No. 22-1716

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

JERRY CINTRON,

Plaintiff-Appellee,

v.

PAUL BIBEAULT, in his official and individual capacity; RUI DINIZ, in his official and individual capacity; MATTHEW KETTLE, in his official and individual capacity; PATRICIA ANNE COYNE-FAGUE, in her individual capacity; WAYNE T. SALISBURY, JR., Interim Director, in his official capacity; SPECIAL INVESTIGATOR STEVE CABRAL, in his official and individual capacity; JEFFREY ACETO, in his individual and official capacity; LYNNE CORRY, in her individual and official capacity,

Defendants-Appellants,

LT. HAYES, in his official and individual capacity; LT. MOE, in his official and individual capacity; LT. BUSH, in his official and individual capacity; JENNIFER CHAPMAN, in her official and individual capacity; "COUNSELOR" FRANCO, in her official and individual capacity,

Defendants.

On Appeal from the U.S. District Court for the District of Rhode Island
Case No. 1:19-cv-497; Chief Judge John J. McConnell

BRIEF OF AMICUS CURIAE OPENDOORS IN SUPPORT OF AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

As required by Federal Rule of Appellate Procedure 26.1, the *amicus curiae* states that it has no parent corporation and that no publicly held company owns 10% or more of *amicus*'s stock.

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INTEREST OF *AMICUS CURIAE*

OpenDoors is the first and largest organization in Rhode Island dedicated to helping those who have been incarcerated. The organization was founded in 2003 and focuses on helping prisoners overcome the challenges associated with incarceration and addiction. As part of its mission, OpenDoors advocates for criminal justice and policy reform, as well as the removal of social and legal barriers to rehabilitation. The organization also offers programs that help promote economic self-sufficiency and support addiction recovery. OpenDoors is a leading contributor to the Stop Torture Rhode Island campaign to end the use of solitary confinement in Rhode Island's prisons. Given the serious harm that solitary confinement has on mental and physical health, OpenDoors has a strong interest in decreasing its use in Rhode Island's prisons. It is therefore of profound interest to Amicus that the Court recognize that both disciplinary and administrative confinement constitute solitary confinement and carry the same consequences for an inmate's physical and mental health.[1]

[1] No party or its counsel authored this brief in whole or in part. No person other than OpenDoors and its counsel contributed money intended to be used to fund preparation or submission of the brief.

ARGUMENT

Solitary confinement is one of the most powerful disciplinary tools available to the Rhode Island Department of Corrections ("RIDOC"). RIDOC routinely uses solitary confinement to coerce Rhode Island prisoners into complying with correction officers' instructions and prison procedures. Such is the case here, where Appellee Mr. Cintron, an inmate in the custody of the RIDOC, was held in a form of solitary confinement for 950 days after he received narcotics from another prisoner while incarcerated at Rhode Island's Medium Security prison despite repeatedly averring that he did not know how the narcotics entered the facility when questioned by prison officials. A. 0018–19, 0026, 0037. Although RIDOC has traditionally been afforded discretion in administering the Rhode Island corrections system, that discretion is not unlimited. Rather, the Eighth Amendment "imposes the constitutional limitation upon punishments," guaranteeing that RIDOC's use of solitary confinement cannot cross over into the impermissible realm of cruel and unusual punishment. *Rhodes v. Chapman*, 452 U.S. 337, 345 (1981). At issue in this appeal is whether Mr. Cintron's Eighth Amendment constitutional right was violated.

Decades ago, the Supreme Court declined to provide a "static test" to "determine whether conditions of confinement are cruel and unusual." *Id.* at 346 (internal quotations and citation omitted). Instead, the Court instructed that the

Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101 (1958). Even where a legitimate penological objective exists, a constitutional violation may still be found if a prisoner is held "for too long a period." *O'Brien v. Moriarty*, 489 F.2d 941, 944 (1st Cir. 1974). Today, it is widely understood that "prolonged solitary confinement produces numerous deleterious harms," *Glossip v. Gross*, 576 U.S. 863, 926 (2015) (Breyer, J., dissenting), and courts have consistently "recognized the increasingly obvious reality that extended stays in solitary confinement can cause serious damage to mental health." *Clark v. Coupe*, 55 F.4th 167, 180 (3d Cir. 2022) (citation and quotation marks omitted).

To determine whether the nature and duration of solitary confinement amounts to a violation of the Eighth Amendment, courts must consider the *conditions* of that confinement, not merely the *label* attached to it by prison officials. *See Duponte v. Wall*, 288 F. Supp. 3d 504, 513 (D.R.I. 2018). RIDOC uses several terms for "restrictive housing,"[2] including "disciplinary confinement" and "administrative confinement." RIDOC Policy 12.27, Conditions of Confinement at 2–4. Regardless of terminology, both forms of restrictive housing constitute solitary

[2] Restrictive housing is a "type of detention that involves removal of an inmate from general population . . . placement in a locked room or cell . . . and the inability to leave the room or cell for the vast majority of the day, typically 22 hours or more." RIDOC Policy 12.27, Conditions of Confinement at 2.

confinement because they severely restrict a prisoner's human contact and limit the prisoner's access to other basic human necessities like outdoor time. Only by considering those conditions of confinement can courts fully account for society's "evolving standards of decency" and the serious harm that is the inevitable byproduct of prolonged solitary isolation. *See Trop*, 356 U.S. at 101.

Appellee Mr. Cintron has ably explained the deleterious effect that being held in restrictive housing for 950 days has had on his mental health and the Appellants' improper motivation for holding him there. During that prolonged period, Mr. Cintron was confined to an eight-by-ten-foot cell for at least twenty-two hours per day. His access to the outside world, including his family and children, was extremely limited, if not non-existent. Amicus writes to emphasize the importance of considering these conditions in assessing Mr. Cintron's Eighth Amendment claim rather than crediting Appellants' argument that Mr. Cintron was held in solitary confinement for only 365 days while he was in disciplinary confinement and that the conditions of his confinement "were not sufficiently serious." Appellants Br. 35–36. Solitary confinement due process protections must also be provided to any inmate who is detained in a setting that is materially similar to the conditions in solitary confinement, even if RIDOC has concocted different names for "new" settings that include the same restrictions. *See, e.g.*, *Duponte*, 288 F. Supp. 3d at 513.

I. Disciplinary and Administrative Confinement in Rhode Island Are Both Forms of Solitary Confinement

Mr. Cintron, who has a history of opioid addiction, received narcotics from another prisoner while incarcerated at Rhode Island's Medium Security prison. A. 0018, 0026. On several occasions, Prison officials questioned Mr. Cintron about the nature of his involvement, including how the narcotics entered the facility. A. 0018–19. Mr. Cintron repeatedly averred that he did not know. A. 0019. Stemming from this incident, in July 2019, Mr. Cintron received four disciplinary bookings and was sentenced cumulatively to 450 days in "disciplinary segregation." A. 0023. From disciplinary segregation, Mr. Cintron was moved and placed in "administrative segregation," another form of restrictive housing, where he remained until March 2022. A. 0026, 0306. After spending a total of 950 days in some form of restrictive housing, Mr. Cintron finally returned to general population. A. 0306.

There are two primary classifications of restrictive housing in Rhode Island: disciplinary and administrative confinement. *See* State of Rhode Island, Report of the Special Legislative Commission to Study and Assess the Use of Solitary Confinement at the Rhode Island ACI (the "Report") 5 (2017), https://www.rilegislature.gov/Reports/Solitary%20final%20report.pdf. Inmates in disciplinary confinement are confined to an eight-by-ten-foot cell for 23 hours per day. They are allowed just one hour of exercise. On holidays and weekends, inmates

are not permitted to leave their cells at all. Contact with the outside world is extremely limited. Inmates are not allowed to have visitors, except for legal and professional visits. By rule, inmates are not permitted to call family, friends, or loved ones except under limited circumstances and for an extremely limited amount of time. Nor do inmates have access to various devices commonly used for mental stimulation, such as a radio, television, or headphones. *See* RIDOC Policy 12.27, Conditions of Confinement at 2, 8–9, 12–13. Even worse, some inmates are subject to constant video surveillance (including when using the restroom), thus stripping away any remaining semblance of human dignity. *See* A. 0024–25.

Those housed in administrative confinement fare no better. Inmates are confined to the same eight-by-ten-foot cell for 23 hours per day. As with disciplinary confinement, inmates are not permitted to leave their cells on weekends and holidays. RIDOC allows those housed in administrative confinement just one visit and one phone call per week. RIDOC Policy 12.27, Conditions of Confinement at 9, 12–13. Inmates housed in administrative confinement can be held there indefinitely under RIDOC policy. *See* RIDOC Policy 11.01-7, Code of Inmate Discipline at 9 (imposing penalty of up to one year in disciplinary confinement for certain offenses but providing no such limitation for administrative confinement).

The foregoing descriptions demonstrate that disciplinary and administrative segregation are two terms for the same thing: solitary confinement. *See* World

Health Organization Regional Office for Europe, *Prisons and Health* 27 (S. Enggist et al. eds., 2014) ("WHO Prisons and Health Report") ("Different jurisdictions may use other terms to describe what is essentially a regime of solitary confinement.").

To plausibly allege an Eighth Amendment violation, a prisoner must "allege[] conditions tantamount to solitary confinement." *Duponte*, 288 F. Supp. 3d at 513. According to intergovernmental and human rights organizations, solitary confinement is marked by the "confinement of prisoners for 22 hours or more a day without meaningful human contact." *See, e.g.*, G.A. Res. 70/175, Annex Rule 44 (Dec. 17, 2015). Such confinement is considered "prolonged" if it continues for more than 15 consecutive days. *Id.* Anything in excess thereof is likely to cause serious and irreparable mental and physical harm. Report at 8, 17.

As noted, Rhode Island's disciplinary and administrative confinement require that an inmate remain in his or her cell for more than 22 hours each day. During that time, inmates have no meaningful contact with others. They have extremely limited access to visitors or phone calls (or none at all). They are deprived of basic human necessities, such as fresh air and opportunities for mental stimulation. The conditions in disciplinary segregation are undeniably akin to solitary confinement. Indeed, a report published by the Rhode Island Special Legislative Commission to Study and Assess the Use of Solitary Confinement at the Rhode Island ACI (the "Commission") observed that disciplinary confinement "most closely resembles the

general definition of solitary confinement." Report at 5. And while conditions in administrative confinement may be slightly less restrictive as a matter of degree, it "unquestionably amount[s] to solitary confinement in that human contact is extremely restricted." *Pona v. Weeden*, No. CV 16-612, 2018 WL 1417725, at *5 (D.R.I. Mar. 21, 2018); *see also Goguen v. Allen*, 780 F.3d 437, 438 (1st Cir. 2015) ("Inmates in administrative segregation endure a significantly restrictive environment.").

The practice of "deploying different names for substantially similar practices is itself a legitimizing technique of prison administrators, allowing them to differentiate 'new' practices from discredited 'old' practices." Ashley T. Rubin & Keramet Reiter, *Continuity in the Face of Penal Innovation: Revisiting the History of American Solitary Confinement*, 43 L. & Soc. Inquiry 1604, 1608 (2018). It is for that reason that courts should be especially vigilant of labels and terminology when assessing the duration and conditions of a prisoner's confinement. *See, e.g.*, *Cox v. Malone*, 199 F. Supp. 2d 135, 142 (S.D.N.Y. 2002) (recognizing no "real difference" in conditions between disciplinary and administrative segregation). Appellants' attempts to split the time Mr. Cintron spent in these restrictive housing conditions into shorter segments must be recognized for what they are—an effort to downplay the seriousness and length of Mr. Cintron's confinement.

Mr. Cintron spent a total of 950 days in restrictive housing conditions. A. 0037. As a result, Mr. Cintron was "deprived of almost any environmental or sensory stimuli and of almost all human contact," in conditions that unquestionably amounted to solitary confinement. *Wilkinson v. Austin*, 545 U.S. 209, 214 (2005).

II. Solitary Confinement Has a Deleterious Effect on Mental Health

More than a century ago, the Supreme Court observed that solitary confinement had a negative effect on mental health. *See In re Medley*, 134 U.S. 160, 168 (1890) (explaining prisoners in solitary confinement were unable to "recover sufficient mental activity to be of any subsequent service to the community"). In recent years, empirical studies have shed more light on the practice of solitary confinement. Inmates in solitary are prone to severe "anxiety, depression, anger, cognitive disturbances, perceptual disturbances, paranoia, and psychosis, among other symptoms." WHO Prisons and Health Report at 28. Self-harm and suicide are also tragic consequences. *Id.* Inmates further suffer from physiological harms, such as insomnia and weight loss. *Id.*

Likewise, in Rhode Island, the Commission heard testimony on "recent research studies which showed that prolonged isolation causes higher rates of psychiatric hospitalization, sleeplessness, anxiety, depression and suicidal thoughts among prisoners." Report at 8. One of the many inmates subject to solitary

confinement in Rhode Island's prisons summarized the conditions: "[I]magine you were locked inside your bathroom for 8,395 hours. What would you do? How would you pass the time? . . . How would you cope mentally, emotionally and physically?" Katherine Gregg, *Should Rhode Island Limit Use of Solitary Confinement? Hear Those Who Lived It Speak Out*, Providence J. (Mar. 9, 2023), https://www.providencejournal.com/story/news/politics/2023/03/09/rhode-island-may-ban-solitary-confinement-whats-in-the-bill/69985138007/.

The above illustrates why there has been a "new and growing awareness" of the harms caused by solitary confinement. *See Davis v. Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring). As the District Court for the District of Rhode Island acknowledged in 2018, "society has become increasingly aware of the profound impact that solitary confinement can have on an individual's mental and physical health." *Duponte*, 288 F. Supp. 3d at 513. In fact, the "consequences of long-term solitary confinement are so well-known that numerous medical associations . . . have all issued formal policy statements opposing the practice." *Diaz v. Wall*, No. CV 17-94, 2018 WL 1224457, at *7 (D.R.I. Mar. 8, 2018) (citation omitted).

The United States Court of Appeals for the Third Circuit recently explored "[t]he robust body of scientific research on the effects of solitary confinement." *Williams v. Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 566 (3d Cir. 2017). The Third

Circuit observed that "the empirical record compels an unmistakable conclusion: this experience is psychologically painful, can be traumatic and harmful, and puts many of those who have been subjected to it at risk of long-term damage." *Id.* (cleaned up). Research has confirmed "that virtually *everyone* exposed to such conditions is affected in some way," and many "experience a degree of stupor, difficulties with thinking and concentration, obsessional thinking, agitation, irritability, and difficulty tolerating external stimuli." *Id.* (citations and quotations omitted). Other studies "underscored the importance of social contact and for the creation and maintenance of self. In other words, in the absence of interaction with others, an individual's very identity is at risk of disintegration." *Id.* (citation and quotations omitted).

For these reasons, it is now firmly established "that solitary confinement imprints on those that it clutches a wide range of psychological scars." *Apodaca v. Raemisch*, 139 S. Ct. 5, 9 (2018) (Sotomayor, J., concurring). And the potential for serious harm increases the longer a prisoner is held in solitary confinement. "Social interaction, environmental stimulation, and activity are basic human needs. Deprivation of these needs for an extended period causes severe and lasting consequences to mental and physical health." *Grissom v. Roberts*, 902 F.3d 1162, 1176 (10th Cir. 2018) (Lucero, J., concurring) (citation omitted).

As a result of the conditions of his confinement, Mr. Cintron suffered mental harm. "He had intrusive thoughts, severe anxiety, and cried often." A. 0306. His relationships with his loved ones deteriorated. *Id*. He even had to begin taking psychiatric medication. *Id*. The mental health consequences of solitary confinement are not hypothetical—they are a well-established and consistent phenomenon that have had a direct impact on the course of Mr. Cintron's life.

III. Courts Have Found That Similar Conditions of Confinement Violate the Eighth Amendment's "Evolving Standard of Decency"

Conditions like those alleged by Mr. Cintron are sufficient to plausibly state a violation of his Eighth Amendment rights. As articulated by this Court, "Eighth Amendment jurisprudence requires courts to exhibit flexibility to comport with the evolving standards of decency that mark the progress of a maturing society." *United States v. Gonzalez*, 981 F.3d 11, 19 (1st Cir. 2020) (citation omitted). Although there is no "static test" for determining whether the conditions of solitary confinement in Rhode Island are cruel and unusual relative to the "evolving standards of decency," recent cases from the Rhode Island District Court taking into account the conditions in which the inmate was held and the length of time the inmate was held in those conditions are illustrative.

For instance, in *Duponte v. Wall*, the district court determined an inmate plausibly alleged an Eighth Amendment violation after being held in "conditions tantamount to solitary confinement" for one year. 288 F. Supp. 3d at 513. The

Duponte court cited this Court's holding in *O'Brien v. Moriarty*, cautioning that "if imposed 'for too long a period, even the permissible forms of solitary confinement might violate the Eighth Amendment.'" *Id.* (citing 489 F.2d 941, 944 (1st Cir. 1974)).

Even more recently, in 2021, the district court found that an inmate who "lived under solitary conditions for thirteen months" had plausibly alleged an Eighth Amendment violation. *Tefft v. Coyne-Fague*, No. CV 21-124, 2021 WL 5824331, at *6 (D.R.I. Dec. 8, 2021). Like *Duponte*, the court's decision in *Tefft* was driven by "[t]he damage that prolonged solitary confinement can inflict upon the human mind." *Id.*

In another case, the district court held that an inmate held in solitary confinement for approximately 18 months plausibly alleged an Eighth Amendment violation. *Diaz*, 2018 WL 1224457, at *5. The inmate "was held in isolation for twenty-three hours a day; permitted one hour of daily exercise in the prison yard; limited to five showers a week; and [was] denied privileges granted to the general population, such as the opportunity to . . . have visitors." *Id.* The district court expressly acknowledged that the inmate "was subjected to amounts and conditions of solitary confinement that might be considered cruel and unusual." *Id.* at *7; *see also Sevegny v. Coyne-Fague*, No. CV 21-471, 2021 WL 6048973, at *2 (D.R.I. Dec. 21, 2021) ("Plaintiff's allegation of more than seven hundred days in

segregation is sufficient plausibly to allege that his right to be free of cruel and unusual punishment may have been violated.").

These cases, along with the ever-growing scientific consensus on the deleterious effects of prolonged isolation, incontrovertibly demonstrate that Mr. Cintron's 950-day isolation in solitary confinement is more than sufficient to plausibly allege a violation of his Eighth Amendment rights.

CONCLUSION

For the foregoing reasons, as well as those explained more fully in Mr. Cintron's submission, the Court should affirm the district court's order denying summary judgment for Defendants on Mr. Cintron's Eighth Amendment claim.

Dated: May 11, 2023

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned certifies that this brief was prepared in Microsoft Word 365 in 14-point Times New Roman proportional font and, excluding exempted portions of the brief, contains 3048 words. The brief therefore complies with the type-volume limitation set forth in Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B).

Dated: May 11, 2023

/s/ John P. Bueker
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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of May 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system.

Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: May 11, 2023

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