UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

WILLIAM H. MELENDEZ,

Plaintiff,

v. Case No. 3:20-cv-01023-BJD-JBT

MARK S. INCH, Secretary of the State of Florida Department of Corrections; *et al.*,

Defendants.
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PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER AND MEMORANDUM IN SUPPORT

Pursuant to Federal Rule of Civil Procedure 65(a) and Local Rule 6.02, Plaintiff William H. Melendez moves this Court for an emergency preliminary injunction against defendants Secretary Mark Inch, Regional Director John Palmer, Warden Donald Davis, Assistant Warden Jeffrey McClellan, and the Florida Department of Corrections ("FDC" or "the Department") (collectively, "the Defendants"), requiring that: (1) the Defendants return Mr. Melendez to the Transitional Care Unit ("TCU") for inpatient mental health care; (2) a court-appointed, independent expert opine as to Mr. Melendez's mental health needs, including his need for mental health services and the appropriate housing placement for him given his mental health needs; (3) before Mr. Melendez is again discharged from inpatient mental health care, the parties have the opportunity to

review the findings of the court-appointed, independent expert and have a reasonable opportunity to challenge the discharge before it occurs; and (4) Defendants are barred from holding Mr. Melendez in solitary confinement conditions regardless of the location or terminology used, meaning confinement to his cell for 22 hours per day or more, or any other form of confinement that is characterized by minimal to rare meaningful contact with other individuals and the lack of opportunities for congregate recreation, meals, and programming.[1] Pursuant to Federal Rule of Civil Procedure 65(b) and Local Rule 6.01, Plaintiff also moves for a temporary restraining order requiring Defendants to transfer Plaintiff to a TCU while this motion is pending. In support, Mr. Melendez states as follows:

Plaintiff William H. Melendez is a 62-year-old man suffering from serious mental illness who is at imminent risk of injury and death due to the conditions of his confinement. Mr. Melendez has a lengthy history of self-mutilation since entering FDC custody in October 2011, particularly in solitary confinement. In December 2013, Mr. Melendez swallowed razor blades, then chewed through an

[1] This 22-hour definition of solitary confinement is consistent with the American Correctional Association's definition of restrictive housing. ACA, *Restrictive Housing Expected Practices* at 3 (Jan. 2018). Plaintiff's definition is also consistent with the National Commission on Correctional Healthcare (NCCHC)'s definition, which describes solitary confinement as "housing of an adult or juvenile with minimal to rare meaningful contact with other individuals." NCCHC, "Position Statement on Solitary Confinement (Isolation)" www.ncchc.org/solitary-confinement; *see also id.* ("Those in solitary confinement often experience sensory deprivation and are offered few or no educational, vocational, or rehabilitative programs.").

IV and began sucking blood from an open tube, stating "I want to die." [Ex. C at 1].

Despite this well-known history of self-harm, and Mr. Melendez's repeated endorsement of suicidal and self-injurious ideation, Defendants have held him in extremely restrictive solitary confinement conditions[2] that provide basically no out-of-cell movement or opportunities for human interaction for 92% of the past five years.[3] They have failed to take the bare minimum measures to protect his life,

[2] Solitary confinement in the Department includes close management, administrative confinement, and disciplinary confinement. Solitary Confinement: Inhumane, Ineffective, and Wasteful, Southern Poverty Law Center 7 (2019), *available at* www.splcenter.org/20190404/solitary-confinement-inhumane-ineffective-and-wasteful. "While there are technical differences between the categories of solitary," in all three, prisoners are confined to a cell for 22 hours per day or more, and experience minimal to rare meaningful contact with other individuals, and the lack of opportunities for congregate recreation, meals, and programming. *Id*. at 6.

[3] In the past five years (1827 days), Mr. Melendez spent only 144 days *not* in one form of solitary confinement, whether CM status or administrative or disciplinary confinement. He was on CM I status from September 13, 2016 to June 17, 2019, CM II status until September 19, 2019, and CM III status until March 23, 2020, then he was held in administrative confinement July 13-21, 2020, then returned to

including by refusing to have him evaluated by a psychiatrist or placed on suicide observation following his recent instances of self-injury in August 2021. [D.E. 171-2 ¶¶ 25, 32, 38].

As relevant to this Motion, Plaintiff's Second Amended Complaint alleges that Defendants' conduct constitutes cruel and unusual punishment and disability discrimination, respectively forbidden by the Eighth Amendment and the Americans with Disabilities Act, and requests permanent injunctive relief, including transfer to an appropriate unit for inpatient mental health care and removal from solitary confinement. [D.E. 134].

On October 6, 2021, this Court issued a preliminary injunction order finding that Plaintiff was likely to succeed on his Eighth Amendment claims and directing, *inter alia*, that Defendants immediately remove Mr. Melendez from Close Management ("CM") and transfer him to an inpatient mental health unit. [D.E. 189, 203]. Defendants "began to comply" with the Court's order under threat of sanctions. [D.E. 201]. Within days of Mr. Melendez's transfer, Defendants filed a report to the Court that portrayed Mr. Melendez as a malingerer and downplayed his illness. [D.E. 202]. In response, Plaintiff sought the Court's appointment of an

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administrative confinement on July 26, 2020, and to CM I on October 12, 2020. [D.E. 171-6 at 24, 30; D.E. 181-1 at 145, 148; Ex. I]. As a result of the Court's order, he spent just 32 days out of solitary confinement from October 8, 2021 to November 9, 2021. [Ex. B ¶¶ 2, 14]. On November 9, 2021, however, the Department removed Mr. Melendez from the TCU and placed him on administrative confinement at Suwannee, where he has been kept in solitary confinement conditions. [Ex. A; Ex. B].

independent psychiatrist to evaluate Mr. Melendez and provide an impartial assessment of his mental health condition and injuries, including, *inter alia*, "whether Mr. Melendez can be safely discharged from an inpatient mental health unit" and the appropriate housing for his mental health needs. [D.E. 209 at 5]. That motion is currently pending.

Despite Mr. Melendez's ongoing and serious mental health needs, and the Court's statements at the October 6, 2021 hearing, on November 4 counsel for FDC notified Plaintiff's counsel via email that they had cleared Mr. Melendez for return to CM, stating that "Mr. Melendez does not need to be taking a very valuable mental health space from another inmate who needs it." [Ex. A, Email Correspondence]. On November 9, 2021, just over a month after the Court's order, Mr. Melendez was returned from the mental health unit to solitary confinement. [*See* Ex. B, Melendez Decl.]. On November 11, counsel for FDC confirmed that Mr. Melendez was being held in administrative confinement, where he would remain pending resolution of their appeal of this Court's order. [*See* Ex. A]. Administrative confinement is a form of solitary confinement. [*See* Ex. B ¶ 17; Fla. Admin. Code R. 33-602.220]. In all likelihood, FDC will return Mr. Melendez to a CM unit after expiration of the Court's order, which lasts through January 4, 2021 (90 days after issuance).[4] 28 U.S.C. 3626(a)(2).

[4] Counsel for FDC previously informed Plaintiff's counsel that "Mr. Melendez has been cleared for release from inpatient and we intend, based on security interests, to return him to CM." [Ex. A, Email from Lance Neff dated November 4, 2021]. They also made this clear in their opening brief to the Eleventh Circuit: "[O]nce the

The Defendants have no intention of providing Mr. Melendez with adequate mental health treatment. It is equally apparent that they will maintain Mr. Melendez in solitary confinement, which causes Plaintiff significant mental and physical harm, without this Court's intervention. Accordingly, Plaintiff seeks a four-part order, requiring: (1) that the Defendants return Mr. Melendez to a TCU for inpatient mental health care; (2) that a court-appointed, independent expert opine as to Mr. Melendez's mental health needs, including his need for mental health services and the appropriate housing placement for him given his mental health needs; (3) that before Mr. Melendez is again discharged from inpatient mental health care, the parties have the opportunity to review the findings of the court-appointed, independent expert and have a reasonable opportunity to challenge the discharge before it occurs; and (4) that Defendants are barred from holding Mr. Melendez in solitary confinement conditions, meaning confinement to his cell for 22 hours per day or more, or any other form of confinement that is characterized by minimal to rare meaningful contact with other individuals and the lack of opportunities for congregate recreation, meals, and programming. Plaintiff also seeks a temporary restraining order requiring that Defendants return Mr. Melendez to a TCU for inpatient mental health care while the preliminary injunction motion is pending.

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preliminary injunction expires, Mr. Melendez's CM sentence is set to resume and per FDC policy he will be transferred back to CM." Appellant Op. Brief, *Melendez v. Inch et al.*, No. 21-13455, at 48 (11th Cir. Nov. 12, 2021).

Plaintiff satisfies the test for issuing a preliminary injunction and a temporary restraining order. *See Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). First, Plaintiff's claim that holding him in solitary confinement violates the Eighth Amendment's prohibition on cruel and unusual punishment is likely to succeed on the merits, as he is being held in isolation conditions that deny him "the minimal civilized measure of life's necessities," *Farmer v. Brennan*, 511 U.S. 825, 834 (1994), and which "pose an unreasonable risk of serious damage to his future health." *Helling v. McKinney*, 509 U.S. 25, 30, 35 (1993). His Americans with Disabilities Act claim is also likely to succeed, as the Defendants have consigned him to solitary confinement and denied him access to prison services because of his mental illness, and they have failed to reasonably accommodate his disability. Second, if the requested preliminary injunction is not issued, Plaintiff will suffer immediate and irreparable harm; each day that he is in solitary confinement, he faces a substantial and increasing risk of serious injury or death due to his worsening mental illness and suicidality. Mr. Melendez is presently deteriorating in solitary confinement at Suwannee Correctional Institution ("CI"), and the Defendants intend to return him to CM to precisely the same conditions he was in when this Court issued the prior preliminary injunction order. Third, the balance of harms also strongly favors entry of the requested injunction. The Defendants have no claim of harm to the prison system's security operations or staff. In response to the Court's prior order, the Defendants held Mr. Melendez in an inpatient mental health unit for four weeks without any security incident or harm

to staff or others. Fourth, it is in the public interest for the Defendants to respect prisoners' constitutional rights and to rehabilitate them, or at least provide for their basic human needs required to survive. *See Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy certainly would serve the public interest.") (affirming grant of preliminary injunction in prison conditions case); *Laube v. Haley*, 234 F. Supp. 2d 1227, 1252 (M.D. Ala. 2002) ("The public interest is in no way served by the defendants' current policy, practice, and custom of incarcerating inmates in dangerous conditions."). The Court's prior order found that Plaintiff has met these elements. [D.E. 203 at 3.]

The relief requested also satisfies the requirements of the Prison Litigation Reform Act. 18 U.S.C. 3626(a)(2). The proposed preliminary injunction and temporary restraining order are narrowly drawn, because they apply to a single prisoner in a correctional department that houses 80,000[5] prisoners, and afford the Department wide discretion as to how and where to incarcerate him. They extend no further than necessary to correct the harm necessitating relief, because they do not impose any requirements aside from precluding Mr. Melendez's return to conditions that not only caused him extreme suffering and place him at risk of death by suicide or through self-mutilation but are also unlawful. The requested relief is the least intrusive means of correcting the identified violations of federal

[5] Florida Department of Corrections, Strategic Plan & Annual Report 12 (2020-2021), www.dc.state.fl.us/pub/annual/1819/2020-2021-Strategic-Plan.pdf.

law because it is the only course of conduct that will prevent Mr. Melendez's death or serious physical injury without involving the Court in the day-to-day management of FDC operations.

Through the undersigned counsel, Plaintiff has provided notice of the filing of this Motion to counsel for defendants. All documents filed with this Court in support of this motion, including declarations and the memorandum of law, are being served electronically on defense counsel within moments of filing. Due to the pending expiration of the Court's initial preliminary injunction order, and the dire consequences of Mr. Melendez's ongoing isolation, Plaintiff respectfully requests a ruling on his motion for a temporary restraining order no later than January 4, 2022.[6] L.R. 3.01(e). Plaintiff is also requesting an evidentiary hearing by separate motion.

MEMORANDUM OF LAW

Plaintiff William H. Melendez is likely to succeed on his claims that the conditions of his confinement violate his Eighth Amendment right to be free from cruel and unusual punishment, and his right to be free from discrimination on account of his disability. [D.E. 134, Counts II.A, II.B & V]. He has already endured serious bodily injury, and he faces a substantial risk of further injury and ultimately, death, absent court intervention. Preliminarily enjoining the

[6] Plaintiff would agree to extend this date by thirty days, to February 3, 2022, if FDC will stipulate to a thirty-day extension of the 90-day PLRA period, through the same date.

Defendants from subjecting Mr. Melendez to further solitary confinement and requiring that they provide him inpatient mental health care is necessary to protect Mr. Melendez from harm.

I. STATEMENT OF FACTS

Mr. Melendez is a 62-year-old, mentally ill man. [D.E. 171-2 ¶¶ 1-2]. It is the scientific consensus that prolonged solitary confinement exacerbates mental illness, yet Mr. Melendez has been consigned to solitary confinement for 1,683 days out of the past 1,827 days.[7] [D.E. 171-1 at 20; D.E. 171-2 ¶¶ 5-7, 13, 14-19; Ex. B ¶¶ 2, 14]. The Department has characterized Mr. Melendez as a "mild" security risk—a 6 out of 60–by their assessment, and graded his recent behavior "above satisfactory" on his gain time review. [D.E. 171-6 at 4; Ex. J, Gain Time].

Mr. Melendez has attempted suicide at least five times and repeatedly self-mutilated while in FDC custody, sometimes in response to auditory hallucinations. [D.E. 190-1 at 5; D.E. 171-1 at 15; D.E. 171-2 ¶¶ 2, 10]. He has swallowed inorganic objects and opened his veins with sharpened metal, including battery nails, until passing out from blood loss. [D.E. 171-2 ¶¶ 2, 8-10, 30, 39]. Several times, Mr. Melendez has been transported to civilian hospitals for surgery. [D.E. 171-2 ¶ 35; D.E. 171-3 at 15]. Hospital physicians have diagnosed Mr. Melendez with suicidal ideation, depression, and mood disorder, and on his most recent hospital

[7] Mr. Melendez was classified to CM I on September 13, 2016, meaning that as of December 10, 2021, he has been in solitary confinement for 1,771 out of the past 1,915 days.

admission, emphasized that he "needs [a] serious psych evaluation." [D.E. 171-3 at 21; D.E. 190-1 at 5, 14, 16].

In response, the Department failed to transfer him to an inpatient psychiatric facility, or even to dispense psychiatric medication. [D.E. 171-2 ¶¶ 38-39]. Instead, Mr. Melendez was left in solitary after attempting suicide or self-mutilating, as the Defendants refused to place him on suicide watch. [*Id.*].

Mr. Melendez's mental health expert, Dr. Terry Kupers, M.D., a board-certified psychiatrist and distinguished fellow of the American Psychiatric Association, diagnosed Mr. Melendez with a "serious mental illness"—[redacted] [D.E. 171-1 at 21]. Dr. Kupers has personally evaluated Mr. Melendez for over five hours, most recently in September 2021, after Mr. Melendez had surgery to remove sharpened metal from his arm.[8] [*Id.* at 3-4; D.E. 187-1 ¶ 3]. Dr. Kupers opined that Mr. Melendez is presently at "extremely high risk" of death by suicide irrespective of whether Mr. Melendez consciously intends to take his own life by self-mutilating. [*Id.* at 14-15, 21, 31-32]. He further concluded that Mr. Melendez's mental health treatment at FSP was "grossly deficient." [*Id.* at 26]. He found that Mr. Melendez's depression, suicidal ideation, and paranoia were underreported or ignored by mental health staff. [*Id.* at 28]. Inpatient psychiatric treatment, rather than continued solitary

[8] For a photograph of Mr. Melendez's post-surgical wounds, see D.E. 171-8.

confinement, is necessary to avoid Mr. Melendez's death, in Dr. Kupers' opinion. [*Id.* at 30].

Yet despite these grave health consequences, Defendants have kept Mr. Melendez in solitary without penological justification. [D.E. 187-3 ¶ 7]. As correctional expert Dan Pacholke[9] explains, "solitary confinement should be used as a last resort, when all other less restrictive forms of behavior management have failed or are demonstrably unworkable, and . . . should be used for the shortest period of time possible." [*Id.*]. Mr. Melendez does not pose a serious security risk that would justify the use of solitary confinement in Mr. Pacholke's opinion. [*Id.* ¶ 19]. Transferring Mr. Melendez to a mental health unit is an appropriate correctional response to his demonstrated needs. [*Id.* ¶ 26].[10]

A. Background to the Filing of this Motion

On October 6, 2021, this Court granted Plaintiff's Emergency Motion for Preliminary Injunction. The Court ordered that the Defendants:

(1) immediately transfer Plaintiff from the close management unit at Florida State Prison to a suitable mental health unit for inpatient psychiatric treatment where Plaintiff shall remain until a qualified, licensed mental

[9] Dan Pacholke is a leading expert in penology and segregated confinement. He has thirty-five years of experience and related training and education in adult corrections. [D.E. 187-3 ¶ 2]. This includes eight years in administration in the Washington State Department of Corrections, including as Secretary, Deputy Secretary, Director of Prisons, and Deputy Director of Prisons. [*Id.*]. He has particular expertise in addressing overuse of segregation. [*Id.* ¶ 4]. Mr. Pacholke reviewed Mr. Melendez's prison record, including the affidavit of Deputy Warden McClellan, in reaching his conclusions. [*Id.* ¶ 6].

[10] Mr. Melendez further incorporates the statement of facts from his Emergency Motion for Preliminary Injunction and Supporting Memorandum of Law. [D.E. 171].

health provider at the transferee institution determines Plaintiff is medically and psychologically capable of returning to the general population; and

(2) video record all of Plaintiff's interactions with staff on account of Plaintiff's physical or mental health or problematic behavior and transportation until Plaintiff is transferred to an inpatient psychiatric facility and upon his return therefrom until further order. [D.E. 189].

Under threat of sanctions, and after filing a notice of appeal, FDC transferred Mr. Melendez to the Crisis Stabilization Unit ("CSU") at Suwannee CI on October 8, 2021. [D.E. 201]. Within days, Defendants filed a status report claiming that Mr. Melendez did not have serious mental health needs and did not require treatment in the mental health unit. [D.E. 202]. Mr. Melendez filed a response disputing Defendants' persistent mischaracterization of his mental health status and sought the appointment of an independent psychiatric expert, not employed by the Defendants, to provide a neutral, unbiased expert opinion for the Court's consideration. [D.E. 204, 209].

Consistent with the Defendants' ongoing refusal to recognize Mr. Melendez's serious mental health needs, FDC housed Mr. Melendez in the mental health unit for only 32 days, before transferring him to solitary confinement at Suwannee CI on November 9, 2021. [Ex. B]. The Defendants have represented that they will hold Mr. Melendez in "administrative confinement" status—another form of solitary[11]—

[11] While there are distinctions between administrative confinement, disciplinary confinement, and close management, each is appropriately described as solitary confinement:

- **Disciplinary confinement** is the use of solitary confinement as a punitive sanction for a rules violation. [Fla. Admin. Code R. 33-602.222(1)]. Only limited personal property is permitted, and canteen items are prohibited.

before returning him to CM I. [Ex. A]. The Defendants' adamance in retaining Mr. Melendez in solitary confinement conditions demonstrates the need for further preliminary injunctive relief until a permanent injunction can be entered.

B. Mr. Melendez's Current Conditions of Confinement

Despite this Court's prior intervention, Mr. Melendez is again being housed by the Defendants in solitary confinement.[12] Mr. Melendez has been incarcerated in the disciplinary confinement wing of Suwannee CI since his release from inpatient mental health care on November 9, 2021. [Ex. B ⁋⁋ 14-15]. Outside his

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- **Administrative confinement** is intended to be a temporary placement in solitary confinement until prison officials determine a more permanent placement. [Fla. Admin. Code R. 33-602.220(1)]. Canteen items are limited. [*Id.* at 602.220(5)]. In both administrative and disciplinary confinement, prisoners are not allowed outdoor exercise for 30 days, after which written policy provides for 3 hours per week, although this can be restricted. [*Id.* at 602.220(5), 602.222(5)]. Prisoners must be cuffed anytime the cell door is open and searched before leaving their cells. [*Id.* at 602.220(6), 602.222(6)]. Visitation and phone calls are restricted. [*Id.* at 602.220(6), 602.222(4)].
- **Close management** is the use of solitary confinement for a prisoner who "has demonstrated an inability to live in the general population without abusing the rights and privileges of others." [Fla. Admin. Code R. 33-601.800(1)]. There are three levels, with CM I the most restrictive. [*Id.* at 601.800(2)]. Only limited personal property is permitted, and tablets are not allowed on CM I. [*Id.* at 601.800(10)]. Canteen items are limited and prisoners on CM I cannot access canteen for 30 days. [*Id.*]. By written policy, prisoners on CM should be provided 6 hours of outdoor exercise per week. [*Id.*]. They cannot attend religious programming outside their cells. [*Id.*]. Prisoners on CM I are only permitted one phone call and, after 30 days, one non-contact visit per month. [*Id.*]. They must be cuffed any time the cell door is open and searched before leaving their cells. [601.800(14)]. There is no upper limit on the amount of time someone can be on CM. [*See id.* at 601.800(16)].

For more information on the forms of solitary confinement in Florida prisons, see Solitary Confinement: Inhumane, Ineffective, and Wasteful, *supra* note 2.

[12] The conditions of Mr. Melendez's solitary confinement prior to the Court's order are described in Plaintiff's Emergency Motion for Preliminary Injunctive Relief and Supporting Memorandum of Law, D.E. 171 at 10-12.

door is a sign that reads: "CM I" and "house alone." [*Id.* ¶ 16]. Defense counsel has represented that he is now in administrative confinement, and that he will remain in these conditions until the Defendants can return him to CM housing. [Ex. A]. His current conditions of confinement are indistinguishable from the conditions he endured at FSP, from which the Court ordered him transferred. [*See* Ex. B].

Mr. Melendez's current solitary cell is about six steps long and two or three steps from the bed to the opposite wall. [Ex. B ¶ 19]. It contains two beds, a locker, and a toilet/sink. [*Id.*]. There is a window in the back wall that is about 30 inches wide but is covered with a film that obscures the view. [*Id.*]. The cell door is solid steel and has a narrow window that provides a limited view of the area in front of his cell, and a slot for officers to pass food into his cell. [*Id.*].

Mr. Melendez is locked inside of this sparse cell 23 to 24 hours a day. [*Id.* ¶ 17]. He cannot leave to go to the dayroom, and he has not been offered any opportunities for recreation, indoors or out. [*Id.*]. He is permitted no more than three showers a week, but is often only allowed to shower once or twice. [*Id.*]. He has only been permitted to call his family once since being discharged from the inpatient mental health unit. [*Id.*]. He cannot go to the dining hall for congregate meals. [*Id.*]. He cannot participate in prison programming or educational or work opportunities. [*Id.*]. He cannot go to the library to work on his legal matters or to find reading material. [*Id.*].

Mr. Melendez is typically required to submit to a strip search when he leaves his cell, and is then shackled at the hands, feet, and waist. [*Id.* ¶ 18]. On a recent

trip to another building for medical care, the shackles tore into his skin, opening new sores on his legs. [*Id.*]. He put in a sick call request around November 29, 2021, but has still not been seen for his injuries. [*Id.*].

Locked inside his cell, Mr. Melendez is unable to distract himself from his dire circumstances and ongoing auditory hallucinations. [*Id.* ¶¶ 21, 26]. Officers did not send his radio and headphones with him when he left FSP.[13] [*Id.* ¶ 21]. He tries to read his Bible, but his cataracts and vision problems make it difficult to focus on text, and he is not permitted to order stronger eyeglasses through the quarterly canteen order because of his CM I status. [*Id.* ¶ 20]. He was not permitted to buy food from the canteen to supplement his diet until November 28, 2021. [*Id.* ¶ 23]. He is often hungry, satiating himself with antacid tablets. [*Id.*].

Mr. Melendez's total inability to access out-of-cell recreation follows the Defendants' historical pattern of arbitrarily denying him those opportunities. The Defendants have produced 361 Daily Record of Special Housing ("SHU") records, representing nearly seven years of solitary confinement spanning the entirety of his incarceration in FDC custody. [Ex. G, SHU Records]. Each record purports to document Mr. Melendez's access over a one-week period to basic amenities while in solitary confinement. [*Id.*]. These records show that Mr. Melendez received

[13] Mr. Melendez purchased a tablet to communicate with family and watch movies and religious programming. [*Id.* ¶ 20]. Because officers will not allow him to access the dayroom, he has to entrust other prisoners with his password and rely on them to "sync" it for him, so that he can use it inside his cell. [*Id.*].

outdoor recreation on 20 out of 2,527 recorded days.[14] [*Id.*]. 14 of those 20 occasions occurred during the early months of 2020, when Mr. Melendez was on CM III at New River CI. [*Id.*]. There is no recorded instance of Mr. Melendez receiving *any* outdoor recreation, dayroom, or phone access from November 9, 2016 through June 17, 2019, when Mr. Melendez was on CM I at FSP.[15] [*Id.*]. For the majority of the recorded weeks, 195 out of 361 weeks, the records reflect that Mr. Melendez did not receive the three showers to which he is entitled by prison regulations. [*Id.*].

This documented pattern and practice demonstrates that the extreme nature of Mr. Melendez's current isolation is not an aberration, and will continue without this Court's intervention. In the words of Mr. Melendez, the solitary confinement unit at Suwannee CI is "the same dog with a different collar." [Ex. B ¶ 25].

[14] 1 hr 3/30-4/5/2014 (*length of time not clear*); 7 m 6/15-21/2014; 2 hr 7/20-26/2014; 2 hr 3/1-7/2015; 3 hr 12/13-19/2015; 2 hr 1/5-11/2020 (CM III); 4 hr 1/12-18/2020 (over 2 days) (CM III); 4 hr 1/26-2/1/2020 (over 2 days) (CM III); 2 hr 2/9-15/2020 (CM III); 2 hr 2/23-29/2020 (CM III); 6 hr 3/1-7/2020 (over 3 days) (CM III); 4 hr 3/8-14/2020 (over 2 days) (CM III); 4 hr 3/15-21/2020 (over 2 days) (CM III); 2 hr 11/22-28/2020).

[15] At times the SHU records wrongly represent that Mr. Melendez refused these opportunities when he did not. [*Compare* D.E. 171-2 ¶ 16 *with* Ex. G].

C. Mr. Melendez's Ongoing, Unmet Mental Health Needs

Mr. Melendez has serious and chronic mental health conditions, [redacted]. [D.E. 171-1 at 20]. At every turn, the Defendants have ignored Mr. Melendez's significant mental health needs, violating the spirit, if not the letter, of this Court's prior Order. They have consistently failed to provide him proper—or any—treatment, in a concerted effort to continue his punitive isolation.

Mr. Melendez has regular thoughts of self-injury and suicide, and he feels increasingly desperate, anxious, and depressed.[16] [Ex. B ¶¶ 24, 26]. He explains:

> I hear voices in my head, and everything is pushing me back to cutting myself. I've been trying hard not to do so. I promised my attorney and my sister that I would not kill myself, but I feel like I might snap. While in my cell, I think about the different things I could use to hurt myself, and there are lots of things that I could use. [*Id.* ¶ 26].

Mr. Melendez has attempted to declare a psychological emergency to officers working the solitary confinement unit, but they walk away without summoning mental health. [*Id.* ¶ 27].

[16] Mr. Melendez's self-injury and suffering prior to the Court's order is detailed in the Emergency Motion for Preliminary Injunction and Memorandum of Law, D.E. 171 at 12-14.

Mr. Melendez's ongoing mental suffering is a predictable consequence of his underlying disorder and recent return to solitary confinement without having received necessary mental health treatment. According to Dr. Kupers, "[t]he expectable result of [Mr. Melendez's] recent court-ordered transfer to a crisis stabilization unit would be a dramatic but transient reduction of his anxiety and despair." [Ex. D, Kupers Supp. Decl. ¶ 8]. "If he is then thrust back into solitary confinement, it is predictable that his level of despair and anxiety will rise quickly," and "he would be at extremely high risk of engaging in further acts of self-harm and dying of the wounds he inflicts on himself." [*Id.*]. This scenario has now played out, and Mr. Melendez's life is in jeopardy.

Mr. Melendez was fast-tracked through the inpatient mental health unit at Suwannee CI despite clear indicators that he required intensive care. His initial "psychiatric evaluation" on October 11 was with Dr. Johnathan Greenfield, the associate statewide psychiatric director for FDC/Centurion. [*See* D.E. 204]. Dr. Greenfield admitted Mr. Melendez to the CSU and discontinued his suicide observation status without prescribing any psychiatric medication or scheduling him for a follow-up evaluation. [D.E. 202-1 at 8]. Dr. Greenfield's report does not mention any of Mr. Melendez's hospitalizations, auditory hallucinations, or prior psychiatric medications. It indicates that Mr. Melendez "[d]enies" hallucinations, even though Mr. Melendez has repeatedly reported hearing voices commanding him to self-harm, including to FDC staff. [*Id.* at 3; D.E. 187-2, ¶ 5]. It describes Mr. Melendez as denying any history of or current suicidality. *[Id.* at 4]. And it does not

discuss his multiple acts of serious self-harm beyond mentioning "'5 suicide' attempts," [*id.* at 2], language derived from the December 2020 psychiatric evaluation. [D.E. 171-3 at 11; D.E. 182-1 at 5].

Dr. Greenfield did not fully and fairly evaluate Mr. Melendez's current mental health nor investigate the cause of his self-harm. [D.E. 204-1 ¶ 5]. His evaluation lacks meaningful discussion of Mr. Melendez's mental state and omits medically-relevant information, instead focusing on his criminal conviction and past disciplinary reports ("DRs"). [D.E. 202-1]. As a stark example, Mr. Melendez explained to Dr. Greenfield that he had been recently hospitalized after inserting nails in his veins that had to be surgically removed. [D.E. 204-1 ¶ 13]. That information did not make it into Dr. Greenfield's report. [D.E. 202-1; D.E. 204-1 ¶¶ 4, 13]. Dr. Greenfield conducted nothing resembling a complete medical evaluation, and his report rather serves to further the Defendants' interest in denying Mr. Melendez's serious mental illness so he can be returned to solitary confinement.[17]

On October 12, the Multi-Disciplinary Services Team ("MDST") at Suwannee convened to initiate his inpatient treatment in the CSU. [Ex. C at 40 ("increase to level 2, patient denies intent to engage in [self-injurious behavior]")]. A week later, they met again to move him from the CSU to the TCU. [*Id.* at 42, 47].

[17] Indeed, the Defendants filed Dr. Greenfield's report with the Court the next day, claiming it "confirms the Department's prior mental health assessments of Plaintiff[.]" [D.E. 202 ¶ 7].

Mr. Melendez reported serious symptoms of mental illness throughout his inpatient stay, including on his first day there, when he said he was "suicidal due to voices telling him to kill himself." [Ex. C at 3-5]. He repeatedly reported anxiety and depression, [*e.g.*, *id.* at 10, 15 (reporting depression and anxiety, both at an 8 of out 10), 17, 19, 21, 23], and hearing voices telling him to kill himself. [*See, e.g.*, *id.* at 27-28 (voices "telling him to hurt himself"), 15, 17, 19, 21, 23]. He explained that he often argues with the voices, and believes he is hearing the devil. [*See, e.g.*, *id.* at 15, 21 ("I fight with the voices"), 27-28].

FDC mental health staff were also made aware of multiple documented instances of Mr. Melendez's self-harm, admissions to inpatient mental health care, prescriptions for antipsychotic medication, and his recent hospitalization for "inserting metal nails into veins." [*Id.* at 29-30 (noting past antipsychotic use, previous inpatient admissions, a "[h]istory of numerous inmate psychological emergencies," and that he had "cut [his] arms in the past.")]. Mr. Melendez's Individualized Service Plan identified his primary problem as "Abusive to Self," specifically: "Swallows objects, cuts self, bites self, bangs head, chokes self, jumps from heights, tears sutures, etc. Pt. has a HX of cutting, and inserting objects into his person." [*Id.* at 32].

Despite this clear evidence of Mr. Melendez's need for substantive mental health treatment and proper care, FDC mental health staff routinely downplayed Mr. Melendez's symptoms and self-reports. More than once, they falsely reported that Mr. Melendez denies hallucinations. [*See, e.g.*, *id.* at 25 ("Denied

Hallucinations w/n past 30 days"), 30 ("hallucinations" unchecked)]. They also frequently omitted his history of self-harm on medical forms that expressly called for such information. [*See, e.g.*, *id.* at 26, 28]. Even when staff noted symptoms, they illogically dismissed them and their significance. [*See, e.g.*, *id.* at 27-28 (marking suicidality and self-injury as "None" despite Mr. Melendez hearing voices "telling him to hurt himself," because he "has not been Observed responding to internal stimuli, and is unable to identify if voice is male or female."), 15, 17, 19].[18] Mental health staff told him not to argue with voices commanding him to hurt himself, and to just stay positive. [Ex. B ¶ 5]. They were quick to dismiss his mental illness as mere "anger issues," although they acknowledged he had no anger issues while in inpatient care. [Ex. C at 31-32].

In the mental health unit, with access to a television, his tablet, dayroom, and some limited time out of doors, Mr. Melendez was better able to distract himself from the voices in his head. [Ex. B ¶ 11]. Yet FDC mental health staff failed to consider or mention whether his removal from solitary confinement conditions had (temporarily) reduced his suicidality. [*See, e.g.*, Ex. C at 15 ("Suicidal[]

[18] As another example, Suwannee mental health staff found discrepancies between Mr. Melendez's reports of mental illness and his consistent participation in group therapy and counseling sessions. [*See, e.g.*, 15 (determining that hallucinations do not cause significant distress or impaired functioning because Mr. Melendez "participates in group + Interviews/individual sessions")]. However, FDC previously cited Mr. Melendez's refusal of group therapy and counseling as evidence that Mr. Melendez *did not* have serious mental health needs. [D.E. 184 at 11]. By the Defendants' reasoning, both Mr. Melendez's attendance or refusal to attend group therapy sessions demonstrates he has no mental health disorder. The conclusion is predetermined.

Ideation: "Denies currently"), 47]. At no point did Defendants conduct a thorough psychiatric evaluation of Mr. Melendez or prescribe psychiatric medication to manage his depression, anxiety, and psychosis, despite his multiple requests. [D.E. 204-1 ¶¶ 2-16; Ex. B ¶¶ 3, 5, 7, 9-10].

The MDST approved Mr. Melendez's discharge from inpatient care on November 4, 2021, after just three weeks in the TCU. [*Id.* at 46].[19] Based on his lack of self-injurious behavior while in inpatient care, and with apparent disregard for his auditory hallucinations, FDC medical staff determined that he could "manage CM or GP environments" and that "any mental health needs that may arise in the future can be met on an outpatient basis." [*Id.* at 49]. FDC, however, returned Mr. Melendez to solitary. [*Id.*; Ex. B ¶¶ 14, 17, 25].

D. There Remains No Legitimate Security Justification for Retaining Mr. Melendez in Solitary Confinement.

In opposing Mr. Melendez's first motion for preliminary injunction, and in subsequent filings and correspondence, Defendants claim that Mr. Melendez is a security risk that they are unable to manage outside of CM.[20] This claim does not withstand any level of scrutiny.

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[19] By way of contrast, in 2014, Mr. Melendez spent three *months* receiving inpatient care in a TCU. [*See id.* at 1-2].

[20] In their emergency motion to stay the preliminary injunction filed in the Eleventh Circuit, Defendants argue that "the district court is forcing FDC to subject its staff, as well as other inmates, to an unacceptable risk of harm." [Ex. H, Emergency Motion to Stay]. The basis for the risk of harm is Mr. Melendez's allegedly "long history of assaults on staff and others" and "other reasons" that go unelaborated. [*Id.*].

To start, in the two months since his transfer out of CM, Mr. Melendez has not had any issues with staff. [*See, e.g.*, Ex. C at 46 ("no security issues at this time"); *id.* at 49 ("His participation in services has been excellent.")]. Neither has he received any disciplinary tickets. [Ex. B ¶ 13]. In the CSU and TCU, he was compliant with his treatment plan and consistently attended mental health groups. [Ex. C at 46]. The intake nurse described him as "cooperative," [*id.* at 3], as did the nurse on every subsequent inpatient follow-up, [*id.* at 15, 17, 19, 21, 23].

Likewise, what Defendants characterize as Mr. Melendez's "long history of assaults" amounts to nothing more than exaggerated and decontextualized descriptions of his reactions to solitary-induced mental health crises. [*See* D.E. 184]:

- **December 25-26, 2013:** Defendants cite "three separate charges of attempted assault on Staff" in the month of December 2013, [D.E. 184 at 3], but they all stem from a single two-day period in which officers twice deployed chemical agent into Mr. Melendez's cell, once in response to him attempting to swallow a razor blade. [Ex. E, Disciplinary Reports, log nos. 120-131104, 120-131105, 120-131106, 120-131107, 120-131108]. Mr. Melendez reacted by throwing a towel and a cup of water at the cell door where staff were standing. [*Id.*]. No staff were injured, but because the towel and water had been exposed to the chemical agent FDC used against Mr. Melendez, *Mr. Melendez* was issued five DRs, three of which were for assault or attempted assault. [*Id.*]. Days later, he was admitted to the Charlotte CI CSU for inpatient care amid reports that he had swallowed razor blades and "chewed through [an] IV and began sucking blood out through [the] open tube which he spat onto walls and door . . . . stat[ing] 'I want to die.'" [Ex. C at 1].

- **August 24, 2016:** Mr. Melendez tied a tourniquet around his arm and cut a vein while alone in a shower. He was ticketed for "aggravated battery or attempted battery" for subsequently bleeding on a responding officer when he let go of the tourniquet in the officer's presence. [Ex. E, log no. 185-161000].

- **July 26 & 28, 2020:** Mr. Melendez was charged with assaulting staff amid repeated instances of self-harm at New River CI. [D.E. 171 at 6-7]. ER doctors at an outside hospital placed Mr. Melendez under an involuntary hold pursuant to the Baker Act on July 27. [D.E. 171-3 at 21]. The Defendants nevertheless insist that these incidents (in which he allegedly struck an officer's hand who was attempting to mace him through the chuckhole in his door and, more seriously, allegedly grabbed an officer by the throat after being returned to consciousness with an ammonia stick) justifies retaining Mr. Melendez on CM I status. But prison staff overturned the disciplinary charges against him for the conduct in question, and never recharged him. [*Id.*; D.E. 184 at 7].[21]

Reviewing Mr. Melendez's remaining DRs in context further undermines the argument that he is a security risk. Many of the DRs penalize minor misconduct that can be expected to occur in solitary confinement units with limited to no human contact. [D.E. 187-3 ¶ 22]. For example, in an incident on November 20, 2018, an officer alleged: "I heard and observed Inmate Melendez yelling out his cell door." [Ex. E, log no. 205-183146]. One cannot be heard from behind a solid steel door without yelling, yet Mr. Melendez was found guilty and sentenced to 30 days of disciplinary confinement for this "misconduct." Additionally, Defendants' reference to "approximately forty-eight (48) disciplinary reports for various offenses," is misleading, as they often issued multiple DRs for a single incident, including issuing five tickets for the events of December 2013. [D.E. 184 at 3].

[21] With respect to the alleged staff assault on July 28, 2020, the video evidence supports Mr. Melendez's contention that correctional officers "severe[ly] beat" him in the medical unit when he was taken there after self-injury. [D.E. 171-2 ¶ 10]. The video record shows Mr. Melendez with two blackened eyes, a bruised nose, and multiple facial lacerations, in addition to a bandaged left arm from his self-injury. [Ex. F-1 (video), F-2 (still images)].

Of the remaining DRs that Defendants reference:

- Six were for cursing or rudeness to staff;[22]
- 11 were for not following an order, including not sitting up on his bunk, not moving away from the food slot, or not moving his property;[23]
- 12 were for yelling, waving his arms, or kicking the door of his cell;[24]
- Four were related to alleged mail violations (Mr. Melendez had mistakenly labeled letters to his brother, who works in law enforcement, as legal mail);[25]
- Three were for "spoken threats";[26]
- Three were for tampering with the sprinkler system (charged as tampering with a "safety device");[27]
- One was for a mutual fight with a cellmate;[28]
- One was for having toilet paper wedged under his door.[29]

None of this conduct comes close to justifying five years of extreme solitary confinement, particularly for someone with Mr. Melendez's level of mental illness.

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[22] Ex. E, log nos. 119-141930, 119-141948, 120-111348, 120-130668, 205-192193, 205-210515.
[23] Ex. E, log nos. 119-142194, 120-120006, 205-170680, 205-172242, 205-180286, 205-180297, 205-180463, 205-210364, 205-211737, 205-211738, 209-130152.
[24] Ex. E, log nos. 119-142193, 119-162959, 120-121125, 120-130927, 205-170709, 205-171668, 205-180565, 205-181778, 205-181897, 205-182010, 205-182011, 205-190332.
[25] Ex. E, log nos. 185-160768, 185-160769, 205-180201, 205-180663.
[26] Ex. E, log nos. 185-160359, 185-160730, 209-120147.
[27] Ex. E, log nos. 185-160991, 205-210606, 205-211747.
[28] Ex. E, log no. 119-150382.
[29] Ex. E, log no. 205-190361.

II. PRELIMINARY INJUNCTIVE RELIEF AND A TEMPORARY RESTRAINING ORDER ARE WARRANTED

A temporary restraining order and preliminary injunction should issue because Mr. Melendez can readily show: 1) a substantial likelihood of success on the merits, 2) that irreparable injury will result unless the court issues an injunction, 3) the threatened harm to him outweighs damage the proposed injunction might cause Defendants, and 4) the public interest favors the issuance of an injunction. *See Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (citing *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998)).

The need for a temporary restraining order and preliminary injunction is pressing, and even more so now than when this Court first intervened. The evidence supports issuing the requested preliminary injunction to require (1) that the Defendants return Mr. Melendez to a TCU for inpatient mental health care; (2) that a court-appointed, independent expert opine as to Mr. Melendez's mental health needs, including his need for mental health services and the appropriate housing placement for him given his mental health needs; (3) that before Mr. Melendez is again discharged from inpatient mental health care, the parties have the opportunity to review the findings of the court-appointed, independent expert and have a reasonable opportunity to challenge the discharge before it occurs; and (4) that Defendants are barred from holding Mr. Melendez in solitary confinement conditions, meaning confinement to his cell for 22 hours per day or more, or any other form of confinement that is characterized by minimal to rare meaningful

contact with other individuals and the lack of opportunities for congregate recreation, meals, and programming. It also supports issuing a temporary restraining order requiring the Defendants to transfer Plaintiff back to a TCU for treatment while the preliminary injunction motion is pending.

Absent such an order, FDC has made clear that it will continue to hold Mr. Melendez in solitary confinement conditions, despite his ongoing mental health issues, lack of behavioral problems, and the clear risk of death. [Ex. A].

A. Mr. Melendez is likely to succeed on the merits of his claims.

1. Mr. Melendez will succeed on his Eighth Amendment claims (Counts II.A and II.B).

The Supreme Court has created a two-part inquiry to determine whether there has been a violation of the Eighth Amendment. Under the "objective component," a prisoner must show the condition complained of is "sufficiently serious." *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004) at 1289. Under the subjective component, he must show that the defendant prison officials "acted with a sufficiently culpable state of mind." *Id.* (quoting *Hudson v. McMillian*, 503 U.S. 1, 8 (1992)).

Mr. Melendez is likely to prevail on the objective component because the conditions of his confinement are constitutionally intolerable, subjecting him to an unreasonable risk of serious harm to his health. Moreover, his extended solitary confinement amounts to extreme punishment without penological purpose. As for the subjective component, Mr. Melendez is likely to prevail because of the ever-

growing body of evidence showing that Defendants are deliberately indifferent to his plight.

a. The extreme nature of Mr. Melendez's conditions of confinement are objectively serious: they have subjected him to serious harm and pose an untenable risk of further harm, including death.

The Eighth Amendment prohibits cruel and unusual punishment and requires "humane" conditions for prisoners. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). Conditions amounting to solitary confinement are subject to Eighth Amendment scrutiny. *Sheley v. Dugger*, 833 F.2d 1420, 1428–29 (11th Cir. 1987). "[T]he length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards." *Id.* (quoting *Hutto v. Finney*, 437 U.S. 678, 686 (1978)).

The "objective component" of the Eighth Amendment analysis asks whether the challenged conditions deny a prisoner "the minimal civilized measure of life's necessities," *Farmer*, 511 U.S. at 834, including human contact and social interaction, exercise, basic hygiene, and warmth, *G.H. by and through Henry v. Marstiller*, 424 F. Supp. 3d 1109, 1116 (N.D. Fla. 2019), or otherwise "pose an unreasonable risk of serious damage to his future health." *Helling v. McKinney*, 509 U.S. 25, 30, 35 (1993); *see also Chandler*, 379 F.3d at 1289 (citing *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). The conditions to which Mr. Melendez has been exposed fall short of the constitutional minimums in all respects.

i. Human Contact and Social Interaction

Human contact and social interaction are basic human needs protected by the Eighth Amendment. *G.H.*, 424 F. Supp. 3d at 1116 (allegations of deprivation of human needs like social interaction state an Eighth Amendment claim); *Harvard v. Inch*, 411 F. Supp. 3d 1220, 1239 (N.D. Fla. 2019) (same); *Hall v. Palmer*, 15-cv-824, 2017 WL 4764345, at *14 (M.D. Fla. Oct. 20, 2017) (severe restriction of human contact suggests risk of serious harm). Humans require some normal social interactions to function properly. [D.E. 171-1 at 8]. The damaging effects of prolonged isolation and lack of social interaction are severe. *See U.S. v. Noriega*, 40 F. Supp. 2d 1378, 1379–80 (S.D. Fla. 1999) ("[H]e is denied in large part[] the company of others. There is little question that this is a more difficult ('harder') type of confinement than in general population."). Extreme long-term isolation leads to anxiety and nervousness, troubled sleep, fear of impending nervous breakdowns, chronic depression, hallucinations, and suicidal ideation. [D.E. 171-1 at 6].

By policy and in practice, Mr. Melendez's contacts with others are severely restricted. *See* Fla. Admin. Code R. 33-601.800(11); D.E. 171-7 (outlawing "yelling or loud talking from cell to cell or out of windows to inmates or staff"); Ex. G (reflecting no time in the dayroom while on CM I). He cannot participate in congregate meals and religious meetings, or socialize in the dayroom, and is shackled and strip-searched every time he leaves his cell. [Ex. B ¶¶ 17-18]. He has been punished for yelling to communicate with others. [*See* Ex. E]. He spends all

day behind a solid steel door, holding up handwritten signs requesting basic amenities, and being ignored. [D.E. 171-2 ¶ 20]. He is only permitted one phone call per month, although FDC has historically not even granted him that much. [*Id.*; Fla. Admin. Code R. 33-601.800(11); Ex. G (no phone calls, from November 9, 2016 through June 17, 2019)].

Mr. Melendez exhibits many of the symptoms associated with the prolonged deprivation of human contact, and they pose a serious risk to his health and safety. [D.E. 171-1 at 15–19]. Suicide is twice as prevalent in prison as in the community, and of all successful suicides, approximately fifty percent involve prisoners in some form of isolated confinement despite the fact that the vast majority of prisoners are housed in general population environments. [*Id.* at 9]. Given Mr. Melendez's history of suicidal ideation and attempted suicide, the continued lack of social interaction and human contact put him at elevated risk for death. [*Id.* at 20; Ex. D ¶ 8].

ii. Exercise and Recreation

Exercise is one of the basic human needs protected by the Eighth Amendment. *Wilson v. Seiter*, 501 U.S. 294, 304–05 (1991). Lack of exercise has deleterious psychological and physical effects. *See, e.g.*, *Gates v. Cook*, 376 F.3d 323, 335 (5th Cir. 2004) (noting the benefits of exercise for prisoners); *French v. Owens*, 777 F.2d 1250, 1255 (7th Cir. 1985) ("[w]here movement is denied and muscles are allowed to atrophy, the health of the individual is threatened and the state's constitutional obligation is compromised"); *Patterson v. Mintzes*, 717 F.2d

284, 289 (6th Cir. 1983) ("Inmates require regular exercise to maintain reasonably good physical and psychological health"). Deprivation of all outdoor recreation for an extended period without an especially strong security or safety basis is therefore constitutionally suspect. *See Spain v. Procunier*, 600 F.2d 189, 200 (9th Cir. 1979); *Harvard*, 411 F. Supp. 3d at 1239; *Julmice v. Florida Dep't of Corrections*, No. 08-22243-CIV-SEITZ, 2008 WL 11331754, at *2 (S.D. Fla. Sept. 3, 2008) (keeping a prisoner in twenty-four-hour lockdown may violate the Eighth Amendment).

Mr. Melendez has been denied the basic human need for exercise and recreation. He is currently unable to access out-of-cell recreation or go to the dayroom. [Ex. B ¶ 17]. He had no regular opportunity for out-of-cell exercise and recreation before his court-ordered transfer to a mental health unit, either. [D.E. 171-2 ¶¶ 15–19]. The SHU logs confirm that Mr. Melendez received outdoor recreation on only 20 out of 2,527 recorded days spent in isolation. [Ex. G]. This deprivation is even more severe than contemplated by FDC regulations, which purport to provide individuals on CM a minimum six hours per week of outdoor exercise. Fla. Admin. Code R. 33-601.800(10)(m).

iii. Hygiene

This circuit also recognizes an Eighth Amendment right to basic sanitation, including hygiene. *See, e.g.*, *Brooks v. Warden*, 800 F.3d 1295, 1303 (11th Cir. 2015). According to FDC policy, CM prisoners should be permitted to shower three times a week, Fla. Admin. Code R. 33-601.800(10)(e)(1), but officers have routinely denied Mr. Melendez this opportunity, sometimes for weeks. [D.E. 171-2

¶¶ 18, 19; Ex. G]. His handwritten signs requesting "SHOWER" went unacknowledged. [D.E. 171-2 ⁋ 20]. As a result, he developed sores on his legs that led to a staph infection. [D.E. 171-2 ¶ 18].

Since his discharge from the TCU, Mr. Melendez has only been permitted to shower once or twice a week. [Ex. B ⁋ 20]. Basic hygiene is not only important for Mr. Melendez's physical and mental well-being and personal dignity, but also for public health. Regular access to showers is critical for personal cleanliness and to prevent the spread of infection throughout prisons.

iv. Warmth

Mr. Melendez has suffered the further indignity of being placed on "strip status" as a form of punishment, during which he is left naked except for his boxer shorts in a cold cell without blankets, sheets, or a mattress. [*Id.* ¶¶ 24, 36]. These deprivations deny Mr. Melendez the basic human need for warmth. *See Wilson*, 501 U.S. at 304 (describing warmth as a basic human need and citing "low cell temperature at night combined with a failure to issue blankets") as an example of a situation that would fail to satisfy that need); *Saunders v. Sheriff of Brevard Cnty.*, 735 F. App'x 559, 571 (11th Cir. 2018) (same).

v. Effect on Mr. Melendez's Mental and Physical Health

The extremely isolative conditions of Mr. Melendez's confinement "pose an unreasonable risk of serious damage" to both his mental and physical wellbeing. *Helling v. McKinney*, 509 U.S. 25, 30, 35 (1993). Indeed, the risk to Mr. Melendez

from ongoing isolation is overwhelming, and inconsistent with Eighth Amendment protections.

Prisoners' physical condition deteriorates in isolation, with scientifically-demonstrated effects on heart health, digestion, muscle tone loss, vitamin deficiency, and even longevity.[30] Researchers have found that the prevalence of high blood pressure is 31% higher among those held in solitary confinement, as opposed to less isolating conditions, and that this alone increases the likelihood that prisoners in solitary confinement will suffer heart attacks, strokes, and have a shortened life span. [*Id.* at 9–10].[31]

The mental health consequences of isolation are also severe and well documented. According to the National Commission on Correctional Healthcare, the preeminent professional organization in the correctional healthcare field, "[i]t is well established that persons with mental illness are particularly vulnerable to the harms of solitary confinement."[32] "[M]ental health needs are no less serious than physical needs," for Eighth Amendment purposes, *Thomas v. Bryant*, 614

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[30] Peter Scharff Smith, The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature, 34 CRIME & JUST. 441, 489–90 (2006); Brie A. Williams, Older Prisoners and the Physical Effects of Solitary Confinement, 106 AM. J. PUB. HEALTH 2126, 2126–27 (2016).

[31] Brie Williams and Amanda Li, "Cardio Confinement," Public Health Post (Feb. 1, 2021) available at https://www.publichealthpost.org/research/cardio-confinement. Solitary confinement also has physical effects on the brain itself; *see also* Carol Schaeffer, *"Isolation Devastates the Brain": The Neuroscience of Solitary Confinement*, SOLITARY WATCH (May 11, 2016), https://solitarywatch.org/2016/05/11/isolation-devastates-the-brain-the-neuroscience-of-solitary-confinement/.

[32] NCCHC, "Solitary Confinement (Isolation)" *available at* https://www.ncchc.org/solitary-confinement.

F.3d 1288, 1312 (11th Cir. 2010) (quoting *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004)), and Mr. Melendez's long-term isolation has resulted in severe and readily observable psychological harm. [D.E. 171-1 (Kupers Report) at 23–24, 38]. At this point, treating Mr. Melendez's mental illness requires removing him out of solitary confinement, permanently. [*Id.* at 29–30].

The record of Mr. Melendez's mental health condition—and his need for treatment—cannot be reasonably disputed by the Defendants or by anyone exercising sound medical judgment. Even the Defendants' own records reflect the severity of his illness. [*See, e.g.*, Ex. C at 36 (describing Mr. Melendez as "Abusive to Self" and outlining his long history of cutting and ingesting foreign objects)]. Mr. Melendez has also attested to his history of self-injury and attempted suicide. [D.E. 171-2 ¶¶ 2, 8, 9, 10, 23, 30, 34, 39; Ex. B ¶¶ 24-26]. Mr. Melendez has multiple recent suicide attempts and persistent suicidal ideation. [*Id.* at 20, 30–31; Ex. B ¶¶ 24-26]. Dr. Kupers has found that Mr. Melendez is at extremely high risk for suicide. [D.E. 171-1 at 14, 20; Ex. D ¶ 8]. He also found that Mr. Melendez suffers from depression, hallucinations, and obsessive thoughts. [D.E. 171-1 at 18].

Consistent with the scientific consensus regarding the particular vulnerability of mentally ill persons, Mr. Melendez's mental illness has worsened since he was placed in solitary confinement. [D.E. 171-1 at 21, 28; Ex. B ¶¶ 24-26]. Prior to being placed on CM I, Mr. Melendez's severe depression was slightly mitigated; he did not have constant auditory hallucinations, and he did not experience paranoia or severe loss of sleep. [D.E. 171-1 at 28]. Since his return to

solitary confinement, these symptoms, and in particular his compulsion to self-injure, have returned and been amplified. [Ex. B ¶¶ 24-26]. Retaining Mr. Melendez in solitary confinement thus poses an unreasonable risk to his health and his life, in violation of the Eighth Amendment. *Helling*, 509 U.S. at 30.

vi. Lack of Penological Necessity

In evaluating the constitutionality of confinement conditions, courts consider the reason for which a prisoner is being subjected to punishment, including whether it is "totally without penological justification." *Rhodes*, 452 U.S. at 346; *see also Hall*, 2017 WL 4764345 at *13 ("[T]o be an effective penological tool, solitary confinement should be . . . reserved for recalcitrant, incorrigible inmates, [where] there is an institutional need to preserve order and prevent chaos."). Mr. Melendez's solitary confinement falls short of constitutional minimums because it is "arbitrary and 'without penological justification.'" *Quintanilla v. Bryson*, 730 F. App'x 738, 747 (11th Cir. 2018).

Mr. Melendez alleges that defendants Inch, Palmer, Davis, and McClellan have "subject[ed] [him] to a substantial risk of serious harm and depriv[ed] him of the minimal civilized measure of life's necessities and basic human dignity by exposing him to excessive periods of isolation in deplorable conditions," for no valid penological purpose. [D.E. 134 ¶¶ 167, 182]. Indeed, there is absolutely no justification for the serious deprivations that Mr. Melendez has endured in FDC custody. His current CM classification occurred following a psychological emergency and suicide attempt. [D.E. 171-2 ¶¶ 8–13; D.E. 171-5 at 7–8, 40, 53].

The disciplinary tickets that led to Mr. Melendez's post-suicide-attempt CM referral have been overturned. [D.E. 171-2 ¶ 13; D.E. 171-6 at 31–34]. Correctional staff recognize that he does not pose a serious risk to security, having evaluated Mr. Melendez's potential risk as "mild." [D.E. 171-6 at 4; *see also id.* at 5–6]. Prison officials graded Mr. Melendez "above satisfactory" on his October 2021 security evaluation. [Ex. J]. Mr. Melendez has not had any behavioral incidents since his transfer out of the CM unit at FSP. [Ex. B ¶ 13]. And while in the inpatient unit, "[h]is participation in services has been excellent." [Ex. C at 49]. Despite all this, Defendants have returned Mr. Melendez to solitary confinement.

Continuing to hold Mr. Melendez in solitary confinement rather than returning him to an appropriate mental health treatment unit serves no legitimate penological purpose. As explained by Mr. Pacholke, "solitary confinement should be used as a last resort, when all other less restrictive forms of behavior management have failed or are demonstrably unworkable, and . . . should be used for the shortest period of time possible." [D.E. 187-3 ¶ 7]. Other, less restrictive forms of behavior management are obviously workable, as Mr. Melendez had no security incidents in inpatient care, his participation in programming was judged "excellent," and his security evaluation was "above satisfactory."[33] [Ex. B ¶ 13; Ex. C at 46, 49; Ex. J].

[33] The Eleventh Circuit approved denying outdoor recreation to prisoners who stabbed an officer and attempted escape, and who therefore posed a legitimate "threat to the safety and security of the prison." *Bass v. Perrin,* 170 F.3d 1312, 1317 (11th Cir. 1999). There is no comparison between such dangerous conduct and Mr.

For all of these reasons, Mr. Melendez is likely to prevail on the objective prong of his Eighth Amendment claim.

b. Prison officials are deliberately indifferent to the severe risk solitary confinement poses to Mr. Melendez's health.

The second part of the Eighth Amendment inquiry asks whether the prison official is subjectively culpable, having shown "deliberate indifference to inmate health or safety." *Farmer*, 511 U.S. at 834 (internal quotation marks omitted). To establish deliberate indifference, the official must "know[] of and disregard[] an excessive risk to inmate health or safety." *Id.* at 837. A court may infer deliberate indifference when the risk of harm is obvious. *Id.* at 842.

This Court has already found that Mr. Melendez will likely demonstrate that Defendants were deliberately indifferent to the risk of serious harm to Mr. Melendez, because of his extended isolation and his documented history of self-harm. [D.E. 203 at 19-21]. As detailed in Plaintiff's prior motion for preliminary injunctive relief:

- Counsel for Mr. Melendez wrote to the former FSP Warden, Barry Reddish, on July 18, 2018, notifying him that "Mr. Melendez ha[d] been in close management since September 2016," "reports spending 24 hours a day in his cell," and that "his mental health ha[d] deteriorated substantially."[*See* D.E. 171-9 ¶¶ 2, Att. A]. Counsel reported that Mr. Melendez had a psychological crisis in solitary confinement, that officers refused to take him to the medical unit, [redacted] [*Id.*; *see also* D.E. 171-4 (documenting this incident of self-harm)]. Assistant Warden McClellan acknowledged receipt of this letter. [D.E. 171-9 ¶ 3, Att. B].

Melendez's behavior in custody. Defendants' denial of Mr. Melendez's outdoor exercise for years on end, in contravention of written policy, was a senseless deprivation of a basic human need.

- Counsel wrote to Regional Director Palmer on August 4, 2020, alerting him to Mr. Melendez's July 28, 2020 self-injury while at New River, the subsequent assault Mr. Melendez suffered in the medical unit, Mr. Melendez's "multiple instances of self-mutilation" in isolation, and his need for an intensive psychiatric care facility. [*Id.* ¶ 4, Att. C]. Counsel specifically requested that Regional Director Palmer ensure Mr. Melendez not be punished or placed in isolation for these events. [*Id.*]

- Following Mr. Melendez's return to FSP and isolation, counsel continued to notify the Defendants of the danger to Mr. Melendez, including that he had embedded nails in his flesh. [*Id.* ¶¶ 5–9]. Mr. Melendez was then transported to an outside hospital for surgical removal of nails, apparently in response to counsel's requests. [D.E. 171-2 ¶ 35; D.E. 171-3 at 12, 15].

This record establishes that the Defendants are aware of the risks to Mr. Melendez. *See Thomas*, 614 F.3d at 1314 ("[Plaintiff's] frequent need for inpatient treatment and psychological screening due to a pattern of self-injurious behavior and suicidal ideations, put the DOC on notice that he was in a category of inmates whose mental health was 'particularly fragile' and that 'notwithstanding his S–3 designation, he was especially susceptible to decompensating.'"). Indeed, the Defendants cannot claim ignorance after this Court has detailed the likely unconstitutionality of holding Mr. Melendez in solitary confinement and required that they act to protect him from harm.

Additionally, Mr. Melendez has an extensive history of filing complaints seeking help, [D.E. 171-1 at 17–18]; Warden Davis and Assistant Warden McClellan are regularly in the solitary confinement units conducting rounds and observing conditions, *see* Answer ¶¶ 17, 18; Fla. Admin Code R. 33-601.800(15); and either the warden or assistant warden sit on the Institutional Classification Team

("ICT")—the very team responsible for making and reviewing prisoners' status classifications, including that of Mr. Melendez. Fla. Admin Code R. 33-601.800(1).

In any event, the risks of extended time in solitary confinement are so obvious that Secretary Inch, Regional Director Palmer, Warden Davis and Assistant Warden McClellan cannot claim to be unaware of them. [D.E. 203 ("[T]he Court finds Plaintiff is likely to establish that the FDOC and the Supervisory Defendants were deliberately indifferent to the risk of harm Plaintiff faced by the very fact that the risk was obvious")]. *See, e.g.*, *Davis v. Ayala*, 576 U.S. 257, 287 (2015) (Kennedy, J., concurring) ("The human toll wrought by extended terms of isolation long has been understood . . . . One hundred and twenty-five years ago, this Court recognized that, even for prisoners sentenced to death, solitary confinement bears 'a further terror and peculiar mark of infamy.'") (quoting *In re Medley*, 134 U.S. 160, 170 (1890)); *Wilkerson v. Stalder*, 639 F. Supp. 2d 654, 680 (M.D. La. 2007) ("Any person in the United States who reads or watches television should be aware that lack of adequate exercise, sleep, social isolation, and lack of environmental stimulation are seriously detrimental to a human being's physical and mental health.").

Mr. Melendez will also be able to demonstrate that the Defendants disregarded these risks to his health and safety. Despite their actual knowledge and the obviousness of the risks to Mr. Melendez, Defendants refused to remove Mr. Melendez from solitary confinement. Assistant Warden McClellan chaired the ICT hearing directly following Mr. Melendez's July 2018 incident of self-harm and

personally elected to continue Mr. Melendez in solitary confinement. [D.E. 171-2 ¶ 6]. In 2020, the Defendants proceeded to refer Mr. Melendez to CM, even after counsel explained the circumstances of the July 28 self-injury and the subsequent physical assault on Mr. Melendez to Regional Director Palmer. The Defendants have repeatedly insisted on returning Mr. Melendez to solitary confinement, despite the lack of a security need to do so. [Ex. A; Ex. B ¶ 13; D.E. 203 ("[T]he Court remains troubled by the fact that prison officials downplay or ignore Plaintiff's suicidal gestures and return Plaintiff to solitary confinement after such incidents.")]. Their insistence on retaining Mr. Melendez in solitary confinement, to his physical and psychological detriment, is the definition of deliberate indifference.

2. Mr. Melendez is likely to prevail on the merits of his disability discrimination claims.

To prevail under the Americans with Disabilities Act (ADA) on a claim for disability discrimination, Mr. Melendez must prove that he is "excluded from participation in or . . . denied the benefits of the [prison's] services, programs, or activities" because of his disability, or that the prison has failed to accommodate his disability. 42 U.S.C. § 12132; *Lonergan v. Fla. Dep't of Corr.*, 623 F. App'x 990, 992 (11th Cir. 2015) ("[A]n ADA claim may proceed on the theory that the Defendant failed to reasonably accommodate the Plaintiffs' disability."). Mr. Melendez is likely to prevail under both theories.

a. FDC's use of solitary confinement is discriminatory.

To prevail, Mr. Melendez needs to establish "(1) that he is a qualified individual with a disability, (2) that he was either excluded from participation in or denied the benefits of a public entity's services, programs, or activities, or was otherwise discriminated against by the public entity, and (3) the exclusion, denial of benefit, or discrimination was by reason of [his] disability." *Bircoll v. Miami-Dade Cty.*, 480 F.3d 1072, 1083 (11th Cir. 2007).

First, Mr. Melendez is a qualified individual with a disability. A disability is a "physical or mental impairment that substantially limits one or more of" an individual's "major life activities." 42 U.S.C. § 12102(1). Major life activities include the ability to care for oneself and operation of major bodily functions, including brain functions. 42 U.S.C. § 12102(2)(A), (B). [redacted] 28 C.F.R. § 35.108(d)(2)(iii)(K) ("Major depressive disorder . . . substantially limits brain function"). His multiple serious suicide attempts "show[] that his mental illness substantially limits his ability to take care of himself." *G.H.*, 424 F. Supp. 3d at 1119.

Second, Mr. Melendez has been discriminated against on multiple grounds. On CM I status, and in his current housing assignment in administrative confinement, he is excluded from participating in educational programming, congregate religious services, congregate meals, and work opportunities. [*See* D.E. 171-2 ¶¶ 14, 27, 40; Answer ¶¶ 52–54; Fla. Admin. Code R. 33-601.800(10)(h), (i);

Ex. B ¶ 17]. This constitutes exclusion from prison programming, services, and benefits. 28 C.F.R. § 35.130(b)(1)(i), (ii). Additionally, because of his mental illness, Mr. Melendez suffers the deprivations of solitary confinement acutely. The isolative nature of these conditions combined with his mental illness have driven him to self-harm and, according to Dr. Kupers, there is a serious risk that this will kill him. [D.E. 171-1 at 20-21; *id*. at 22 (describing the international consensus that mentally ill prisoners should not be confined to prolonged isolation)[34]].

Third, Mr. Melendez will be able to show that this discrimination is "on account" of his disability. The ADA "imposes a 'but-for' liability standard," meaning that disability was "a factor that made a difference in the outcome." *McNely v. Ocala Star-Banner Corp.*, 99 F.3d 1068, 1077 (11th Cir. 1996). Over and over, the Defendants have punished Mr. Melendez, excluding him from services and worsening his mental illness, *because of*, not in spite of, his mental health diagnosis and the related symptoms. The Defendants own records prove this. Mr. Melendez was in a psychiatric crisis when the events occurred that led to his current CM classification: On July 26, 2020, he engaged in self-injury that required outside hospital transportation to receive care for his wounds; he

[34] According to the National Commission for Correctional Health Care, "mentally ill individuals . . . should be excluded from solitary confinement of any duration." *Solitary Confinement (Isolation)*, NCCHC (2016), https://www.ncchc.org/solitary-confinement. According to the American Psychiatric Association, "Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates." Position Statement on Segregation of Prisoners with Mental Illness, APA (2017).

returned to the hospital on July 27, 2020, after harming himself again, and ER doctors were so disturbed by his self-injurious behavior that they placed him under an involuntary hold pursuant to the Baker Act; then on July 28, 2020, he inserted wire into a vein in his arm. [D.E. 171-2 ¶¶ 8–11; D.E. 171-3 at 12–16, 21]. The conduct allegations that led to his CM referral were from this same period of July 26 and 28, 2020. [D.E. 171-6 at 30]. The narrative of the July 28, 2020 incident that formed the basis of his placement on CM status reveals that Mr. Melendez was in the emergency room awaiting medical treatment for self-injury and was barely conscious at the time. [D.E. 171-5 at 7–8]. And during the July 26, 2020 incident, he was attempting to declare a psychological emergency. [*Id.* at 40, 53]. Mr. Melendez's 2016 referral to CM was a result of his mental illness, as well; he was charged with assault for cutting himself during a psychiatric crisis, and then bleeding on responding officers. [redacted]

Defendants also use minor infractions resulting from his mental illness as a reason to retain him on CM. *See G.H.*, 424 F. Supp. 3d at 1120 (finding that allegation that plaintiff was retained in solitary for behaviors related to his disability constituted claim of discrimination on account of disability). At his April 2021 CM review, the classification officer cited a February 23, 2021 disciplinary charge issued because Mr. Melendez purportedly "refused to walk from medical back to wing requiring escort chair" to justify continuing his isolation. [D.E. 171-6

at 27]. [redacted].[35]

Moreover, by isolating Mr. Melendez in solitary confinement, FDC violates the ADA's mandate that persons with disabilities be provided services in a setting that is integrated. *See Stiles v. Judd*, 12-cv-02375, 2013 WL 6185404, at *2 (M.D. Fla. Nov. 25, 2013) (estate of decedent who was kept in solitary confinement after attempting suicide stated claim that he was unjustly isolated due to his mental illness) (citing *Olmstead v. L.C. ex rel Zimring*, 527 U.S. 581, 587, 597 (1999)). The Defendants isolated Mr. Melendez from the general population in violation of this principle. 28 C.F.R. § 35.130(d); *cf.* 28 C.F.R. § 35.152(b)(2) (elaborating on the integration mandate's application in custodial settings, explaining that "[p]ublic entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals.").

For these reasons, Mr. Melendez is likely to prove that FDC's continued use of extended solitary confinement is discriminatory.

[35] The other two DRs cited in the April 2021 CM referral were minor charges for swearing at an officer (March 16, 2021) and for refusing an order to stop tampering with a sprinkler (March 29, 2021). [D.E. 171-6 at 27].

b. FDC fails to reasonably accommodate Mr. Melendez's disability.

Mr. Melendez can also succeed in showing that Defendants failed to reasonably accommodate his mental illness. "[F]ailure to reasonably accommodate a disabled individual itself constitutes discrimination under the ADA, so long as that individual is 'otherwise qualified,' and the [entity] cannot show undue hardship." *Robinson v. RockTenn CP*, 986 F. Supp. 2d 1287, 1310 (N.D. Ala. 2013) (citing *Holly v. Clairson Industs.*, 492 F.3d 1247, 1262 (11th Cir. 2007)). Whether a modification is reasonable is a fact-specific inquiry that depends on the circumstances of the case. *Bircoll*, 480 F.3d at 1085–86; *see also* 42 U.S.C. § 12111(9)(A) ("'reasonable accommodation' may include…making existing facilities…readily accessible to and usable by individuals with disabilities").

As Mr. Melendez's mental illness constitutes a disability within the meaning of the ADA, he is entitled to reasonable accommodations that enable him to access prison services and that alleviate the discriminatory burden of solitary confinement. Transfer within FDC, to another unit that already exists to care for prisoners, is a reasonable accommodation of Mr. Melendez's mental illness. *See Lonergan*, 623 F. App'x at 993–94 (rejecting argument that transfer to another prison is per se unreasonable under the ADA); *Wolfe v. Fla. Dep't of Corr.*, 2012 WL 4052334, at *5 (M.D. Fla. Sept. 14, 2012) (jury could find that "FDOC and its agents were deliberately indifferent to Plaintiff's need for a reasonable

accommodation" by failing to transfer him to a housing area that provided better management of his asthma); *compare with Siskos v. Sec'y, Dep't of Corr.*, 2018 WL 2452204, at *7 (N.D. Fla. May 18, 2018) (finding release from custody and transfer to an *outside* residential mental health facility was not reasonable).

Confining Mr. Melendez in isolation conditions does not constitute, under any law or medical guidelines, a reasonable accommodation. In fact, it constitutes a policy of affirmative harm, creating obvious detrimental effects on Mr. Melendez's mental and physical well-being, including by enhancing his risk of self-mutilation, self-harm, and death. Yet despite the consequences of isolation on Mr. Melendez's mental illness, prison officials failed to accommodate his disability by releasing him from CM or transferring him to a mental health unit. They have continued to discriminate against him following the first preliminary injunction order by discharging him from inpatient treatment back to isolation.

Mr. Melendez's transfer from solitary confinement to a mental health unit does not impose an undue burden on FDC. The Department already managed Mr. Melendez for 32 days in inpatient care without any security incidents. [Ex. B ¶ 13; Ex. C at 46]. The Defendants' stated fears of harm to other prisoners or staff have not materialized. [Ex. B ¶ 13; Ex. C at 36, 46]. Additionally, there are multiple mental health units in FDC, and it is inconceivable that FDC lacks bedspace for one more person. [Ex. A].

B. Mr. Melendez will suffer further irreparable harm if the injunction is denied.

Mr. Melendez's life and physical well-being are at stake, putting him at risk of further irreparable harm and rendering this a quintessential matter for emergency injunctive relief. No amount of money can compensate Mr. Melendez for his mental anguish, for the bodily harm he has already suffered, and for the future harm he will experience if the Defendants' misconduct is left unabated and Mr. Melendez remains in solitary confinement. *See Cabral v. Olsten Corp.*, 843 F. Supp. 701, 703 (M.D. Fla. 1994) ("In order to constitute irreparable harm, monetary damages must be insufficient to remedy the harm.") (citing *Cunningham v. Adams*, 808 F.2d 815, 821 (11th Cir. 1987)).

Increased risk of suicide, mental anguish, self-harm, and damage to one's mental health all constitute irreparable harms. *Poretti v. Dzurenda*, 11 F. 4th 1037, 1050 (9th Cir. 2021) (holding that "serious or extreme damage" to mental health, including "suicide or self harm and 'debilitating symptoms' like paranoid delusions, auditory hallucinations, and 'compulsive ingestion of metal parts'" were irreparable); *Braggs v. Dunn*, 383 F. Supp. 3d 1218, 1243 (M.D. Ala. 2019) ("[T]he immediate and substantial risk of suicide . . . satisfies the irreparable harm inquiry."); *Tugg v. Towey*, 864 F. Supp. 1201, 1208–09 (S.D. Fla. 1994) (finding psychological stress that could lead to suicide is an irreparable injury); *Georgia Advoc. Off. v. Jackson*, No. 1:19-CV-1634-WMR-JFK, 2019 WL 12498011, at *14 (N.D. Ga. Sept. 23, 2019) *modified,* No. 1:19-CV-1634-WMR-RDC, 2020 WL 1883877 (N.D. Ga. Feb. 26, 2020), and *order vacated, appeal dismissed on other*

grounds, 4 F.4th 1200 (11th Cir. 2021) (holding that the harm to one's physical and mental health from severe isolation, including psychotic episodes, suicide attempts, and self-injury, is irreparable).

Mr. Melendez is clearly suffering from these harms. Dr. Kupers warns that Mr. Melendez is at an extremely high risk of suicide and other serious injury due to his worsening mental illness and solitary confinement conditions. [D.E. 171-1 at 3, 20–21, 30–31; Ex. D ¶ 8]. He found that Mr. Melendez's mental illness has been exacerbated by the extreme stress of solitary confinement and the deprivations he has endured, including his social isolation, lack of recreation, and inability to access adequate mental health care, including psychiatric medication. [D.E. 171-1 at 21, 23–26, 29–30].

Since being forced into solitary confinement in 2016, Mr. Melendez's depression has worsened, his thoughts of suicide have become more frequent, and his auditory hallucinations more regular. [*Id.* at 21; D.E. 171-2 ¶ 25; Ex. B ¶¶ 4, 11, 25–26]. He is suffering a severe mental breakdown that is not only psychiatrically disabling, but dangerous to his health and safety. [D.E. 171-1 at 23–24]. He feels intense despair and paranoia. [D.E. 171-1 at 23–24, 30–31; Ex. B ¶¶ 4, 25–26]. He has suffered persistent sleep deprivation, fearing that officers will enter his cell and beat him. [D.E. 171-1 at 13; D.E. 171-2 at ¶ 23]. He has persistent suicidal ideation and thoughts of self-harm, which he has repeatedly acted upon. [D.E. 171-1 at 13–14; Ex. B ¶¶ 24-26]. As this Court has previously determined, "[t]here is no more irreparable injury to prevent than death." [D.E. 203 at 22]. *See also Gayle v.*

Meade, No. 20-21553-CIV, 2020 WL 3041326 at *20 (S.D. Fla. June 6, 2020) (noting that increased likelihood of death constitutes an irreparable injury).

Solitary confinement greatly increases the irreparable harm to Mr. Melendez, meaning that he needs to be removed from such conditions in order to recover, not be returned to them. [D.E. 171-1 at 31]. Dr. Kupers concluded that Mr. Melendez's mental health treatment at FSP was "grossly deficient." [*Id.* at 26]. He found that Mr. Melendez's depression, suicidal ideation, and paranoia were underreported or ignored by mental health staff. [*Id.* at 28]. Time and time again, when Mr. Melendez self-mutilated, FSP staff returned him to the same cell without intervention. [D.E. 171-2 at ¶¶ 32, 36-38].

This pattern has continued. Mr. Melendez reports repeatedly telling mental health staff his concerns that he will hurt himself in response to the commanding voice in his head but receiving no responsive help. [Ex. B ¶ 24]. As such, Mr. Melendez has no reason to believe anyone will help him as he continues to deteriorate. *See Thomas*, 614 F.3d at 1317 ("[W]here a history of legal violations is before the district court, that court has significant discretion to conclude that future violations of the same kind are likely." (*quoting Kapps*, 404 F.3d at 123)).

Mr. Melendez is also at immediate risk of further irreparable harm because of the impact that extended solitary confinement has on the brain. Research has shown that solitary confinement is a form of trauma that is accompanied by physical changes to the brain's neurological pathways. [D.E. 171-1 at 9–10]. Neuroscientists have reported findings of structural changes in the region of the

brain responsible for memory, spatial orientation, and emotion regulation with prolonged solitary confinement. [*Id.* at 11]. This indicates that Mr. Melendez has been and will continue to be irreparably harmed neurologically by his extended period of solitary confinement.

C. The balance of the harms weighs in favor of a preliminary injunction.

The balance of the harms weighs strongly in favor of a second preliminary injunction. In solitary confinement Mr. Melendez is at "extremely high risk of suicide" and further self-injury. [D.E. 171-1 at 30; Ex. D ¶ 8]. By contrast, it is not burdensome for Defendants to house Mr. Melendez in conditions other than solitary confinement. *See* Section II.B, *supra*. Defendants already maintain facilities to care for mentally ill prisoners like Mr. Melendez. Mr. Melendez is a weak and ailing 62-year-old man, who poses a danger only to himself, which the Defendants themselves admit. [D.E. 171-6 at 2–6; Ex. J; D.E. 187-3 ¶ 19]. Since his release from the FSP CM unit, Mr. Melendez has had no issues with security, received no DRs, and was consistently deemed cooperative by staff in the inpatient mental health unit. [Ex. B ¶ 13; Ex. C at 46]. Indeed, the discharging psychologist cleared him for discharge to the general population. [Ex. C at 49].

D. The public interest favors an injunction.

The public is served when prisoners receive rehabilitative care,[36] not

[36] John V. Jacobi, Prison Health, Public Health: Obligations and Opportunities, 31 Am. J.L. & Med. 447, 478 (2005) ("Almost all of the two million American incarcerated today will be released to their communities. Prisons' and jails' failure to provide adequate treatment to a wide variety of chronic conditions, mental

needless punishment.[37] *Pesce v. Coppinger*, 355 F. Supp. 3d 35, 49 (D. Mass. 2018) (finding that the public had an interest in ensuring that prisoner received adequate medical treatment while incarcerated). Mr. Melendez is due to be released in two-and-a-half years.[38] The public interest will be promoted by addressing Mr. Melendez's mental health needs and engaging him in rehabilitative programming that will allow him to become a productive member of society. Keeping Mr. Melendez in solitary confinement right up until his release will only make his reintegration more challenging and increases the risk of recidivism.[39]

The public has a strong interest in protecting constitutional rights, particularly the rights of vulnerable people in state-run institutions. *See Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy certainly would serve the public interest.") (affirming grant of preliminary injunction in prison conditions case); *Laube v. Haley*, 234 F. Supp. 2d 1227, 1252 (M.D. Ala. 2002) ("The public interest is in no way served by the defendants'

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illnesses, sexually transmitted diseases, and communicable diseases threaten those communities with physical and financial harm, infection, and illness.").

[37] The FDC website page on programs and re-entry explains that FDC programming aims to "increase[] security and public safety by providing programming for productive learning, positively transforming behaviors, and teaching pro-social skills that assist[] with re-integration into communities." http://www.dc.state.fl.us/development/index.html (last accessed September 16, 2021).

[38] http://www.dc.state.fl.us/offenderSearch/ (last accessed December 7, 2021) (reflecting release date of July 1, 2024).

[39] www.prisonlegalnews.org/news/2018/jan/8/solitary-streets-studies-find-such-releases-result-higher-recidivism-rates-violent-behavior

current policy, practice, and custom of incarcerating inmates in dangerous conditions."); *see also Cate v. Oldham*, 707 F.2d 1176, 1190 (11th Cir. 1983) (referencing the strong public interest in protecting First Amendment values); *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (noting that it is always in the public interest to prevent the violation of constitutional rights). Moreover, it is in the public interest to ensure that Plaintiff's constitutional rights are not violated by correctional officers. *See Hoskins v. Dilday*, No. 16-CR-334, 2017 WL 951410, at *7 (S.D. Ill. Mar. 10, 2017) ("In this case the public interest is best served by ensuring that corrections officers obey the law."); *Jones 'EL v. Berge*, 164 F. Supp. 2d 1096, 1125 (W.D. Wis. 2001) ("Respect for law, particularly by officials responsible for the administration of the State's correctional system, is in itself a matter of the highest public interest.").

III. THE REQUESTED RELIEF SATISFIES THE PLRA

"[C]ourts can, and routinely do, address violations of constitutional rights and issue prospective relief to remedy violations in a civil action challenging prison conditions." *G.H. by & through Henry v. Marstiller*, 424 F. Supp. 3d 1109, 1115 (N.D. Fla. 2019). The Prison Litigation Reform Act ("PLRA") requires that such relief "be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm." 18 U.S.C. § 3626(a)(2). A preliminary injunction addressed at remedying prison conditions must be accompanied by particularized findings satisfying the PLRA's need-narrowness-intrusiveness requirement.

Georgia Advocacy Office v. Jackson, 4 F.4th 1200, 1213 (11th Cir. 2021). Each form of relief granted must be supported by the required need-narrowness-intrusiveness findings. *Hoffer v. Sec'y, Fla. Dep't of Corr.*, 973 F.3d 1263, 1278 (11th Cir. 2020).

The fou-part order sought by Plaintiff satisfies the PLRA, as the relief sought (1) is narrowly tailored, (2) extends no further than necessary to remedy the harm to Mr. Melendez, and (3) is the least intrusive means necessary to correct the harm. 18 U.S.C. § 3626(a)(2).

A. Requirement that Defendants return Mr. Melendez to a TCU for inpatient mental health care

Narrowly tailored: "Narrow tailoring requires a fit between the remedy's ends and the means chosen to accomplish those ends." *Brown v. Plata*, 563 U.S. 493, 531 (2011) (internal citations and quotation marks omitted). An order directing Mr. Melendez's return to a correctional setting for inpatient mental health care is narrowly tailored to mitigate the harm to Mr. Melendez's health from the years of isolation he has endured in FDC custody. The relief requested would apply only to Mr. Melendez, and does not mandate that FDC adopt any new policies. *See Keohane v. Fla. Dep't of Corr.*, 952 F.3d 1257, 1265 n.3 (11th Cir. 2020) (rejecting PLRA-based challenge to injunctive order that "direct[ed] the FDC to provide a particular course of treatment to [the plaintiff] *specifically*"); *Poretti v. Dzurenda*, 11 F.4th 1037, 1051 (9th Cir. 2021) (upholding as narrowly tailored an injunction requiring a prison to create a treatment plan and to provide the plaintiff with two specific psychiatric medications).

Extends no further than necessary: Returning Mr. Melendez to a TCU also extends no further than necessary to avoid further physical and psychological harm to Mr. Melendez. Mr. Melendez's current placement in solitary confinement puts him at "extremely high risk" of engaging in self-harm. [Ex. D ¶ 8]. He has serious unmet mental health needs, and must be provided inpatient mental health treatment in a non-solitary setting to preserve his life. [D.E. 171-1 at 29–31]. No lesser remedy could prevent the grave risks of suicide or self-harm. [*Id.* at 3, 30–31].

Least intrusive means necessary: The least intrusive relief tends to "track a prison system's 'current policy' and leave discretion to prison officials in implementing the ordered relief." *Gumm v. Ford*, No. 5:15-CV-41, 2019 WL 2017497, at *4 (M.D. Ga. May 7, 2019) (citing *Thomas v. Bryant*, 614 F.3d 1288, 1325 (11th Cir. 2010)).

Here, FDC already maintains inpatient mental health units to house prisoners at risk of self-harm, like Mr. Melendez. The injunction will, therefore, "require little to no additional expenditures on the part of [FDC]." *See Thomas*, 614 F.3d at 1325. And although it requires Defendants to provide Mr. Melendez with inpatient mental health care, it provides them with some discretion in determining where and how to administer that care. An order returning Mr. Melendez to a TCU is thus not overly intrusive into prison operations. *See Brown*, 563 U.S. at 533 (upholding injunctive order even though it "does . . . control the

State's authority in the realm of prison administration," because it "does so in a manner that leaves much to the State's discretion").

B. Appointment of an independent mental health expert

Mr. Melendez has filed a motion pursuant to Federal Rule of Evidence 706 for appointment of an independent expert to evaluate Mr. Melendez's mental health needs and proper placement. [D.E. 209]. Appointment of a Rule 706 expert need not satisfy the PLRA, because it does not require the Defendants to do or cease doing anything. But even if Plaintiff were required to meet that burden, the appointment of a Rule 706 expert is consistent with PLRA requirements.

Narrowly tailored: The appointment of an independent expert to evaluate Mr. Melendez's mental health needs is narrowly tailored to achieve the goal of placing him in a carceral setting responsive to his needs. An objective, unbiased mental health evaluation extends no further than necessary to counter the Defendants' dismissive attitude toward Mr. Melendez's mental health needs and psychological crises and innate bias of employed experts. This relief would not "unnecessarily reach out to improve" the quality of FDC mental health evaluations for all prisoners, nor would it apply to any prisoner except for Mr. Melendez. *See Brown*, 563 U.S. at 531.

Extends no further than necessary: Given the divergence between the evaluations conducted by Plaintiff's expert, Dr. Kupers, and the prison psychologists employed or contracted by FDC, in addition to Mr. Melendez's unresolved mental health symptoms, appointment of an independent expert to

opine as to Mr. Melendez's mental health needs and proper placement extends no further than necessary to ensure that Mr. Melendez is housed in a setting appropriate to his mental health needs. The Court need not look further than the Defendants' conduct in response to its prior order granting Mr. Melendez's request for injunctive relief to appreciate the necessity of appointing an independent expert. *See Thomas*, 614 F.3d at ("[T]he DOC's historical treatment of [Plaintiff] gives rise to an inference of future irreparable injury justifying the entry of injunctive relief."). The record establishes that Defendants continue to ignore Mr. Melendez's significant mental health needs and dismiss his pain and suffering, necessitating evaluation by an independent mental health expert.

Least intrusive means necessary: Appointing an independent expert is the least intrusive means of ensuring Mr. Melendez receives a proper placement upon discharge from the TCU. Such an order would not "micro-manage[] the minutiae of prison operations," nor does it require "onerous continuous supervision by the court or judicial interference in running [the prison]." *Thomas*, 614 F.3d at 1325. It merely requires Defendants to provide the independent mental health expert access to Mr. Melendez so that he/she can conduct an evaluation, and fair compensation for the expert's time and expenses. The requested relief poses no repeated or ongoing intrusion on prison administration, and is not overly intrusive into the prison's day-to-day business.

C. Notice and an opportunity to challenge Mr. Melendez's discharge from inpatient mental health care

Narrowly tailored: Mr. Melendez further requests that the parties have a reasonable opportunity to review the findings of an independent expert and to challenge any discharge decisions. Requiring the Defendants to provide notice of their intent to discharge Mr. Melendez and an opportunity to challenge that discharge is crucial to ensuring that Mr. Melendez is not released from inpatient mental health care prematurely or improperly. Preventing Mr. Melendez's sudden discharge from inpatient mental health care and the resulting deterioration in his physical and mental health can only be accomplished by an order such as this. An order requiring Defendants to provide Mr. Melendez with a reasonable opportunity to object to his discharge from the TCU would only apply to him and would not require Defendants to implement any broad policy changes. It would slightly alter the discharge procedure of "only one inmate out of thousands" under the Defendants' custody. *See Thomas*, 614 F.3d at 1324.

Extends no further than necessary: The Defendants' conduct since the Court's order illuminates the necessity of the requested relief. Despite Mr. Melendez's severe mental health needs and an order from this Court expressing serious concerns over his isolation, Defendants determined to discharge Mr. Melendez from the TCU after only three weeks and then effected that discharge within a matter of days. Absent an order requiring Defendants to provide notice and a meaningful opportunity to challenge Mr. Melendez's potential discharge

from the TCU, the Defendants would surely fast-track Mr. Melendez through the inpatient mental health unit and return him to isolation yet again.

Least intrusive means necessary: The requested relief is the least intrusive means necessary to prevent Mr. Melendez's premature or improper discharge. It does not require Defendants to hold Mr. Melendez indefinitely in a TCU, but only to extend his stay by as much time as necessary to ensure that he has adequate notice and a meaningful opportunity to contest his discharge. The injunction "will require little to no additional expenditures on the part of [FDC]" and accordingly complies with the PLRA's minimal intrusiveness requirement. *See Thomas*, 614 F.3d at 1325.

D. Prohibition of solitary confinement

Narrowly tailored: Barring Defendants from holding Mr. Melendez in solitary confinement, meaning 22-hour confinement in his cell per day or more, or any other form of confinement that is characterized by minimal to rare meaningful contact with other individuals and the lack of opportunities for congregate recreation, meals, and programming, is also PLRA-compliant. Mr. Melendez's extended, extreme isolation is the root of the harm that the preliminary injunction is to remedy. If this Court does not order relief from these conditions, Mr. Melendez be left in the same isolation that caused him to repeatedly self-mutilate, and any progress made in inpatient treatment will be undone. The requested order is appropriately narrow under the PLRA.

Extends no further than necessary: Although solitary confinement has been demonstrably destructive to Mr. Melendez's vulnerable mental health, Defendants have placed him in administrative confinement. They are also intent on returning him to Close Management—FDC's most restrictive form of confinement—as they have made clear to the Eleventh Circuit: "[O]nce the preliminary injunction expires, Mr. Melendez's CM sentence is set to resume and per FDC policy he will be transferred back to CM." Appellant Op. Brief, *Melendez v. Inch et al.*, No. 21-13455, at 48 (11th Cir. Nov. 12, 2021). Barring Defendants from housing Mr. Melendez in any sort of solitary confinement is necessary to ensure that Defendants do not substitute one form of isolation for another, thereby violating the spirit of the Court's orders.[40] It also extends no further than necessary to prevent the Defendants from taking the very actions that they have already expressed an intention to pursue. Plaintiff does not seek broad reform but to prevent, until such time as a permanent injunction can be entered, Defendants from inflicting on a single mentally-ill prisoner a form of confinement that has already caused him grievous harm. The relief sought does not extend any further than necessary.

[40] *See* NCCHC, "Position Statement on Solitary Confinement (Isolation)" www.ncchc.org/solitary-confinement ("Different jurisdictions refer to solitary confinement by a variety of terms, such as isolation; administrative, protective, or disciplinary segregation; permanent lockdown; maximum security; supermax; security housing; special housing; intensive management; and restrictive housing units. Regardless of the term used, an individual who is deprived of meaningful contact with others is considered to be in solitary confinement.").

Least intrusive means necessary: Lastly, the requested relief is the least intrusive means necessary to prevent further harm to Mr. Melendez. Although the order would run counter to the Defendants' plan to retain Mr. Melendez under CM status, this does not amount to impermissible intrusion upon prison administration. "[T]he PLRA contemplates that courts will retain authority to issue orders necessary to remedy constitutional violations," including to "in some respects shape or control the State's authority in the realm of prison administration[.]" *Brown*, 563 U.S. at 533–34. The requested relief does not dictate in which facility Mr. Melendez is to be housed, nor what types of programming and recreational activities he should receive. Although the injunction requires Defendants to move Mr. Melendez *out* of solitary confinement, it leaves them wide latitude to decide where to transfer him. It therefore "leaves much to the State's discretion," and is not impermissibly intrusive under the PLRA. *See id.*

V. CONCLUSION

Mr. Melendez has met the requirements for preliminary injunctive relief. Indeed, the case for granting a temporary restraining order and preliminary injunctive relief has only grown clearer and more persuasive since the Court's prior order. Accordingly, this Court should grant the relief requested.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF on January 3, 2022. I also certify that the foregoing document is being served this day on the following counsel of record via transmission of Electronic Filing generated by CM/ECF:

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