22-1716

IN THE

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 STEVEN 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 UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

BRIEF FOR *AMICUS CURIAE* RIGHTS BEHIND BARS IN SUPPORT OF APPELLEE JERRY CINTRON

DANIEL S. RUZUMNA
ISAAC WEINGRAM
DAVID MOOSMANN
PATTERSON BELKNAP WEBB
& TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
(212) 336-2000

Attorneys for Amicus Curiae
Rights Behind Bars

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

Other Authorities

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amicus Curiae Rights Behind Bars states that it does not have a parent corporation and that no publicly held corporation owns 10% or more of its stock.

INTEREST OF *AMICUS CURIAE*[1]

Rights Behind Bars (RBB) legally advocates for people in prison to live in humane conditions and contributes to a legal ecosystem in which such advocacy is more effective. Since the start of the organization in 2019, RBB has acted as counsel to over 100 prisoners in the Courts of Appeals and Supreme Court. These matters include numerous appeals concerning the contours of qualified immunity. *See, e.g.*, *McCoy v. Alamu*, 209 L. Ed. 2d 114 (2021); *Taylor v. Riojas*, 208 L. Ed. 2d 164 (2020); *Getzen v. Long*, No. 21-16437, 2023 WL 118743 (9th Cir. Jan. 6, 2023); *Fugate v. Erdos*, No. 21-4025, 2022 WL 3536295 (6th Cir. Aug. 18, 2022); *Wheat v. D'ay*, 859 F. Appx 885 (11th Cir. 2021). As such, RBB has become an expert in the field and has a concrete interest in the just development of doctrine in this area which could potentially impact affects any of the organization's clients who pursue damages litigation stemming from the conditions of their confinement.

[1] Fed. R. App. P. 29 Statement: All parties were notified and consented to the filing of this brief. No counsel for either party authored this brief in whole or in part. No one other than *amicus* and its members made monetary contributions to its preparation or submission.

INTRODUCTION

In this case, Defendants—officials of the Rhode Island Department of Corrections—subjected Jerry Cintron to over two-and-a-half years of solitary confinement. *See* A37, A302, A305–06. They now seek to avoid liability by invoking the doctrine of qualified immunity, claiming that, despite a judicial, academic, and public consensus that long-term solitary confinement has pernicious and long-lasting effects, they could not have known that what they did was wrong. The district court properly rejected that gambit; this Court should affirm. Qualified immunity exists to ensure that government officials have proper notice that their conduct infringes constitutional rights. It should not be twisted into a mechanism to escape accountability for clear constitutional violations.

As this Court has held, the constitutional standard for conditions-of-confinement cases like this one is clearly established: government officials may not with deliberate indifference impose conditions of incarceration that pose a substantial risk of serious harm. Accordingly, a right to be free from a particular condition of confinement is clearly established when government officials know, or should know, that their conduct subjects a prisoner to a substantial risk of serious harm. In the face of a mountain of evidence, there is no doubt that prolonged solitary confinement of the type Defendants inflicted on Mr. Cintron presented such a risk and that Defendants knew or should have known that it did.

But Defendants seek to leverage a misapplication of qualified immunity that seemingly immunizes government officials when there is not a precisely analogous case on point regardless of what other information was and should have been available to them. That approach is inconsistent with Supreme Court precedent expressly rejecting the proposition that a plaintiff must identify a factually analogous case in order to overcome a qualified immunity defense. The proper approach, as recognized in this Court's recent precedents, focuses on whether the test for a constitutional right is sufficiently well-defined through identification of relevant issues such that officials may be deemed on notice of, and responsible for, the constitutionally significant issues. This Court should once again affirm that approach.

ARGUMENT

There is a strong—and cross-ideological—agreement that qualified immunity has been misapplied in practice and lacks a foundation in theory. *See, e.g.*, *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1872 (2017) (Thomas, J., concurring in part) (calling on the Supreme Court to "reconsider [its] qualified immunity jurisprudence"); *Kisela v. Hughes*, 138 S. Ct. 1148, 1162 (2018) (Sotomayor, J. dissenting) (decrying "a one-sided approach to qualified immunity [that] transforms the doctrine into an absolute shield for law enforcement officers"); *Sampson v. Cnty. of Los Angeles*, 974 F.3d 1012, 1025 (9th Cir. 2020) (Hurwitz, J.,

concurring in part and dissenting in part) (describing the "judge-made doctrine of qualified immunity" as "ill-conceived" and lacking any textual foundation); *Horvath v. City of Leander*, 946 F.3d 787, 800 (5th Cir. 2020), *as revised* (Jan. 13, 2020) (Ho, J., concurring in part) ("The 'clearly established' requirement is controversial because it lacks any basis in the text or original understanding of § 1983. Nothing in the text of § 1983—either as originally enacted in 1871 or as it is codified today—supports the imposition of a 'clearly established' requirement."); *Cole v. Carson*, 935 F.3d 444, 471 (5th Cir. 2019), *as revised* (Aug. 21, 2019) (Willett, J., dissenting) ("The real-world functioning of modern immunity practice—essentially 'heads government wins, tails plaintiff loses'—leaves many victims violated but not vindicated. More to the point, the 'clearly established law' prong, which is outcome-determinative in most cases, makes qualified immunity sometimes seem like unqualified impunity: 'letting public officials duck consequences for bad behavior—no matter how palpably unreasonable—as long as they were the first to behave badly.'" (internal quotation marks omitted)); *Thompson v. Clark*, No. 14-CV-7349, 2018 WL 3128975, at *11 (E.D.N.Y. June 26, 2018) (Weinstein, J.) (setting forth various criticisms of the doctrine and describing its application in excessive force cases as "particularly troubling"); James A. Wynn, Jr., *As a judge, I have to follow the Supreme Court. It should fix*

this mistake, Wash. Post (June 12, 2020) ("Eliminating the defense of qualified immunity would improve our administration of justice and promote the public's confidence and trust in the integrity of the judicial system.").

No aspect of the doctrine has been as consistently misinterpreted and criticized as the requirement that the law be clearly established before officials may be held liable for violating it. Courts construing that requirement too narrowly have produced absurd and unjust results. Although this Court may be bound by the doctrine generally, it should not follow that erroneous course which unnecessarily expands qualified immunity.

In fact, this Court's recent precedent cabins the doctrine. It should continue that trend here. Drawing from Supreme Court precedent, this Court has struck a balance between providing fair notice to officials while preventing the dismissal of meritorious claims on dubious grounds. This Court's approach finds that a right is clearly established when a test for violative conduct has been enunciated that identifies the relevant issues bearing on the test's application. Government officials are then held accountable for all facts reasonably known to them that bear on those issues. Using that approach in Mr. Cintron's case requires a finding that qualified immunity does not apply.

Accordingly, this brief proceeds in three parts: first, amicus sketches the landscape of qualified immunity doctrine and explains where many federal courts go wrong in applying it; second, amicus articulates this Court's evolving approach to qualified immunity cases; and third, amicus argues that this Court should affirm that all information reasonably available to government officials bears on whether they had notice of their violative conduct and that Defendants here were on notice of the illegality of their conduct.

I. Courts Have Misapplied Qualified Immunity

Under the judicially created doctrine of qualified immunity, state actors may not be held personally liable unless "(1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *Irish v. Fowler,* 979 F.3d 65, 76 (1st Cir. 2020) (quoting *District of Columbia v. Wesby*, —— U.S. ——, 138 S. Ct. 577, 589, 199 L.Ed.2d 453 (2018)). The analysis often turns on the second prong. Although the purpose of the "clearly established" prong is to "give officials (and, ultimately, governments) the same protection from civil liability and its consequences that individuals have traditionally possessed in the face of vague criminal statutes," *United States v. Lanier*, 520 U.S. 259, 270–71 (1997), some courts have lost sight of that principle, but not the ones that bind this Court and dictate the outcome here.

Many lower court cases incorrectly turn on granular analyses of factual similarities to judicial precedent, holding officials immune from liability unless a plaintiff identifies a perfectly on-point case. That approach has had absurd—and unjust—results. *See, e,g., A.M. v. Holmes*, 830 F.3d 1123 (10th Cir. 2016) (holding that it was not clearly illegal to arrest a middle-schooler for burping and laughing in class); *Thompson v. Rahr*, 885 F.3d 582, 590 (9th Cir. 2018) (granting qualified immunity to an officer who put a gun to an unarmed suspect's head and threatened to kill him because, unlike in a previous case, the suspect was not a "woman [who] suffered from knee problems, stood five feet and six inches tall, and weighed 250 pounds"); *Corbitt v. Vickers*, 929 F.3d 1304, 1318-19 (11th Cir. 2019) (granting qualified to an officer who shot a family's concededly non-threatening dog, missed, and maimed a ten-year-old because no case "holds that a temporarily seized person—as was [the plaintiff] in this case—suffers a violation of his Fourth Amendment rights when an officer shoots at a dog—or any other object—and accidentally hits the person"); *Jessop v. City of Fresno*, 936 F.3d 937, 942 (9th Cir. 2019) (holding that it was not clearly established that officers may not steal over $200,000 worth of property and keep that property for themselves after executing of a search warrant).

These decisions ignore that the Supreme Court has expressly rejected the idea that a factually identical—or even analogous—precedent is required to clearly establish the illegality of certain conduct. *Lanier*, 520 U.S. at 271 ("[A] general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though the very action in question has not previously been held unlawful." (internal quotation marks and alterations omitted)); *see also Taylor v. Riojas*, 208 L. Ed. 2d 164, 141 S. Ct. 52, 53-54 (2020) ("Confronted with the particularly egregious facts of this case, any reasonable officer should have realized that Taylor's conditions of confinement offended the Constitution."); *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (holding that an official may be on notice of illegality even where there are no cases with "fundamentally similar" or even "*materially* similar" facts). Applying that principle, several courts—including this Court—have recognized that conduct may be so obviously illegal that no precedent is necessary to put reasonable officials on notice. *See, e.g.*, *Marrero-Mendez v. Calixto-Rodriguez*, 830 F.3d 38, 47 (1st Cir. 2016) ("Indeed, the coerciveness of appellants' conduct is so patently evident that no particular case—and certainly not one 'directly on point,' *al–Kidd,* 563 U.S. at 741, 131 S.Ct. 2074—need have existed to put a reasonable officer on notice of its unconstitutionality."); *Browder v. City of Albuquerque*, 787 F.3d 1076, 1082 (10th

Cir. 2015) ("[T]he more obviously egregious the conduct in light of prevailing constitutional principles, the less specificity is required from prior case law to clearly establish the violation.").

If qualified immunity is supposed to work like the "fair warning standard" in criminal void-for-vagueness jurisprudence, the body of caselaw focusing on granular factual distinctions from precedent cannot be right. Courts do not let criminal defendants go free because no one has ever been convicted under the precise fact pattern for which they are tried. Rather, the test is one of "fair" notice. *See Johnson v. United States*, 576 U.S. 591, 595 (2015). Those lower court decisions that hew too closely to the facts of precedent miss the forest for the trees; they substitute recitation of granular factual distinctions for principled analysis of when precedent provides fair notice. In so doing, they dramatically expand the scope of official immunity, rendering it qualified in theory but near-absolute in practice, leading to a lack of accountability.

II. This Court's Recent Precedents Balance Fair Notice and the Compelling Need to Vindicate Constitutional Rights

This Court has charted a path that reins in the excessive application of qualified immunity. If qualified immunity is premised on the need for officials to receive fair notice of the illegality of their conduct before they may be held liable, the law must have a theory of notice grounded in the practical realities of state

action. Officials do not conduct their duties merely by reference to abstract principles of law. Nor, however, do they scour the pages of the Federal Reporter for factually analogous precedents. Rather, officials look to precedent—and sources of law more generally—to articulate principles of constitutional law that translate broader legal propositions into actionable tests of legality. For example, while officials know from the Constitution alone that searches may not be "unreasonable," U.S. Const. amend. IV, other sources of law identify the facts—consent, plain view, etc.—that concretize that principle's application. Officials then apply that constitutional test to the facts before them, paying particular attention to facts courts have identified as legally significant.

The "clearly established" prong of qualified immunity "has two sub-parts." *Alfano v. Lynch*, 847 F.3d 71, 75 (1st Cir. 2017). First, there must be authority "sufficient to send a clear signal to a reasonable official that certain conduct falls short of the constitutional norm." *Id.* Second, the test then asks "whether an objectively reasonable official in the defendant's position would have known that his conduct violated that rule of law." *Id.* For the first subpart, "it is enough if the existing precedents establish the applicable legal rule with sufficient clarity and specificity to put the official on notice that his contemplated course of conduct will violate that rule." *Id.* at 76. A plaintiff "is not required to identify cases that

address the particular factual scenario that characterizes his case." *Id.* Rather, courts should draw on *all* information reasonably available to government officials capable of putting them on notice of their conduct's illegality. *See, e.g.*, *Stamps v. Town of Framingham*, 813 F.3d 27, 32 (1st Cir. 2016) (considering, among other things, "police rules," the officer's "training," and "general firearms protocol"). This Court should take this case as an opportunity to affirm this approach again and eschew the hollow approach to qualified immunity that narrowly looks for analogous cases.

This Court's decision in *McKenney v. Mangino*, 873 F.3d 75 (1st Cir. 2017), illustrates the proper application of the qualified immunity test. There, an officer was alleged to have shot and killed a man who, while carrying a firearm, had not pointed it at the officer or at anyone else. Under the Fourth Amendment, the use of lethal force constitutes a seizure, the reasonableness of which is assessed in light of two factors: "the immediacy of the danger posed by the decedent and the feasibility of remedial action." *Id.* at 84. In rejecting the officer's claim to qualified immunity, this Court declined to survey its precedents in search of the closest factual analogues. Instead, it concluded that, because precedent had established that "the most relevant factors in a lethal force case . . . are the immediacy of the danger posed by the decedent and the feasibility of remedial action," the officer's

knowledge of certain facts—about McKenney's demeanor and conduct—clearly established the illegality of his conduct. *Id.* That is, the "constitutional rule already identified in the decisional law" applied with "obvious clarity to the specific conduct in question" because the rule identified the legal standard and the facts relevant to that standard. *Id.* at 83. Even in the absence of a factually analogous case, therefore, "the defendant [had] fair warning that . . . his use of deadly force against McKenney offended clearly established Fourth Amendment law—and an objectively reasonable officer would have realized as much." *Id. at* 83.

In *Norton v. Rodrigues*, 955 F.3d 176 (1st Cir. 2020), this Court adopted a similar approach to address a prison official's entitlement to qualified immunity in a case alleging that he had exposed an inmate to attacks by a prison gang. As in *McKenney*, this Court began by considering the constitutional framework for the right at issue—in this case the Eighth Amendment's protection of "the incarcerated community from 'cruel and unusual punishment.'" *Id.* at 185. This Court found that the constitutional standard was clearly established: prison officials may not, with deliberate indifference, incarcerate a person "under conditions posing a substantial risk of serious harm." *Id.* "Deliberate indifference," in turn, "requires knowledge of a substantial risk of serious harm and an unreasonable response to

the same." *Id.* With that clear constitutional framework in hand, this Court dispensed with the need to find a factually analogous precedent. What mattered, this Court observed, was what the defendant knew with respect to the risk of harm to the plaintiff. *Id.* at 186 ("[T]o determine whether Rodrigues may have violated a clearly-established right and therefore may not be entitled to qualified immunity, we focus on the portions of the record that could reasonably be read to support the conclusion that Rodrigues knew about Norton's safety concerns but failed to take reasonable steps to address them."). This included facts gleaned from common understanding such as those learned from Rodrigues's "years of experience as a prison official." *Id.* at 186. This Court did not even consider whether the facts of *Norton* neatly lined up with its precedents. Instead, it recognized that Eighth Amendment caselaw already established the test of illegality and the facts to which that test applies, thus providing sufficient notice of what conduct was lawful. The only question for the application of qualified immunity, then, was whether the defendant had sufficient knowledge of the particular facts evidencing the risk posed to the plaintiff.

Unlike cases that look only for precise precedential analogues or only obvious or egregious conduct, *McKenney* and *Norton* faithfully apply Supreme

Court precedent by allowing for fair warning to public officials while preserving accountability.

III. This Court's Recent Precedents Require Finding That Defendants are not Entitled to Qualified Immunity

In *Farmer v. Brennan*, the Supreme Court articulated a two-part test for assessing the constitutionality of a prisoner's conditions of confinement. 511 U.S. 825, 832 (1994). This Court in *Burrell v. Hampshire County* held that the *Farmer* test applies to cases like this one. 307 F.3d 1, 8 (1st Cir. 2002). Under that test, conditions of confinement violate the Eighth Amendment's protections against cruel and unusual punishment if (a) "the deprivation alleged [is] objectively, sufficiently serious"—that is, the "conditions impos[e] a substantial risk of serious harm"—and (b) "prison officials possessed a sufficiently culpable state of mind, namely one of 'deliberate indifference' to an inmate's health or safety." *Id.*; *see also Evariste v. Massachusetts*, No. 20-1137, 2020 WL 8611029, at *1 (1st Cir. Dec. 22, 2020). This two-part test clearly establishes the standard of legality under the Eighth Amendment. *See, e.g.*, *Mosher v. Nelson*, 589 F.3d 488, 493 (1st Cir. 2009) (noting that "in August of 2004 . . . the law was clearly established" under the two-part *Farmer* test); *Norton*, 955 F.3d at 185–86. The test provides officials notice that if their conduct poses substantial risk of serious harm and they act with deliberate indifference, they violate Eighth Amendment. The only open question

regarding whether a particular condition of confinement clearly runs afoul of this established standard, then, is if reasonable officials knew or should have known that their conduct posed a substantial risk of harm. *See id.* at 494 ("With the standard in mind, we next consider whether a reasonable official in Nelson's position would have been on notice . . . that his conduct violated the [Eighth Amendment as incorporated by the] Fourteenth Amendment."); *Camilo-Robles v. Hoyos*, 151 F.3d 1, 7 (1st Cir. 1998) ("Because the constitutional rights and supervisory liability doctrine that . . . are clearly established, the qualified immunity analysis here turns on whether, in the particular circumstances confronted by each appellant, that appellant should reasonably have understood that his conduct jeopardized these rights.").

To determine what reasonable officials knew or should have known, this Court's precedents and decisions within this Circuit point to a number of sources of information. One such source is the knowledge customarily available to officials performing their duties, whether acquired by training, experience, or otherwise. For example, in *Stamps v. Town of Framingham*, 813 F.3d 27 (1st Cir. 2016), which involved the question of whether a police officer's accidental shooting violated the Fourth Amendment's prohibition on unreasonable seizures, the Court looked to "police rules," the officer's "training," and "general firearms

protocol." *Id.* at 32. Those sources of knowledge, in light of case law holding that "pointing a firearm at a person in a manner that creates a risk of harm incommensurate with any police necessity" is unlawful, put the defendant officer on notice of the illegality of his conduct. *Id.* at 42; *see id.* ("Here . . . we have a procedural posture and a record supporting the conclusion that police officers are customarily taught *not* to do what Duncan did. This evidence reinforces the conclusion that the unreasonableness of Duncan's conduct, as a jury could find it, was well established." (emphasis in original)); *see also Raiche v. Pietroski*, 623 F.3d 30, 39 (1st Cir. 2010) ("A reasonable officer with training on the Use of Force Continuum would not have needed prior case law on point to recognize that it is unconstitutional to tackle a person who has already stopped in response to the officer's command to stop and who presents no indications of dangerousness.").

Scientific evidence and common knowledge may also inform an assessment of the reasonableness of officers' conduct. *See, e.g.*, *Diaz v. Wall*, No. CV 17-94 WES, 2018 WL 1224457, at *7 (D.R.I. Mar. 8, 2018) (citing *United States v. D.W.*, 198 F. Supp. 3d 18, 93 (E.D.N.Y. 2016), in which the district court relied upon "reliable studies show[ing] . . . severe consequences from isolation"); *id.* (noting that the "consequences of long-term solitary confinement are so well-known that numerous medical associations . . . have all issued formal policy statements

opposing the practice" (quoting *Peoples v. Annucci*, 180 F. Supp. 3d 294, 297, 299 (S.D.N.Y. 2016)). So too may common sense. Reasonable officials, like reasonable people generally, can be expected to draw certain reasonable inferences. *See, e.g.*, *Camilo-Robles v. Hoyos*, 151 F.3d at 14 (denying qualified immunity because an erratic, violent officer's supervisors "knew that [he] was a ticking time bomb and also knew (or should have known) that [he] . . . would likely commit acts that would violate the constitutional rights of others")

In sum, decisions of this Court and its district courts establish that many sources of knowledge may bear on the unlawfulness of officials conduct. And where, as here, officials had ample opportunity to observe Mr. Cintron's state and deliberate on the best course of action, they cannot plead ignorance of readily available sources of information about the consequences of their conduct. *Cf. Ciolino v. Gikas*, 861 F.3d 296, 304 (1st Cir. 2017) (noting that the standard of objective reasonableness must take into account whether the defendant official had to make snap judgments or had an opportunity to deliberate). Here, those sources universally point to the serious and long-lasting deleterious effects of solitary confinement. See *Glossip v. Gross*, 576 U.S. 863, 926 (2015) (Breyer, J., dissenting) ("[I]t is well documented that . . . prolonged solitary confinement produces numerous deleterious harms.").

First, precedent clearly establishes that prolonged solitary confinement inflicts grave—and often permanent—psychological damage. In 1890, the Supreme Court, relying upon the scholarly literature as it existed then, described the predictable consequences of total isolation from one's fellow man: "[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." *In re Medley*, 134 U.S. 160, 168 (1890).

That assessment of solitary confinement's consequences has remained unchanged. In case after case, courts throughout the country have recognized the profound harms associated with solitary confinement. *See, e.g.*, *Clark v. Coupe*, 55 F.4th 167, 179–80 (3d Cir. 2022) (noting "a growing consensus that solitary confinement conditions can cause severe and traumatic psychological damage that in turn leads to high rates of self-harm or suicide in inmates who had spent time in solitary confinement." (cleaned up)); *Porter v. Pennsylvania Dep't of Corr.*, 974 F.3d 431, 441 (3d Cir. 2020) ("It is well established in both case law and scientific and medical research that prolonged solitary confinement . . . poses a substantial

risk of serious psychological and physical harm"); *Incumaa v. Stirling*, 791 F.3d 517, 534 (4th Cir. 2015), *as amended* (July 7, 2015) ("Prolonged solitary confinement exacts a heavy psychological toll that often continues to plague an inmate's mind even after he is resocialized."). No case so much as suggests, let alone holds, that prolonged solitary confinement comes without severe psychological consequences. The law clearly establishes that prolonged solitary confinement poses a substantial risk of serious psychological harm.

Second, official findings, ranging from local legislative studies to international reports, confirm the pervasive and serious risks of harm created by solitary confinement. *See, e.g.*, *Diaz*, 2018 WL 1224457, at *7 (noting that "reliable studies show[ing] . . . severe consequences from isolation" and that the "consequences of long-term solitary confinement are so well-known that numerous medical associations . . . have all issued formal policy statements opposing the practice"). Most relevant here, in *DuPonte v. Wall*, 288 F. Supp. 3d 504 (D.R.I. 2018), the district court considered a case of solitary confinement in the Rhode Island prison system—the precise system at issue in Mr. Cintron's case. The district court noted that "on June 29, 2017, the Rhode Island Special Legislative Commission to Study and Assess the Use of Solitary Confinement at the Rhode Island ACI (the 'Commission') published [a] Report." *Id.* at 513. "The Report

recognizes that solitary confinement 'has recently been the focus of a world-wide human rights campaign,' and cites criticism calling the practice 'dehumanizing.'" *Id.* Further, "[t]he Report likens Rhode Island's 'disciplinary +confinement' to solitary confinement." *Id.* at 514. Among its findings, the Report noted "that 'prolonged isolation causes higher rates of psychiatric hospitalization, sleeplessness, anxiety, depression and suicidal thoughts among prisoners.'" *Id.* There was also testimony in the "Report . . . regarding 'the lack of any empirical evidence of the effectiveness of solitary confinement as a tool to deter recidivism or change a prisoner's behavior.'" *Id.* Given this evidence, the Report included recommendations of "'time limits,' including '15 day maximum sentence[s] for disciplinary confinement.'" *Id.* Rhode Island correctional officials are unquestionably on notice of Rhode Island's assessment of its own practices.

Third, scholarly consensus establishes that solitary confinement cannot be imposed, let alone for over two years, without a substantial risk of psychological harm to the person incarcerated. *See*, *e.g.*, Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev. L. & Soc. Change 477, 530 (1997) (noting that solitary confinement can cause "increases in negative attitudes and affect, insomnia, anxiety, panic, withdrawal, hypersensitivity, ruminations, cognitive

dysfunction, hallucinations, loss of control, aggression, rage, paranoia, hopelessness, lethargy, depression, emotional breakdowns, self-mutilation, and suicidal impulses"); Ruth Chan, *Buried Alive: The Need to Establish Clear Durational Standards for Solitary Confinement*, 53 UIC J. Marshall L. Rev. 235, 252 (2020) (noting, *inter alia*, that prisoners in solitary confinement account for 50% of prison suicides despite constituting a far smaller portion of the prison population). While no empirical proposition ever goes wholly uncontested, the overwhelming weight of scholarly authority confirms that prolonged solitary confinement results in the development, or exacerbation, of mental illness.

Fourth, common knowledge demonstrates that isolation is inimical to human welfare.[2] Human beings are social creatures. And recent events have made our

[2] Depictions of solitary confinement have also found their way into popular culture, with news, humor, and fiction setting out its dire consequences. *See, e.g.*, *Last Week Tonight*, *Solitary Confinement* (HBO 2023) (describing the pernicious consequences of prolonged solitary confinement); *60 Minutes Overtime*, *Pelican Bay* (CBS Sep. 12, 1993) (recounting prisoners' description of the solitary housing unit as Pelican Bay as "a living hell where inmates are brutalized and sometimes driven insane"); Rick Raemisch, *My Night in Solitary*, N.Y. Times (Feb. 20, 2014), https://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html. (describing the head of Colorado's Department of Correction's account of a single night in solitary confinement, which he described as "inhumane"); Alanna Vagianos, *The Real Piper Explains The Devastating Effects Of Solitary Confinement*, Huffington Post (June 26, 2015), https://www.huffpost.com/entry/piper-kerman-explains-shu_n_7665626 (noting that Orange is the New Black, an award-winning show centered on life in a women's prison, "shed[] light on . . . the terrifying mental emotional effects

need for interaction all the clearer, with lockdowns reminding us of the crucial role socializing plays in our mental and physical health. *See* Ibtihal Ferwana & Lav R. Varshney, *The Impact of COVID-19 Lockdowns on Mental Health Patient Populations: Evidence from Medical Claims Data* (2021). Common recognition of the consequences of prolonged is evidenced by robust polling data suggesting the existence of a remarkably bipartisan opposition to prolonged solitary confinement. *See* Data For Progress, *A Bipartisan Majority of Voters Support Strongly Restricting Solitary Confinement, Including Placing a Four-Hour Limit on the Practice*, (Nov. 16, 2022) https://www.dataforprogress.org/blog/2022/11/16/a-bipartisan-majority-of-voters-support-strongly-restricting-solitary-confinement-including-placing-a-four-hour-limit-on-the-practice (noting that 71% of a set of over a thousand likely voters supported limiting the length of solitary confinement to 15 days).

Each of these sources weighs on the reasonableness of the conduct at issue here. When a practice is overwhelmingly acknowledged to be harmful by the courts, the academy, and the public at large, reasonable correctional officials should be deemed on notice of its consequences. But the facts of this case, in light

---

[solitary confinement] has on prisoners"). The average layperson, let alone the average corrections official, would be aware of the harms of solitary confinement.

of this Court's factor-based qualified immunity precedent, put the defendant officials on particularly pellucid notice of the illegality of their conduct.

Here, Mr. Cintron was subjected to an extraordinarily lengthy incarceration in solitary confinement; for over two years in total, he was denied any meaningful social interaction. A302. Common sense—and authoritative precedent and scientific research—put Defendants of notice of the natural consequences of that conduct. Other facts made the illegality of Cintron's confinement particularly clear. For example, he plausibly alleged that that he was subjected to solitary confinement under false and retaliatory pretenses. *See* A21. Such confinement is clearly illegal under First Circuit law. *See Disessa v. Massachusetts*, No. 1:18-CV-11024-IT, 2020 WL 1158254, at *6 (D. Mass. Mar. 10, 2020) ("Plaintiff has alleged that he was placed on suicide watch and in solitary confinement for a year based on false allegations from Laroche. These allegations state a claim for a constitutional violation under First Circuit law."). Moreover, Mr. Cintron was, at the time of his confinement, evidently suffering from a substance use disorder—a medical condition that is often comorbid with, exacerbated by, and in turn contributes to, the psychological issues—depression, anxiety, suicidality—that almost inevitably follow from prolonged solitary confinement. *See* A26. And the defendants here were on notice of his pre-existing disorder and the psychological

disorders that developed while Mr. Cintron was in solitary; they knew that he began to take psychiatric medication designed to ameliorate the depression and anxiety caused by his torturous conditions. *See* A25. Such knowledge has been held sufficient to put officials on notice of the illegality of prolonged solitary confinement. *See, e.g.*, *Diaz*, 2018 WL 1224457, at *7 (holding that the plaintiff stated an Eighth Amendment claim because, inter alia, the officials subjecting him to solitary confinement were "aware of his diagnosed mental illness"). That Mr. Cintron told Defendants—time and time again—of his physical and mental deterioration makes it all the clearer that Defendants knew of the harms they were inflicting on Mr. Cintron. That they chose to ignore those harms and press ahead with his solitary confinement was objectively unreasonable under clearly established law.

CONCLUSION

This case presents the opportunity for this Court to reaffirm its balanced approach to qualified immunity. A right is clearly established for the purposes of qualified immunity if courts have enunciated a standard and identified the relevant issues that bear on the standard. Government officials are then held accountable for facts that they knew, or should have known, that bear on the relevant legal standard. Reaffirming this framework, which this Court has already adopted,

would assist district courts in deciding qualified immunity cases. That benefits plaintiffs, defendants, and the rule of law.

In this case, those principles confirm that the conditions of Mr. Cintron's confinement violated clearly established Eighth Amendment law. The decision of the district court should be affirmed.

DATED: May 11, 2023

By: */s/ Daniel S. Ruzumna*

Daniel S. Ruzumna
First Circuit Bar No. 1145704
Isaac J. Weingram
First Circuit Bar No. 1207983
David Moosmann
First Circuit Bar No. 1207982
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, NY 10036-6710
Tel: (212) 336-2000

Attorneys for Amicus Curiae Rights Behind Bars

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief the type-volume limit of Fed. R. App. P. 32(g)(1) because, excluding parts of the document exempted by Fed. R. App. P. 32(f), it contains 5,666 words. I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: May 11, 2023

/s/ Daniel S. Ruzumna
Daniel S. Ruzumna

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2023 I electronically filed the foregoing Brief Amicus Curiae of Rights Behind Bars with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: May 11, 2023

/s/ Daniel S. Ruzumna
Daniel S. Ruzumna