appeal from the United States District Court for the District of Rhode Island
(Providence)

Case No. 1:19-cv-00497

Honorable John J. McConnell, Jr.

**BRIEF *AMICI CURIAE* OF FORMER CORRECTIONS OFFICIALS DAN
PACHOLKE, DICK MORGAN, ELDON VAIL, AND
STEVE J. MARTIN IN SUPPORT OF PLAINTIFF-APPELLEE**

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Former corrections officials Dan Pacholke, Dick Morgan, Eldon Vail, and Steve J. Martin respectfully submit this brief as *amici curiae* in support of affirming the district court’s decision that Plaintiff-Appellee Jerry Cintron had actionable claims with regard to his Eight Amendment, First Amendment, and Abuse of Process state law claims. Dan Pacholke has a long tenure as an officer for the Washington State Department of Corrections (“WDOC”). Among other positions, he has served as Secretary of the Department of Corrections (October 2015–March 2016), Deputy Secretary (April 2014–October 2015), Director of Prisons (July 2011–April 2014), Deputy Director of Prisons (July 2008–July 2011), and, additionally, was the Co-Director at Vera Institute of Justice (April 2016–August 2017). While in WDOC, he led efforts to reduce the use of intensive management units (“IMUs”) that resulted in a 50 percent reduction of those housed in IMUs and an over 30 percent reduction in system-wide violence. This work is described in a 2016 Department of Justice Bureau of Justice Policy Brief, *More than Emptying Beds: A Systems Approach to Segregation Reform*. He has over 34 years’ experience in the field of corrections.

¹ Pursuant to Federal Rule of Appellate Procedure 29(a), *Amici* represent that no party opposes the filing of this brief *amici curiae*. Pursuant to Rule 29(a)(4)(E), the undersigned counsel further represent that no party or party’s counsel authored this brief in whole or in part; that no party or party’s counsel contributed money that was intended to fund preparation or submission of this brief; and that no person other than the *Amici* and counsel identified herein contributed money that was intended to fund preparation or submission of this brief.

Dick Morgan is a veteran officer and administrator for the WDOC. He served as Secretary of the Department (March 2016–January 2017), Director of Prisons (2008–2010), and Assistant Deputy Secretary of Prisons (2006–2008). He also served as Superintendent of three different prisons. He was appointed to Washington State’s Parole Board and elected to the Walla Walla City Council, and he has served on the Board of the Washington State Coalition to Abolish the Death Penalty since 2012. He has over 36 years’ experience in the field of corrections.

Eldon Vail is a long-serving corrections official for the WDOC. He was Secretary of the Department (2007–2011), Deputy Secretary (1999–2006), and Superintendent of three institutions (1987 and 1989–1994). While Secretary, he successfully reduced violence in the state prison system and implemented a wide array of evidence-based programs, including an intensive treatment program for people in prison with mental illness. He has over 35 years’ experience in the field of corrections. Since his retirement from state service, he has been retained as a correctional consultant or expert witness over 60 times in 23 different states.

Steve J. Martin is the former General Counsel/Chief of Staff of the Texas prison system (1981–1985) and has served in gubernatorial appointments in Texas on both a sentencing commission and a council for prisoners with mental impairments. He coauthored *Texas Prisons: The Walls Came Tumbling Down*,

and has written numerous articles on criminal justice issues. He also served as an expert for the U.S. Department of Justice Civil Rights Division and the Department of Homeland Security Civil Rights section for over 21 years. He is currently the Federal Court Monitor for the New York City Department of Corrections in *Nunez v. City of New York*, where he provides oversight of New York jails' compliance with the settlement agreement with federal prosecutors. No. 11 Civ. 5845 (LTS)(JCF), 2015 U.S. Dist. LEXIS 176190, at *14 (S.D.N.Y. July 10, 2015). He has over 50 years' experience in the field of corrections.

As former corrections officials with over 200 years of collective experience, *Amici* have substantial first-hand experience administering secure prisons and reducing the use of solitary confinement. *Amici* are concerned that the use of long-term solitary confinement causes serious harms to prisoners' physical and mental health, exacerbates drug addiction, and has been perpetuated under a misguided belief that prisons have no viable alternative for ensuring security. *Amici* assert that prison security can be maintained without the extended use of isolation, which has proven dangerous and ineffective. *Amici* respectfully submit this brief to set forth the basis for those views.

SUMMARY OF FACTS

Mr. Jerry Cintron has been in the custody of the Rhode Island Department of Corrections (“RIDOC”) since February 2016.² In July 2019, Mr. Cintron overdosed on a substance unknowingly laced with fentanyl.³ While still in the hospital, and before Mr. Cintron fully regained consciousness, Correctional Officer Investigators Paul Bibeault and Steve Cabral, interrogated Mr. Cintron multiple times regarding the incident and threatened to put him in disciplinary segregation for over a year if Mr. Cintron refused to answer their questions.⁴ At one point, Defendant Bibeault told Mr. Cintron, “We’ll see if you’re still normal when you get out of segregation, kid. You’re fucking buried alive. I’m going to bury you alive.”⁵ Mr. Cintron admitted to ingesting narcotics, but was unable to respond coherently otherwise. Mr. Cintron was placed in solitary confinement for 25 days at the High Security Center in the Adult Corrections Unit, amongst other penalties.

Mr. Cintron confided in Defendant Rui Diniz, Warden of Medium Security, and told him about the threats Defendants Bibeault and Cabral were making. In response, Defendant Diniz told Mr. Cintron that he did not care what Mr. Cintron had to say and that he would personally make sure Mr. Cintron got 365 days in

² 2d. Am. Compl., Dkt. 31 ¶ 17

³ *Id.* at ¶ 18-19.

⁴ *Id.* at ¶ 39–40.

⁵ *Id.* at ¶ 41.

solitary confinement.⁶ In total, Mr. Cintron was placed in solitary confinement for over 2.5 years.⁷

Before being placed in segregation, Mr. Cintron was allowed 10 out-of-cell hours per day, access to visits, and phone calls with family.⁸ He participated in educational programs and other programming that allowed him to spend time with his six children.⁹ Mr. Cintron practiced mindfulness and meditation, and did not require any mental health medication before his placement in solitary confinement.¹⁰ Once relegated to solitary confinement, Mr. Cintron spent 23–24 hours per day in an eight-by-ten foot cell.¹¹ He was permitted 45–60 minutes of out-of-cell time per day, Monday through Friday, and zero out-of-cell time on weekends and holidays.¹² He was given a maximum of one 10-minute phone call each month.¹³ He had no radio, TV, or MP3 player; no desk in his cell; and no access to educational resources or programming.¹⁴ During most of his time in solitary, Mr. Cintron’s activity was recorded by a video camera that was always

⁶ *Id.* at ¶ 43.

⁷ Pl.’s Opp’n to Def.’s Mot for J. on the Pleadings, Dkt. 52 at 3.

⁸ Dkt. 38 at ¶ 57.

⁹ *Id.* at ¶ 57–58.

¹⁰ *Id.* at ¶ 59–60.

¹¹ *Id.* at ¶ 62.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

on, even while he was using the restroom.¹⁵ The lights were kept on all night.¹⁶ In the winter, he was forced to wear wet coats for outdoor recreation and the outside doors were left open, making his cell freezing cold.¹⁷ For eight months, Mr. Cintron had no access to newspapers, a mirror, or winter boots.¹⁸

After being placed in solitary confinement, Mr. Cintron's physical and mental health rapidly declined.¹⁹ He was prescribed antidepressants.²⁰ Mr. Cintron began taking sleeping medication for the first time in his life.²¹ He lost almost 70 pounds and began to engage in self-harm by punching the walls of his cell and pulling out his hair.²² Mr. Cintron cried often, had intrusive thoughts and severe anxiety.²³

To cope with the conditions of his extended solitary confinement, Mr. Cintron began abusing prescription medication.²⁴ This resulted in additional disciplinary citations, which extended his placement in solitary confinement.²⁵ Mr. Cintron did not leave disciplinary segregation until September 2020, and even then, he was put

¹⁵ *Id.* at ¶ 63.

¹⁶ *Id.* at ¶ 65.

¹⁷ *Id.* at ¶ 64.

¹⁸ *Id.* at ¶ 63.

¹⁹ *Id.* at ¶ 66.

²⁰ *Id.* at ¶ 68.

²¹ *Id.*

²² *Id.* at ¶ 67.

²³ *Id.* at ¶ 69.

²⁴ *Id.* at ¶ 74.

²⁵ *Id.*

in administrative segregation, another form of restrictive housing in the High Security Center.²⁶

Mr. Cintron alerted prison officials multiple times to his declining mental health, yet time and time again, his pleas for help were ignored. During Mr. Cintron's second disciplinary hearing, he informed the hearing officer that he would have a difficult time if he were forced to spend an additional 30 days in solitary confinement. Mr. Cintron wrote multiple letters to Defendant Jeffrey Aceto, the former Warden of High Security, telling him about his mental health breakdowns and pleading for his remaining time in solitary confinement to be suspended.²⁷ Defendant Aceto refused.²⁸ Mr. Cintron asked correctional officers and counselors for access to mental health services numerous times before he finally saw a social worker.²⁹ Mr. Cintron's social worker further informed Defendant Aceto and then-Deputy Warden Lynne Corry about Mr. Cintron's severely declining mental health.³⁰ Ignoring the concerns raised by Mr. Cintron's social worker, both of them refused to suspend the remainder of Mr. Cintron's time in solitary confinement.³¹ When Defendant Corry became the Warden of High Security, Mr. Cintron wrote her,

²⁶ *Id.* at ¶ 75.

²⁷ *Id.* at ¶ 86.

²⁸ *Id.*

²⁹ *Id.* at ¶ 85.

³⁰ *Id.* at ¶ 87.

³¹ *Id.*

asking that the remainder of his time in solitary be suspended.³² Defendant Corry rejected that request, stating, “I understand that you are going through things at this time however the way to suspend your discipline time is as easy as stop being disciplined.”³³

On September 20, 2019, acting *pro se*, Mr. Cintron brought suit against 12 RIDOC officials, alleging that his prolonged solitary confinement and the subsequent retaliatory actions by Defendants constituted violations of his First, Fifth, and Eighth Amendment rights and several state tort law claims.³⁴ Mr. Cintron then filed an amended complaint on July 21, 2020, and a second amended complaint on February 12, 2021.³⁵ The district court granted in part and denied in part Defendant’s Motion for Judgment on the Pleadings, finding that Mr. Cintron had actionable claims with regard to his Eight Amendment, First Amendment, and Abuse of Process state law claim.³⁶ Four defendants appealed to this Court on September 20, 2022.³⁷

SUMMARY OF ARGUMENT

The first-hand experience of *Amici*, across a variety of correctional settings, has led them to understand that the extended placement of inmates in solitary confinement

³² *Id.* at ¶ 88.

³³ *Id.*

³⁴ *Id.* at ¶ 93.

³⁵ *See* Dkt. 31, 38.

³⁶ Aug. 22, 2022 Text Order.

³⁷ Dkt. at 63.

is generally harmful and unnecessary to achieving institutional safety or security. In *Amici's* experience, prolonged solitary confinement serves no penological purpose: Prolonged solitary confinement does not reduce violence in prison systems and serves only to exacerbate mental health concerns, especially for persons with serious, pre-existing mental illnesses and substance addiction issues.

Moreover, to the extent solitary confinement is used at all, it should not be used to punish those struggling with substance abuse issues. Mr. Cintron's segregation for over 2.5 years served only to exacerbate his drug addiction and prohibit successful recovery.

Accordingly, this Court should affirm the district court's finding on the motion for judgment on the pleadings wherein the district court found that Mr. Cintron had actionable claims with regard to his Eighth Amendment, First Amendment, and Abuse of Process state law claims.

ARGUMENT

I. PROLONGED SOLITARY CONFINEMENT CAUSES SERIOUS HARM TO PRISONERS' MENTAL AND PHYSICAL HEALTH.

Long-ago, physician and Supreme Court Justice Samuel Freeman Miller cautioned of the effects of solitary confinement on prisoners in Pennsylvania, Massachusetts, New Jersey, and Maryland:

A considerable number of the prisoners 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.³⁸

Today, numerous studies of prolonged solitary confinement detail the serious psychological harm to prisoners as a result of such isolation.³⁹ Inmates in solitary confinement report the same effects as from other forms of torture,⁴⁰ including “severe depression, memory loss, suicidal tendencies, and an inability to relax, being unable to keep track of time due to the tiny window and a lack of natural daylight in the cell.”⁴¹ These inmates lose the ability to “establish and sustain a sense of identity and to maintain a grasp on reality.”⁴² One individual who had been in isolation for almost twenty-five years described his confinement as being like an “endless toothache,” or a “slow constant peeling of the skin, stripping of the flesh, the nerve-wracking sound of water dripping from a leaky faucet in the still of the night while you’re trying to sleep. Drip, drip, drip, the minutes, hours, days, weeks, months, years, constantly drip away with no end or relief in sight.”⁴³

³⁸ *In re Medley*, 134 U.S. 160, 168 (1890).

³⁹ See, e.g., Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinq.* 124, 130-32 (2003)..

⁴⁰ See Laura Rovner & Jeanne Theoharis, *Preferring Order to Justice*, 61 *Am. U. L. Rev.* 1331, 1364 (2012).

⁴¹ Human Rights Clinic at U. of Tex. Sch. of L., *Designed to Break You: Human Rights Violations on Texas’ Death Row*, 21 (Apr. 2017), <https://law.utexas.edu/wp-content/uploads/sites/11/2017/04/2017-HRC-DesignedToBreakYou-Report.pdf>.

⁴² See Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment*, 90 *Ind. L.J.* 741, 776 (2015)(internal quotations omitted).

⁴³ Jules Lobel, *Prolonged Solitary Confinement and the Constitution*, 11 *U. Pa. J. Const. L.* 115, 116 (2008) (internal quotations omitted).

The prevalence of suicide and self-harm in solitary confinement illustrates the dangers of isolation. Approximately 50% of completed prisoner suicides occur among prisoners housed in solitary confinement.⁴⁴ Detainees in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than those in the general population; in California prisons in 2004, 73% of all suicides occurred in isolation units.⁴⁵ This is not a surprising result; many prisoners in solitary deteriorate dramatically. It is not unusual for prisoners in solitary confinement to swallow razors, smash their heads into walls, compulsively cut their flesh, and try to hang themselves.⁴⁶

These “negative (sometimes severe) health effects can occur after only a few days of solitary confinement,” and “[t]he health risk rises for each additional day in solitary confinement.”⁴⁷ The psychological consequences for those who are held in

⁴⁴ Stuart Grassian & Terry Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, 13 *Corr. Mental Health Rep.* 1, 11 (2011).

⁴⁵ Expert Report of Craig Haney ¶ 81 n.119, *Coleman v. Schwarzenegger*, No: Civ S 90-0520 LKK-JFM P, 2008 WL 8697735 (E.D. Cal. Aug. 15, 2008); *see also* Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 *Am. J. Pub. Health* 442, 444 (2014).

⁴⁶ *See, e.g.*, David Fathi, *Supermax Prisons: Cruel, Inhuman and Degrading*, ACLU Blog (July 9, 2010), [.](#)

⁴⁷ Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 *Crime & Just.* 441, 495 (2006); *see also* Tracy Hresko, *In the Cellars of the Hollow Men: Use of Solitary Confinement in U.S. Prisons and Its Implications Under International Laws Against Torture*, 18 *Pace Int’l L. Rev.* 1, 13 (2006) (“[T]he longer an individual experiences conditions of isolation, the likelier they are to develop significant mental illness.”).

solitary confinement for extended periods of time is profoundly negative. Put simply, “there is not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasted for longer than 10 days, where participants were unable to terminate their isolation at will, that failed to result in negative psychological effects.”⁴⁸ Describing his motivation to drive reform, one prison official recounted his learning about the health consequences of solitary confinement as:

Now I think that longer term staff acknowledge that some residents have been permanently damaged by being locked up in restrictive housing for so many years, after listening to the personal stories of some of our residents talk about what it had done to them. It made me cry, thinking what we had done to people before we made these changes.⁴⁹

Studies demonstrate that prisoners with mental health illnesses are overrepresented in restrictive housing, and there is a broad concern that isolation is being used for “nuisance” prisoners rather than those who may pose a threat to the safety and security of others.⁵⁰

A comprehensive study of prisoners in Washington State’s supermax prisons concluded that mental illness was present in approximately 30% of segregated

⁴⁸ *Porter v. Clarke*, 923 F.3d 348, 356 (4th Cir. 2019) (internal quotations and emphasis omitted); *see also* Lobel, *supra* n.42, at 118 (“[N]o study of the effects of solitary . . . that lasted longer than 60 days failed to find evidence of negative psychological effects.” (internal quotations omitted)).

⁴⁹ David Cloud et al., “*We Just Needed to Open the Door*”: *A Case Study of the Quest to End Solitary Confinement in North Dakota*, 9 Health & Just. 1, 6–8 (2021).

⁵⁰ Sonja E. Siennick et al., *Revisiting and Unpacking the Mental Illness and Solitary Confinement Relationship*, Just. Q. 1, 1–2 (2021).

prisoners, which was two to three times more common than prisoners in the general population.⁵¹ Moreover, men with mental illnesses have higher odds of being placed in restrictive housing for safety reasons, institutional adjustment, and contraband, and have spent more total days in those placements than men without mental illnesses.⁵² In fact, prisoners with diagnosed serious mental illnesses are 170% more likely to be in prolonged solitary confinement than those without a serious mental illness.⁵³

These studies suggest that prison officials may perceive prisoners with mental illnesses to be a threat to the safety or security of the facility—regardless of the actual validity of the threat—and are more likely to segregate prisoners with mental illness in solitary confinement.⁵⁴

Prisoners with mental illnesses are the most vulnerable to the psychological and physiological harms caused by solitary confinement, and they are also at the greatest risk of suffering “permanent and disabling” harms.⁵⁵ They are “far less likely to be able to withstand the stress, social isolation, sensory deprivation, and idleness”

⁵¹ 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, 46–47 (2013).

⁵² Siennick, *supra* n.49, at 10–13.

⁵³ *Id.* at 13; *see also* Ilanit Turner & Noelle Collins, *A Call to Reform Federal Solitary Confinement*, *Right on Crime & Tex. Pub. Pol’y Found.* 1, 7 (2022), <https://rightoncrime.com/wp-content/uploads/2022/01/ROC-ReformFederalSolitaryConfinement-Turner-Collins-12-21.pdf>.

⁵⁴ *See, e.g.*, Siennick, *supra* n.49, at 14.

⁵⁵ *See* Haney, *Mental Health Issues*, *supra* n.39, at 142.

of solitary confinement.⁵⁶ When deprived of social interaction, “many prisoners with mental illness experience catastrophic and often irreversible psychiatric deterioration.”⁵⁷ One clinician noted, “there is even more awareness that someone with a serious mental illness shouldn’t be in [solitary confinement].”⁵⁸ Another expert declared conditions in one supermax facility to be “‘toxic’ for seriously mentally ill inmates.”⁵⁹

By its very nature, solitary confinement impedes the delivery of mental health services on a timely basis. The location of the units themselves and the extremely restrictive manner in which they are run greatly limit the access of mental health staff and the nature and timeliness of the treatment they can provide.⁶⁰ This means mentally ill inmates endure painful, dangerous, isolated confinement without receiving the necessary treatment that might help to at least alleviate some of the harm to which they are subjected.⁶¹

There is interdisciplinary consensus that seriously mentally ill and other vulnerable prisoners should not be consigned to isolation. The American Psychiatric

⁵⁶ Hafemeister & George, *supra* n.50 at 41–42.

⁵⁷ *Id.* at 38–39 (quoting David Fathi, *Solitary Confinement in Arizona: Cruel and Unusual*, Nat’l Prison Project (Mar. 6, 2012, 1:09 PM), <http://www.aclu.org/blog/prisoners-rights/solitaryconfinement-arizona-cruel-and-unusual>).

⁵⁸ Cloud, *supra* n.48, at 13 (internal quotation omitted).

⁵⁹ *Jones ‘El v. Berge*, 164 F. Supp. 2d 1096, 1103 (W.D. Wis. 2001).

⁶⁰ *See, e.g.*, Hafemeister & George, *supra* n.50 at 42–43.

⁶¹ *See, e.g., id.*

Association states that “[p]rolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential harm to such inmates.”⁶² Similarly, the American Public Health Association and the National Commission on Correctional Health Care call for the exclusion of individuals with serious mental illness from restricted housing.⁶³ Leading correctional associations and prominent prison administrators also condemn the practice of placing vulnerable prisoners in solitary confinement.⁶⁴

II. SOLITARY CONFINEMENT EXACERBATES SUBSTANCE ADDICTION FOR INCARCERATED INDIVIDUALS.

In addition to causing serious harm to prisoners’ mental and physical health, solitary confinement increases the risk of drug abuse by incarcerated individuals. Placing an individual in solitary and isolating them from other human beings for 23

⁶² Am. Psych. Ass’n, *Position Statement on Segregation of Prisoners with Mental Illness*, (Dec. 2012), <http://nrcat.org/storage/documents/apa-statement-on-segregation-of-prisoners-with-mental-illness.pdf>.

⁶³ See Nat’l Comm’n on Corr. Health Care, *Position Statement: Solitary Confinement (Isolation)*, (2016), <https://www.nccchc.org/solitary-confinement>; Am. Pub. Health Ass’n, *Solitary Confinement as a Public Health Issue*, Policy 201310 Statement (Nov. 5, 2013), <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>.

⁶⁴ See, e.g., Gary C. Mohr & Rick Raemisch, *Restrictive Housing: Taking the Lead*, Corrs. Today (2015), <https://cl.memberclicks.net/assets/docs/6.pdf>; see also Am. Corr. Ass’n, *2016 Standards Supplement*, 70, 76–77 (Nov. 2016), <https://www.aca.org/common/Uploaded%20files/2016%20Standards%20Supplement.pdf>.

hours of the day removes prisoners from potential support systems for extended periods of time. Studies by the Substance Abuse and Mental Health Services Administration (“SAMHSA”), the agency within the U.S. Department of Health and Human Services responsible for overseeing public health and preventing overdose, have shown that such isolation is damaging to mental health and increases the risk of drug abuse. SAMHSA research shows that such isolation is counterproductive to successful recovery because recovery is closely correlated with interacting with other humans, which allows for a greater sense of purpose, belonging, social inclusion, and community.⁶⁵ Moreover, those in solitary often lose visitation privileges, cutting them off from family and friends on the outside and even other incarcerated individuals inside the prison who might have been providing them with an essential support system.

Solitary confinement separates those in recovery from the essential elements they need to achieve and maintain their sobriety: purpose and community. In a 2020 ethnographic study on isolation and drug usage published in the *Frontiers in Psychiatry Journal*, researchers found that:

“Isolation can, as such, lead to increased or riskier substance use, partly because the social relations and interactions that offer purpose and meaning are unattainable. In addition to the harmful effects of isolation mentioned above, too much time on one's own can foment powerful senses of boredom, anxiety, and loneliness, as well as precipitate the return of painful memories, against which substances provide a means

⁶⁵ *Id.*

of relief. For those in recovery, too, the draw toward substances is often coupled with boredom, loneliness, and feelings of hopelessness, with everyday life ceasing to feel meaningful. Diverse studies on boredom; waiting; and notions of being “stuck”, draw attention to the distinctly temporal dynamics that characterize such experiences, many noting in particular that future hopes and aspirations appear inaccessible. Clouded senses of the future are further exacerbated by economic precarity and experiences of subjugation that provoke a sense of the present as endlessly, and inescapably, repeating. Temporal repetition can easily become oppressive and anxiety-inducing, leading to ‘thinking too much’ and being overwhelmed by difficult or distressing memories.”⁶⁶ [internal citations omitted]

Subjecting individuals with substance addiction to solitary as punishment for drug use only serves to create a revolving door. Many of those incarcerated use drugs to escape from their reality as well as the pain and trauma they experienced in their daily lives. Given the lack of or plain nonexistence of mental health and substance abuse services for prisoners in solitary confinement, inmates often see this as their only reprieve. SAMHSA emphasizes that hope, the belief that these challenges and conditions can be overcome, is the foundation of recovery.⁶⁷ Even though people in solitary confinement comprise only 6% to 8% of the total prison population, they account for approximately half of those who die by suicide.⁶⁸ Often times, without

⁶⁶ Laura Roe, et. al., *Isolation, Solitude and Social Distancing for People Who Use Drugs: An Ethnographic Perspective*, *Frontiers in Psychiatry* (2020)

⁶⁷ Substance Abuse and Mental Health Services Administration, *SAMHSA’s Working Definition of Recovery* (2012), <https://store.samhsa.gov/sites/default/files/d7/priv/pep12-recdef.pdf>

⁶⁸ Tiana Herring, *The research is clear: Solitary confinement causes long-lasting harm*, *Prison Policy Initiative* (2020), https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/

reprieve and adequate drug rehabilitation treatment, inmates in isolation often view drug abuse or suicide as their only escape.

Solitary confinement is not a safe and stable environment conducive to an addict's recovery. Kyle Ruggeri, a former inmate in the New York State prison system, was initially put in solitary for 60 days for failing a drug test.⁶⁹ He described solitary confinement as a "life or death experience," saying that "[s]uicide, stabbings, rapes, psychotic breakdowns, and inhumane treatment by the guards were everyday occurrences in solitary."⁷⁰ Mr. Ruggeri was suicidal as he could not deal with the loneliness and hopelessness that came with being locked in a cell for months.⁷¹ He attempted to take his own life by swallowing 25 pills he bought while in solitary.⁷² Before he could carry out his plan, he was caught with the pills. Instead of receiving mental health and substance abuse treatment, the prison added 90 days to his solitary time for a total of almost 5 months.⁷³ Mr. Ruggeri wrote in an essay that he had been clean for several years, and the only thing that could instantly trigger a drug craving for him was thinking about solitary.⁷⁴

⁶⁹ Voices from Solitary, *Voices from Solitary: Solitary Confinement's Cycle of Addiction* (2019), <https://solitarywatch.org/2019/08/27/voices-from-solitary-solitary-confinements-cycle-of-addiction/>

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

Those incarcerated who suffer from substance abuse issues should be given treatment, not solitary confinement. As the former Medical Director of Rhode Island's State Corrections Department, Jennifer Clarke put it, "locking people up is not treatment."⁷⁵ In 2015, the then-governor of Rhode Island, Gina Raimondo, created an overdose prevention task force.⁷⁶ Once formed, the task force saw that drug treatment in the state's correctional facilities was a priority and their efforts ultimately culminated in the Rhode Island Department of Corrections' Medication Assisted Treatment program.⁷⁷ The program offers incarcerated individuals access to therapy medications like suboxone and vitriol a few months before they are released and continues to offer it after individuals are released.⁷⁸ The Federal Bureau of Prisons has explained that when drug abuse treatment programs "are well-designed, carefully implemented, and utilize effective practices", they reduce relapse, criminality, recidivism, inmate misconduct, increase the level of the offender's stake in societal norms, increase levels of education and employment upon return to the community, improve health and mental health symptoms and conditions and improve

⁷⁵ See A Better Way to Treat Addiction in Jail, The Marshall Project (Mar. 1, 2017), <https://www.themarshallproject.org/2017/03/01/a-better-way-to-treat-addiction-in-jail>

⁷⁶ See Eric Trickey, *How the Smallest State is Defeating America's Biggest Addiction Crisis* (Aug. 25, 2018), <https://www.politico.com/magazine/story/2018/08/25/rhode-island-opioids-inmates-219594/>

⁷⁷ *Id.*

⁷⁸ *Id.*

relationships.⁷⁹ While providing drug treatment for inmates as they prepare to reintegrate into their communities is essential, it is equally as important to provide drug treatment to people throughout their time in prison. Studies going back to the 1970s that show that treatment of those with substance abuse disorders who are in the criminal legal system changes “attitudes, beliefs, and behaviors toward drug addiction” and helps addicts “successfully remove themselves from a life of substance use and crime.”⁸⁰ Specifically, studies show that the use of methadone maintenance in addicts reduces “opioid use, drug-related health complications, overdose, mortality, criminal activity, and recidivism.”⁸¹ Overall, effective drug treatment programs reduce inmate misconduct inside prisons and reduce relapse and rates of substance addiction – all key elements for a safe environment for inmates and staff alike.

⁷⁹ Federal Bureau of Prisons, *Substance Abuse Treatment*, https://www.bop.gov/inmates/custody_and_care/substance_abuse_treatment.jsp

⁸⁰ See National Institute on Drug Abuse, Criminal Justice DrugFacts, <https://nida.nih.gov/publications/drugfacts/criminal-justice>

⁸¹ See Sarah E. Wakeman, Josiah D. Rich, *Addiction Treatment Within U.S. Correctional Facilities: Bridging the Gap Between Current Practice and Evidence-Based Care*, J. of Addict. Dis. 34, 2-3 (2015); Mattick RP, Breen C, Kimber J, Davoli M., *Methadone maintenance therapy versus no opioid replacement therapy for opioid dependence*. Cochrane Database Syst Rev. (2009).

III. PROLONGED SOLITARY CONFINEMENT SERVES NO PENOLOGICAL PURPOSE.

Known by a variety of names, solitary confinement is some form of restrictive housing that commonly involves between 22 and 24 hours a day of physical isolation and strict regulations about when, and under what conditions, a prisoner may be permitted to leave their cell.⁸² When imposed on a prisoner for a limited amount of time following an individualized assessment, solitary confinement may be an appropriate tool in the correctional arsenal. However, there exists no penological interest in maintaining prisoners in *prolonged* solitary confinement.

Studies have shown that solitary confinement does not reduce violence within prison systems. Further, solitary confinement is no longer reserved for the most violent inmates and what was once considered a last-resort disciplinary practice is now a default option when correctional and administrative protocols fail after the first attempt.⁸³ Such prolific use of solitary confinement is both counterproductive and expensive. Indeed, numerous states have begun to investigate options for reducing their use of solitary confinement.⁸⁴

⁸² See, e.g., Brad Bennett et al., *Solitary Confinement: Inhumane, Ineffective, and Wasteful*, S. Poverty L. Ctr. 6 (2019),

https://www.splcenter.org/sites/default/files/com_solitary_confinement_0.pdf.

⁸³ Turner & Collins, *supra* n.52 at 5.

⁸⁴ See U.S. Dep't of Just., *Report and Recommendations Concerning the Use of Restrictive Housing: Final Report*, 72–78 (Jan. 2016), <https://www.justice.gov/archives/dag/file/815551/download> (noting several States' self-reported claims to be undertaking reform efforts).

A. Solitary Confinement Does Not Reduce Violence Within Prison Systems.

Over a century ago, the United States abandoned solitary confinement as a failed experiment begetting mental illness rather than rehabilitation.⁸⁵ In the past few decades, solitary confinement has returned to America’s prisons, partly in reaction to exploding prison populations.⁸⁶ Prisons, however, were ill-equipped to address the resulting volume of prisoners with mental illness and the overall increase in violence due to overcrowding.⁸⁷

Correctional officials believed they could pinpoint the “worst of the worst” who most frequently engaged in prison violence and then isolate them to restore order.⁸⁸ Many states and the Federal Bureau of Prisons built solitary confinement units and “supermax” prisons.⁸⁹ Officials expected that removing difficult prisoners from the general population would reduce prison violence.⁹⁰ They were wrong.

The increased use of solitary confinement was “not associated with reductions

⁸⁵ See, e.g., Bennion, 90 Ind. L.J. at 746–47.

⁸⁶ *Id.* at 747–51.

⁸⁷ See *id.* at 748–51.

⁸⁸ See, e.g., *id.* at 750; Chad S. Briggs et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 *Criminology* 1341, 1341–42 (2003).

⁸⁹ See, e.g., Bennion, *supra* n.84, at 751–52.

⁹⁰ See Briggs, *supra* n.87, at 1341–42.

in facility or systemwide misconduct and violence.”⁹¹ As the practice expanded, studies showed that “[p]risons with higher rates of restrictive housing had higher levels of facility disorder.”⁹² For example, Texas prisons experienced a 104 percent increase in prisoner assaults between 2009 and 2015, which correctional staff attributed directly to the overuse of solitary confinement.⁹³ Psychologists demonstrated that the social pathology caused by isolation led prisoners to “occupy this idle time by committing themselves to fighting against the system”⁹⁴

Putting prisoners into isolation did not reduce violence. Rather, the available evidence has proved the opposite is true: letting prisoners out of solitary confinement resulted in a dramatic decrease in prison violence.⁹⁵

Statistics from reforming states demonstrate that reducing long-term isolation

⁹¹ Benjamin Steiner & Calli M. Cain, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence in Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, Nat’l Inst. of Just. 165, 179 (2016).

⁹² Allen J. Beck, *Use of Restrictive Housing in U.S. Prisons and Jails, 2011–12*, U.S. Dep’t of Just. 1 (Oct. 2015), <https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf>.

⁹³ See ACLU of Tex. & Tex. Civil Rights Project-Houston, *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, 9, 44 (Feb. 2015), https://www.aclutx.org/sites/default/files/field_documents/SolitaryReport_2015.pdf.

⁹⁴ *supra* n.39, at 140.

⁹⁵ See, e.g., Marc A. Levin, Esq., *Director of the Center for Effective Justice at the Texas Public Policy Foundation Before the U.S Senate Judiciary Subcommittee on The Constitution, Civil Rights and Human Rights*, Tex. Pub. Pol’y Found. (Feb. 25, 2014), <https://www.judiciary.senate.gov/imo/media/doc/02-25-14LevinTestimony.pdf>.

decreases violent prison incidents. In Mississippi, as the solitary confinement population plunged, “the number of incidents requiring use of force plummeted Monthly statistics showed an almost 70% drop in serious incidents, both prisoner-on-staff and prisoner-on-prisoner.”⁹⁶ In North Dakota, extreme incidents such as suicide attempts and cell flooding used to occur three or more times every week in solitary confinement units; after dramatic reductions in the use of isolation, they now occur only a few times each year.⁹⁷

Barely a year after launching solitary confinement reforms in 2011, Maine prisons reported:

substantial reductions in violence, reductions in use of force, reductions in use of chemicals, reductions in use of restraint chairs, reductions in inmates cutting [themselves] up—which was an event that happened every week or at least every other week . . . The cutting [has] almost been totally eliminated as a result of these changes.⁹⁸

In Washington, a dramatic drop in violence occurred following the adoption of solitary confinement reforms and a group violence deterrence strategy.⁹⁹ “In the

⁹⁶ Terry Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 *Crim. Just. & Behavior* 1037, 1043 (2009).

⁹⁷ Cheryl Corley, *North Dakota Prison Officials Think Outside the Box to Revamp Solitary Confinement*, NPR Morning Edition (July 31, 2018), <https://www.npr.org/2018/07/31/630602624/north-dakota-prison-officials-thinkoutside-the-box-to-revamp-solitary-confineme>.

⁹⁸ Levin, *supra* n.94, at 3 (alterations in original) (internal quotations omitted).

⁹⁹ Dan Pacholke & Sandy Felkey Mullins, J.D., *More Than Emptying Beds: A Systems Approach to Segregation Reform*, U.S. Dep’t of Just. 6–9 (2016),

model's first year of implementation at its pilot facility, assaults against staff, the use of weapons, and multi-man fights were reduced by 50 percent."¹⁰⁰

B. Limiting the Use of Solitary Confinement Also Reduces Costs.

Limiting solitary confinement also provides long-term cost savings. The Government Accountability Office estimated that the cost of holding a person in solitary confinement can be as much as three times the cost of holding a person in the general population per year.¹⁰¹ Further, the cost of constructing a supermax prison, built specifically to house prisoners in solitary confinement, can be as high as three times the cost to build a conventional prison.¹⁰² These facilities must also be staffed more robustly because prisoners cannot do many of the jobs they would do in general population housing.¹⁰³ Additionally, isolation units need a higher ratio of correctional officers to prisoners because policies require at least two officers be present to move prisoners between their cells, exercise areas, and showers.¹⁰⁴

<https://www.bja.gov/publications/MorethanEmptyingBeds.pdf>.<https://www.bja.gov/publications/MorethanEmptyingBeds.pdf>.

¹⁰⁰ *Id.* at 6.

¹⁰¹ See U.S. Gov't Accountability Off., *Bureau of Prisons: Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing*, 31 (May 2013), <http://www.gao.gov/assets/660/654349.pdf>.

¹⁰² ACLU, *Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States*, (Aug. 2014), https://www.aclu.org/sites/default/files/field_document/stop_solitary_briefing_paper_updated_august_2014.pdf.

¹⁰³ *Id.* at 11.

¹⁰⁴ *Id.*

As of 2015, the Texas Department of Criminal Justice spent \$46 million a year housing inmates in solitary confinement, spending \$19.17 more on each person per day than it would housing a person in the general population.¹⁰⁵ Colorado estimated it costs over \$15,000 more per year to house a prisoner in isolation than in the general population, and spent \$20 million housing prisoners in solitary confinement in 2010 alone.¹⁰⁶ In 2009, the California Office of the Inspector General investigated the costs, per prisoner, in California’s administrative segregation units and “estimated that the annual correctional staff cost of a standard [segregation] bed [was] at least \$14,600 more than the equivalent general population bed,” amounting to “nearly \$130 million a year.”¹⁰⁷

¹⁰⁵ Douglas Smith, *Allow the Texas Department of Criminal Justice to Document and Review Its Policies Regarding Confinement in Administrative Segregation*, Tex. Crim. Just. Coal. (2015), <https://www.texascjc.org/system/files/publications/TCJC%20Fact%20Sheet%20HB%201084%20%28Administrative%20Segregation%29.pdf>.

¹⁰⁶ See Rick Raemisch, *Executive Director of the Colorado Department of Corrections “Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences”*, (Feb. 25, 2014), <https://www.judiciary.senate.gov/imo/media/doc/02-25-14RaemischTestimony.pdf>; Sal Rodriguez, *Fact Sheet The High Cost of Solitary Confinement*, Solitary Watch (2011), <https://solitarywatch.org/wp-content/uploads/2011/06/fact-sheet-the-high-cost-of-solitary-confinement.pdf>.

¹⁰⁷ David R. Shaw, *Special Review: Management of the California Department of Corrections and Rehabilitation’s Administrative Segregation Unit Population*, Off. of the Inspector Gen. (Jan. 2009), <https://www.oig.ca.gov/media/reports/ARCHIVE/BOA/Reviews/Management%20of%20the%20California%20Department%20of%20Corrections%20and%20Rehabilitation's%20Administrative%20Segregation%20Unit%20Population.pdf>.

In 2013, Illinois closed its supermax prison, Tamms, which cost \$64,000 per prisoner per year, contrasted with \$21,000 per year for general population prisoners.¹⁰⁸ The governor's office projected that closing Tamms would save the state over \$48 million in 2013 alone.¹⁰⁹ Mississippi saved nearly \$6 million a year by closing its supermax facility; Colorado estimated it saved over \$5 million after closing just one of its supermax prisons.¹¹⁰ Louisiana also closed a facility eliminating 416 restrictive housing cells.¹¹¹ In each state, reducing the use of solitary confinement also reduced ballooning corrections costs.

CONCLUSION

For the foregoing reasons, as well as those set forth in Plaintiff-Appellee's brief, this Court should affirm the district court's finding on Defendant-Appellant's motion for judgment on the pleadings wherein the court found that Mr. Cintron had

¹⁰⁸ Steve Mills, Quinn's Prison Plan Causes Stir, Chicago Tribune (Feb. 23, 2012), <https://www.chicagotribune.com/news/ct-xpm-2012-02-23-ct-met-illinois-state-budget-prisons-20120223-story.html>; Amnesty Int'l, Tamms Supermaximum Security Prison Now Closed (Jan. 10, 2013), <https://www.amnestyusa.org/victories/tamms-supermaximum-security-prison-now-closed/>.

¹⁰⁹ *Id.*

¹¹⁰ GAO Report, *supra* n.100, at 34–35.

¹¹¹ Ass'n of State Corr. Adm'rs & The Liman Ctr. for Pub. Int. L. at Yale L. Sch., Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-In-Cell, 107 n.34 (Oct. 2018), https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca_liman_2018_restrictive_housing_revised_sept_25_2018_-_embargoed_unt.pdf.

actionable claims with regard to his Eight Amendment, First Amendment, and Abuse of Process state law claim.

Respectfully submitted,

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May 11, 2023

CERTIFICATE OF COMPLIANCE

The foregoing brief complies with the type-volume limitations in Fed. R. App. P. 29(a)(5) and 32(a)(7) because it contains 6,268 words, excluding those parts exempted by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I certify that on May 11, 2023, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. All counsel of record are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

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