19-1291

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES HAMNER,

Petitioner,

v.

DANNY BURLS, *ET AL.*

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

---

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF FORMER CORRECTIONS DIRECTORS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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Six corrections experts—several of whom also served as directors of state correctional systems—("proposed *amici*") respectfully move under Supreme Court Rule 37.2(b) for leave to file a brief as *amici curiae* in support of petitioner Charles Hamner.[1] As leaders in the longstanding movement toward reforming the use of solitary confinement, proposed *amici* are troubled by the lower court's decision in this case to *sua sponte* invoke the defense of qualified immunity. This decision enabled the lower court to evade review of important constitutional questions about the use of solitary confinement. Because isolation is known by corrections administrators to be harmful and unnecessary, *amici* believe that the lower court's invocation of the qualified immunity defense improperly precluded meaningful judicial review of the merits of Mr. Hamner's claim and undermined the purpose of the qualified immunity doctrine. Corrections administrators are aware of the harms of solitary confinement and know it fails to fulfill a penological purpose.

These are issues of critical importance to proposed *amici* who, during their careers as corrections experts and/or directors of state corrections systems, have acquired substantial experience managing prisons and prison systems. Proposed *amici* have direct experience reducing the use of solitary confinement in prisons and replacing it with alternative, more effective prison management methods. *Amici* have seen first-hand the dramatic reduction in prison violence and the positive

[1] All parties were timely notified of proposed *amici*'s intent to file an *amicus* brief. Petitioner consented to the brief's filing. Respondents declined to consent to the brief's filing. Accordingly, proposed *amici* request leave of the Court to file the accompanying *amicus* brief.

developments in prisons as a result of eliminating reliance on prolonged solitary confinement.

Amici aim to assist the Court by providing information regarding the broad and interdisciplinary consensus opposed to the use of solitary confinement—of which the corrections industry is a part—and the successes of various reforming state correctional systems. These reforms demonstrate that reliance on solitary confinement is harmful and unnecessary and that less-restrictive alternatives improve prison security while reducing costs. In light of the availability and widely-known successes of these reforms, prison administrators can no longer assert a compelling interest in keeping prisoners in long-term solitary confinement; accordingly, qualified immunity should not shield the practice from constitutional review.

For the foregoing reasons, proposed *amici* respectfully request that the Court grant this motion and file the attached brief.

Respectfully submitted,

Dated: May 14, 2020

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BRIEF OF FORMER CORRECTIONS DIRECTORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[2]

Amici curiae are former corrections directors and experts with experience reducing the use of solitary confinement in prisons. *Amici* are a part of an established and ever-growing consensus of corrections officials that recognizes that isolation harms incarcerated people and fails to fulfill a penological purpose. *Amici* are concerned that the lower court's *sua sponte* resurrection of the defense of qualified immunity in this case threatens to insulate solitary confinement from meaningful constitutional review despite widespread and longstanding condemnation of the practice and pervasive knowledge among corrections officials that isolation is unnecessary and harmful. *Amici* submit that solitary confinement has proven dangerous and ineffective, whereas alternative prison management methods have successfully eliminated prolonged solitary confinement while decreasing prison violence. *Amici* provide the Court information and data regarding the broad consensus that solitary confinement and the various reforms in state correctional systems that prove isolation to be unnecessary and harmful.

Amici are:

Martin F. Horn served as Secretary of Corrections of Pennsylvania from 1995 to 2000. He also served as Commissioner of the New York City Departments of

[2] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. The parties' counsel of record received timely notice of the intent to file the brief. Petitioner consented to the filing of this brief, but Respondents did not consent. Accordingly, *amici* filed the accompanying motion seeking leave to file this brief.

Correction and Probation for seven years. Horn has also served as Executive Director of the New York State Sentencing Commission.

Steve J. Martin is the former General Counsel/Chief of Staff of the Texas prison system and has served in gubernatorial appointments in Texas on both a sentencing commission and a council for offenders with mental impairments. He coauthored *Texas Prisons, The Walls Came Tumbling Down*, and has written numerous articles on criminal justice issues.

Richard Morgan was appointed Secretary of the Washington State Department of Corrections in 2016. He also was appointed to Washington State's Parole Board and elected to the Walla Walla City Council, and he has served on the Board for the Washington State Coalition to Abolish the Death Penalty since 2012.

Dan Pacholke is the former Secretary for the Washington State Department of Corrections (WDOC). He started his thirty-three-year career as a Correctional Officer, working his way to the senior most position for the department. In 1985, he worked in one of the first intensive management units (IMUs) in the state of Washington and twenty-five years later he led the efforts to reduce the use of IMUs that resulted in a fifty-percent reduction of those housed in IMUs and an over thirty-percent reduction in system-wide violence. This work is described in a 2016 Department of Justice Bureau of Justice Policy Brief, *More than Emptying Beds: A Systems Approach to Segregation Reform*.

Phil Stanley is the former Commissioner of the New Hampshire Department of Corrections, reporting directly to the Governor. He has served as a Regional

Administrator, Prison Superintendent, Probation Officer and Youth Correctional Counselor for the Washington State Department of Corrections. He is currently a consultant for jail operations.

Eldon Vail served as Secretary of the Washington Department of Corrections from 2007 until 2011. As Director, he successfully reduced violence in the state prison system and implemented a wide array of evidence-based programs, including an intensive treatment program for people in prison with a mental illness and a step-down program for people held for long terms in solitary.

SUMMARY OF ARGUMENT

Over the last few decades, attitudes about solitary confinement among experts, the general public, and within the correctional industry have shifted. A growing consensus among mental-health professionals, legislators, and correctional officials, among others, recognize that isolation harms prisoners and does not serve a penological purpose. In light of this consensus, many states have reformed the use of isolation by reducing the flow of prisoners into solitary confinement, implementing prosocial training for temporarily segregated prisoners, and substantially reducing the amount of time spent in isolation. These reforms have resulted in reduced harm to prisoners and substantial reductions in prison disorder and violence. Such results undermine the notion that solitary confinement is a necessary element of the prison administration and prove that correctional officials cannot simply turn a blind eye to the counter productive and harmful effects of isolation.

Allowing for *sua sponte* resurrection of a qualified immunity defense, as the lower court did in this case, threatens to insulate solitary confinement from judicial review and constitutional scrutiny despite broad and longstanding condemnation of the practice as inhumane and unnecessary to effective prison management and security. Moreover, *sua sponte* resurrection of a qualified immunity defense undercuts the purpose of the qualified immunity doctrine by shielding correctional officials from liability for constitutional violations despite pervasive knowledge in the industry that solitary confinement is harmful and unnecessary. As this Court has expressly recognized, prison officials in the United States are on notice of "the clear constitutional problems raised by keeping prisoners. . . in near-total isolation from the living world in what comes perilously close to a penal tomb." *Apodaca v. Raemisch*, 139 S.Ct. 5, 10 (2018) (Sotomayor, J., respecting denial of cert.) (internal quotation omitted).

ARGUMENT

I. A Large and Growing Consensus Recognizes Solitary Confinement Inflicts Substantial Harm and Fails to Fulfill Any Penological Goal.

Galvanized by tragic and widely publicized stories like that of Kalief Browder[3] and Albert Woodfox[4], opposition to solitary confinement has consolidated into a

[3] At sixteen-years-old, Mr. Browder spent around two years in solitary confinement awaiting trial on charges that were ultimately dismissed. Not long after his release, Mr. Browder hung himself. His story drove substantial reform at Riker's Island jail and across the nation. *See* Benjamin Wiser, *Kalief Browder's Suicide Brought Changes to Rikers. Now It Has Led to a $3 Million Settlement*, N.Y. Times, Jan. 24, 2019.

[4] Mr. Woodfox spent more than forty years in solitary confinement but was released in 2016 after decades of fighting a dubious murder conviction. *See* Rachel Aviv, *How Albert Woodfox Survived Solitary*, The New Yorker, Jan. 9, 2017.

broad, interdisciplinary, and bi-partisan consensus. To illustrate the breadth of this consensus, the following highlights the various contributions of medical research, litigation efforts, institutional research, correctional organizations, and political bodies to the reform of solitary confinement in American prisons.

For nearly four decades, extensive psychological research has shown prolonged solitary confinement harms people's mental health. *See e.g.*, Keramet Reiter, et al., *Psychological Distress in Solitary Confinement: Symptoms, Severity, and Prevalence in the United States, 2017–2018*, 110 Am. J. Pub. Health 556 (2020); Craig Haney, *Restricting the Use of Solitary Confinement*, 1 Ann. Rev. Criminology 285, 286 (2018); Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365 (2018); Bruce A. Arrigo & Jennifer Leslie Bullock, *The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units*, 52 Int. J. of Offender Therapy and Comparative Criminology 622 (2008); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. of L. & Pol'y. 325, 354 (2006); Craig Haney, *Mental Health Issues in Long-term Solitary and "Supermax" Confinement*, 49 Crime & Delinq. 124 (2003); Stuart Grassian & Nancy Friedman, *Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement*, 8 Int. J. of L. and Psychiatry, 49 (1985); Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. of Psychiatry 1450 (1983). Research also shows mental and emotional scars from solitary confinement languish after a person's release from prison; indeed, one recent study showed that prisoners released from solitary confinement face dramatically increased mortality rates after release—

people held in solitary confinement are twenty-four percent more likely to die within a year of release, seventy-eight percent more likely to commit suicide, and 127 percent more likely to die from an opioid overdose within two weeks of release. *See* Lauren Brinkley-Rubenstein, et al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, 1 Jama Open Network (2019); *see also* Christopher Wildman & Lars H. Anderson, *Solitary Confinement Placement and Post-release Mortality Risk Among Formerly Incarcerated Individuals: a Population Based Study*, 5 Lancet Pub. Health 107 (2020) (finding "that individuals who were placed in solitary confinement during incarceration died at high rates in the 5 years following release").

For more than a decade, litigation has also brought to the attention of prison systems and correctional officials the risks of solitary confinement to prisoners, particularly for juveniles and people with mental illness, and challenged the constitutionality of isolation. *See, e.g.*, *Kane v. Pierce*, No. 1:06–cv–01564, 2009 WL 189955 (E.D. Cal. 2009); *Presley v. Epps*, No. 4:05cv148, 2005 WL 1842195 (N.D. Miss. 2005); *Jones'El v. Berge*, No. 00-C-421-C, 2003 WL 24259845 (W.D. Wis. 2003); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995); *Morris v. Travisono*, 549 F. Supp. 291 (D.R.I. 1982); *see also* Keramet Reiter, *The Most Restrictive Alternative: A Litigation History of Solitary Confinement in U.S. Prisons, 1960-2006*, 57 Studies in Law Politics and Society 71 (2012). In addition to the research discussed above, this legal advocacy has put corrections officials on notice of the unavoidable constitutional concerns associated with the use of solitary confinement.

This sort of litigation has also prompted justices of this Court to comment negatively on the use of isolation in American prisons. For example, in *Davis v. Ayala*, Justice Kennedy penned a concurrence opining that the "human toll wrought by extended terms of isolation long has been understood," and noted that—as far back as the nineteenth century—the Supreme Court "recognized that, even for prisoners sentenced to death, solitary confinement bears 'a further terror and peculiar mark of infamy.'" 576 U.S. ____, 135 S.Ct. 2187, 2209 (2015) (Kennedy, J., concurring in the Court's opinion but writing separately to discuss the conditions of solitary confinement); *see also Ruiz v. Texas*, 137 S.Ct. 1246, 1247 (2017) (reiterating Justice Kennedy's concerns about the "terrible human toll" wrought by solitary confinement) (Breyer, J., dissenting from denial of application for stay of execution); *Wilkinson v. Austin*, 545 U.S. 209, 223-24 (2005) (finding that placement in solitary confinement and the accompanying disqualification from parole constituted an "atypical and significant hardship" giving rise to a liberty interest in the prison context). Similarly, in *Apodaca v. Raemisch*, Justice Sotomayor opined that the Court was "no longer so unaware" of the costs and "clear constitutional problems" associated with isolating prisoners in "what comes perilously close to a penal tomb." 139 S.Ct. at 10.

In addition to the scientific research, studies of carceral institutions have shown for years that—contrary to its oft-stated justification—the use of solitary confinement was "not associated with reductions in facility or systemwide misconduct and violence." B. Steiner & C.M. Cain, U.S. Department of Justice, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation:*

A Systematic Review of the Evidence, Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions 165, 179 (2016); *see also* R.M. Labrecque, *The Effect of Solitary Confinement on Institutional Misconduct: A Longitudinal Evaluation* (Aug. 2015) (unpublished Ph.D. dissertation, Univ. of Cin.). Rather, the opposite has proven true, as "[p]risons with higher rates of restrictive housing had higher levels of facility disorder." Allen Beck, U.S. Department of Justice, *Use of Restrictive Housing in U.S. Prisons and Jails, 2011-12*, 1 (2015), https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf. For example, between 2008 and 2015, Texas prisons experienced a 104 percent increase in prisoner assaults, which correctional staff attributed directly to the overuse of solitary confinement. ACLU of Texas & Texas Civil Rights Project, *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, 9 (2015).

Not only is isolation detrimental to the physical, mental, and emotional health of incarcerated people and ineffective, solitary confinement imposes a substantial and unjustified financial burden on prison systems. The Government Accountability Office calculated that solitary housing costs three times as much as general population housing. The United States Government Accountability Office, *Bureau of Prisons: Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing* 31 (2013), http://www.gao.gov/assets/660/654349.pdf (*GAO Report*). The cost of constructing supermax prisons, built specifically to house prisoners in solitary confinement, can be as high as three times the cost to build a conventional prison. ACLU, *Briefing Paper: The Dangerous Overuse of Solitary*

Confinement in the US, 2 (2014). The facilities must be staffed more robustly because prisoners cannot do many of the jobs that they would do in general population housing. *Id.* at 11. Isolation units need a higher ratio of correctional officers to prisoners because policies require at least two officers be present to move prisoners between their cells, exercise areas, and showers. *Id.*

Of particular relevance to this case, many correctional experts—including *amici*—and industry organizations are a part of the movement toward reform that recognizes solitary confinement is harmful and unnecessary. The American Correctional Association (ACA)—the largest accrediting body in the United States for correctional institutions—has proposed standards and guidelines recommending limits on the use of solitary confinement. The American Correctional Association, *Restrictive Housing Performance Based Standards* (Aug. 2016), https://www.asca.net/pdfdocs/8.pdf (*ACA Standards*). The National Institute of Corrections—a federal agency that provides support and guidance to federal and state correctional facilities—issued training materials for corrections administrators and staff regarding how to evaluate and reduce the use of solitary confinement in their facilities. National Institute of Corrections, *Restrictive Housing: Roadmap to Reform [Internet Broadcast]* (2016), https://nicic.gov/restrictive-housing-roadmap-reform-internet-broadcast. In 2016, a report published by the Association of State Correctional Administrators (ASCA)—an association of leaders from corrections agencies across the America—and the Arthur Liman Center for Public Interest Law at Yale Law School (Liman Center) captured the growing tendency toward reform:

"Instead of being cast as the solution to a problem, restricted housing has come to be understood by many as a problem in need of a solution." The Association of State Correctional Administrators & The Liman Center for Public Interest Law at Yale Law School, *Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms* 15 (2016).

Solitary confinement has also been subject to considerable political scrutiny, as legislatures and political organizations took notice of broad opposition to the practice and joined the movement toward reform. Eli Hager & Gerald Rich, *Shifting Away from Solitary: More states have passed solitary confinement reforms this year than in the past 16 years*, The Marshall Project (Dec. 12, 2014), https://www.themarshallproject.org/2014/12/23/shifting-away-from-solitary; Press Release, The White House, *Fact Sheet: Department of Justice Review of Solitary Confinement* (Jan. 25, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement; The Association of State Correctional Administrators & The Liman Center for Public Interest Law at Yale Law School, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-In-Cell* 82–86 (2018) (*ASCA-Liman 2018*). Senators Dick Durbin and Kamala Harris recently introduced the Solitary Confinement Reform Act, which seeks to limit the use of solitary confinement. Solitary Confinement Reform Act, S.719, 116th Cong. (2019). The American Legislative Exchange Council (ALEC)—a powerful conservative legislative

organization—issued a model resolution highlighting the successes of states reforming their use of solitary confinement and advocating for the use of alternative methods. American Legislative Exchange Council, *Resolution on Limiting the Use of Prolonged Solitary Confinement* (2019), https://www.alec.org/model-policy/resolution-on-limiting-the-use-of-prolonged-solitary-confinement/. ALEC's resolution recommends that prison systems strictly limit their use of solitary confinement, including for disciplinary reasons, and provide prisoners with opportunities to "present mitigating evidence regarding the allegations that led to" isolation. *Id.*

II. Reforming States Show That Limiting Solitary Confinement Reduces Violence and Improves Safety for Corrections Officers.

The longstanding consensus against solitary confinement has driven sweeping reforms in over one-third of American states. Reforming state correctional systems proved relying on alternatives to solitary confinement is not only possible, but also makes prisoners and staff safer. Corrections officials know that viable alternatives to isolation exist, and they can no longer ignore the movement toward reform, in light of reforming states' proven results that reducing the use of solitary confinement leads to safer prisons.

Nine states—Colorado, Idaho, Maine, Mississippi, Nebraska, North Carolina, North Dakota, Oregon, and Washington—report system-wide reforms, reducing the population of prisoners in isolation from nearly 100,000 to approximately 60,000 in just four years. *ASCA-Liman 2018*, *supra* at 7, 10; National Conference of State Legislatures, *Administrative Segregation: State Enactments: January 2018*, https://leg.mt.gov/content/Committees/Interim/2017-2018/Law-and-

Justice/Meetings/Mar-2018/Exhibits/sj25-state-enactments-2018-ncsl.pdf. Colorado reports reducing the population of prisoners in long-term solitary confinement from seven percent of the prison population to one percent. Marie Gottschalk, *Staying Alive: Reforming Solitary Confinement in U.S. Prisons and Jails*, 125 Yale L.J. Forum 253, 263 (Jan. 15, 2016), https://www.yalelawjournal.org/forum/reforming-solitary-confinement-in-us-prisons-and-jails. On August 1, 2020 a New Jersey law prohibiting the use of solitary confinement for more than twenty consecutive days or for more than thirty days in a sixty-day period will go into effect. ACLU of New Jersey, *Gov. Murphy Signs Isolated Confinement Restriction Into Law*, (Jul. 11, 2019), https://www.aclu-nj.org/news/2019/07/11/gov-murphy-signs-isolated-confinement-restriction-act-law. In reforming states, prisoners who remain in solitary confinement now reportedly stay for days, not years, in compliance with ACA-recommended standards. *ACA Standards*, *supra* at 3.

Reforming states transformed their prisons by reducing the number of prisoners sent to solitary confinement, initiating prosocial training for prisoners in temporary isolation, and reducing the length of time prisoners spend in isolation. These reforms resulted in a dramatic decrease in prison violence. *See, e.g.*, Marc A. Levin, Esq., *Testimony Before the U.S Senate Judiciary Subcommittee on The Constitution, Civil Rights and Human Rights* 3 (Feb. 25, 2014), https://www.judiciary.senate.gov/download/02-25-14-levin-testimony; Rick Raemisch, remarks at Vera Institute of Justice, *Webinar: Rethinking Restrictive Housing: What's Worked in Colorado?* (Sept. 17, 2018),

https://www.safealternativestosegregation.org/webinar/rethinking-restrictive-housing-whats-worked-in-colorado/ (*Raemisch Remarks)*; *Focused Deterrence Initiatives to Reduce Group Violence in Correctional Facilities: A Review of Operation Workplace Safety and Operation Stop Violence*, ACA 2018 Winter Conference Seminar (2018) 18–23 (on file with counsel) (*Deterrence*).

In Mississippi, as the use of solitary confinement population plunged, "the number of incidents requiring use of force plummeted. . . Monthly statistics showed an almost seventy percent drop in serious incidents, both prisoner-on-staff and prisoner-on-prisoner." Terry Kupers, et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 Crim. Just. & Behavior 1037, 1039 (2009). Similar metrics of violence in the Colorado prison system decreased by approximately eighty percent post-reforms, and prisoner-on-staff assaults decreased by nearly fifty percent. *Raemisch Remarks*, *supra*. In North Dakota, extreme incidents such as suicide attempts and cell flooding used to occur three or more times every week in solitary confinement units; after dramatic reductions in the use of isolation, they now occur only a few times each year. Cheryl Corley, *North Dakota Prison Officials Think Outside the Box to Revamp Solitary Confinement,* NPR Morning Edition (Jul. 31, 2018, 5:01 a.m.), https://www.npr.org/2018/07/31/630602624/north-dakota-prison-officials-think-outside-the-box-to-revamp-solitary-confineme. Barely a year after launching solitary confinement reforms in 2013, Maine prisons reported

> substantial reductions in violence, reductions in use of force, reductions in use of chemicals, reductions in use of

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

Levin, *supra*. In Washington, a dramatic drop in violence occurred following the adoption of solitary confinement reforms and a group violence deterrence strategy. Dan Pacholke & Sandy Felkey Mullins, J.D., U.S. Department of Justice, *More Than Emptying Beds: A Systems Approach to Segregation Reform* 1, 5 (2016), https://www.bja.gov/publications/MorethanEmptyingBeds.pdf; *see generally*, Terry Allen Kupers, *Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It* 171-211 (2017). "In the model's first year of implementation at its pilot facility, assaults against staff, the use of weapons, and multi-man fights were reduced by 50%." *Id.* at 6. Between 2014 and 2017, violent incidents in the two high-security prisons utilizing the model decreased by nearly sixty percent and prisoner-on-staff assaults decreased by nearly ninety percent. *Deterrence*, *supra*. Indeed, reduced numbers of isolated prisoners and reduced time in solitary confinement *improved* the security of prisons in these states.

CONCLUSION

Many corrections professionals are part of the movement toward reforming the use of solitary confinement, and accordingly, are well-aware the practice is troublingly harmful and unnecessary. States that reformed the used of solitary confinement demonstrated that less harmful and more effective alternatives can prevail over long-term isolation. "Moreover, many of these alternative approaches to

social control in prison systems do not have the dubious moral qualities, legal uncertainties, and costs" associated with solitary confinement. Chad S. Briggs et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 Criminology 1341, (2006). Despite the established consensus opposed to solitary confinement, the practice continues to evade meaningful judicial review. Allowing for *sua sponte* resurrection of qualified immunity, as the Eighth Circuit did in this case, threatens to further preclude judicial review of the practice, especially when taken together with a court's ability to skip analysis of the constitutional violation and decide a case on the "clearly established" prong of the qualified immunity analysis. *See Pearson v. Callahan*, 555 U.S. 223, 236 (2009). The Eighth Circuit's decision shields a practice known in the corrections community to be troublingly harmful and clearly unnecessary from constitutional review. Reforming state correctional systems proved there is no longer a penological interest in maintaining prisoners in prolonged isolation, and accordingly, courts and corrections institutions can no longer ignore the reality that isolation inflicts considerable harm on prisoners without justification. Minimizing solitary confinement's harm is not only a moral imperative, but a practical necessity for American prison systems.

Respectfully submitted,

Dated: May 14, 2020

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