No. 19-1291

IN THE

Supreme Court of the United States

CHARLES HAMNER,

Petitioner,

v.

DANNY BURLS, ET AL.,

Respondents.

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

BRIEF OF *AMICI CURIAE* PROFESSORS AND PRACTITIONERS OF PSYCHIATRY, PSYCHOLOGY, AND MEDICINE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are experts in psychiatry, medicine, and psychology who have spent decades studying solitary confinement and its psychological and physiological effects on prisoners. Based on their own work—which this Court has relied on frequently[2]—and an assessment of the professional literature, *amici* have concluded that solitary confinement has devastating, often irreversible effects on prisoners' mental and physical health. In fact, solitary confinement of more than ten days causes harms both different and greater than prisoners incur in the general population. And the longer the confinement, the more severe the harm will be and the greater the chance that such harm will be irreversible.

Given their expertise and their knowledge of solitary confinement's devastating effects, *amici* have a particular interest in this case. *Amici* believe that the decision below is emblematic of lower courts' all-too-common failure to recognize that indefinite solitary con-

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[1] Under Supreme Court Rule 37, *amici curiae* state that no counsel for a party authored this brief in whole or part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person other than *amici curiae* and their counsel made any monetary contribution to its preparation and submission. Petitioner and Respondent have consented to the filing of this brief.

[2] *See, e.g.*, *Glossip* v. *Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting) (citing scholarship by Dr. Craig Haney and Dr. Stuart Grassian); *Davis* v. *Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring) (citing scholarship by Dr. Grassian); *Apodaca* v. *Raemisch*, 139 S. Ct. 5, 9 & n.8 (2018) (Sotomayor, J., respecting denial of certiorari) (citing scholarship by Dr. Grassian); *Brown* v. *Plata*, 563 U.S. 493, 518 (2011) (citing scholarship by Dr. Haney).

finement causes unique psychological and physiological harm, especially for prisoners—like Mr. Hamner—who suffer from preexisting mental illness. *Amici* further believe that, based on this Court's precedent and on the overwhelming scientific consensus regarding solitary confinement's harmful effects, prison officials had "fair warning" that their conduct violated the Eighth and Fourteenth Amendments. *Hope* v. *Pelzer*, 536 U.S. 730, 745–46 (2002).

Amici are the following:

Stuart Grassian, M.D., is a psychiatrist who taught at Harvard Medical School for almost thirty years. He has evaluated hundreds of prisoners in solitary confinement and published numerous articles on the psychiatric effects of solitary confinement.

Craig W. Haney, Ph.D., J.D., is Distinguished Professor of Psychology and UC Presidential Chair at the University of California, Santa Cruz. He has researched and published numerous articles on the psychological effects of solitary confinement and has provided expert testimony before numerous courts and the United States Senate.

Terry A. Kupers, M.D., M.S.P., a Distinguished Life Fellow of The American Psychiatric Association, is Professor Emeritus at The Wright Institute. He has provided expert testimony in several lawsuits about prison conditions and published books and articles on related subjects.

Pablo Stewart, M.D., is Clinical Professor of Psychiatry at the University of Hawaii. He has worked in the criminal justice system for decades and as a court-appointed expert on the effects of solitary confinement for more than thirty years.

Brie Williams, M.D., M.S., is a Professor of Medicine, Director of the Criminal Justice & Health Program, and Director of Amend: Changing Correctional Culture at the University of California, San Francisco. She has published numerous articles on the physical effects of solitary confinement.

SUMMARY OF THE ARGUMENT

More than a century ago, this Court first observed that solitary confinement—even for short periods—causes prisoners to become "violently insane" and "commit[] suicide." *In re Medley*, 134 U.S. 160, 168 (1890). *Amici*'s decades of research and scholarship confirm what this Court observed long ago: Solitary confinement imposes an "immense amount of torture and agony" on prisoners. *Apodaca* v. *Raemisch*, 139 S. Ct. 5, 10 (2018) (Sotomayor, J., respecting denial of certiorari). Over the past 150 years, scientists have frequently studied the psychological and physical effects of solitary confinement. And in nearly *every* instance, these studies "ha[ve] concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies." Kenneth L. Appelbaum, *American Psychiatry Should Join the Call to Abolish Solitary Confinement*, 43 J. Am. Acad. Psychiatry & L. 406, 410 (2015) (quoting David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 Am. J. Public Health 18, 21 (2015)).

Because of these severe, debilitating effects, this Court has placed prison officials on notice that solitary confinement can violate the Fourteenth Amendment's requirement of procedural due process, see *Wilkinson* v. *Austin*, 545 U.S. 209, 222–23 (2005), and the Eighth Amendment's prohibition of "cruel and unusual punishments," see *Hutto* v. *Finney*, 437 U.S. 678, 685

(1978). When prison officials arbitrarily subjected Mr. Hamner to indefinite solitary confinement, while denying him applicable procedural protections and depriving him of adequate care for his serious mental illness, officials had "fair warning" that their actions were unlawful. *Hope*, 536 U.S. at 745–76; see also *Brown* v. *Plata*, 563 U.S. 493, 511 (2011) ("A prison that deprives prisoners of . . . adequate medical care[] is incompatible with the concept of human dignity and has no place in civilized society."). Thus, respondents are not immune from suit under this Court's qualified immunity jurisprudence.

But the Eighth Circuit held otherwise. In deciding that respondents' conduct did not violate a "clearly established" constitutional right, the Eighth Circuit exhibited the "rigid, overreliance on factual similarity" that this Court has long criticized, especially in this context. See *Hope*, 536 U.S. at 742. And by focusing so narrowly on the facts of prior circuit precedent, the Eighth Circuit ignored *this Court's* precedent. The court did not analyze respondents' conduct under this Court's controlling Eighth Amendment case law for medical care and conditions-of-confinement claims, and failed even to mention this Court's decision in *Wilkinson*.

In sum, even if the Eighth Circuit were right to examine whether qualified immunity insulates respondents from liability, dismissal on qualified immunity grounds was inappropriate. This Court's precedent—informed by the devastating effects of indefinite solitary confinement—would have alerted any reasonable official to the wrongfulness of their actions.

ARGUMENT

I. SOLITARY CONFINEMENT SUBJECTS PRISONERS TO SEVERE AND IRREVERSIBLE PSYCHOLOGICAL AND PHYSICAL INJURIES

Humans, by their nature, are social. Like food and water, social interaction and environmental stimulation are necessary for human wellbeing. Craig Haney, *Restricting the Use of Solitary Confinement*, 1 Ann. Rev. Criminology 285, 298 (2018) (collecting studies). Solitary confinement[3] deprives prisoners of these necessities and subjects them to conditions so harsh that they amount to torture, leaving prisoners with permanent psychological and physical scars.

A. Solitary Confinement Deprives Prisoners of Necessary Social Interaction and Environmental Stimulation

Some species are naturally solitary, seeking out community infrequently and often for limited purposes. Jared Edward Reser, *Solitary Mammals Provide an Animal Model for Autism Spectrum Disorders*, 128 J. Comp. Psychol. 99, 100–01 (2014). Humans are the opposite: "[T]he human brain is literally wired to connect with others." Haney, *Restricting the Use*, *supra*, at 296 (internal quotations marks omitted). Basic executive function and physical health depend on adequate exposure to positive environmental stimuli, which allows humans to "maintain[] an adequate state of alertness

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[3] "Solitary confinement," as employed in the scientific literature and this brief, describes imprisonment under conditions where meaningful social interaction and positive environmental stimuli are severely restricted. Mr. Hamner's isolation in "administrative segregation" is consistent with the typical conditions of solitary confinement at the facilities that were the subjects of the studies discussed here.

and attention." Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 330 (2006); Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365, 374–75 (2018).

Near total absence of social interaction and positive environmental stimulation are the hallmarks of solitary confinement. See Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 Crime & Delinq. 124, 125–27 (2003). Whereas prisoners in the general population may leave their cells for up to ten hours a day—during which they can meaningfully interact with other human beings, have contact visits, and access prison libraries, worship services, and vocational programs, see Haney, *The Psychological Effects of Solitary Confinement*, *supra*, at 388 n.12; *Brown* v. *Or. Dep't of Corr.*, 751 F.3d 983, 985 (9th Cir. 2014)—prisoners in solitary confinement often spend at least twenty-two hours every day alone in small, bare cells. Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement is Cruel and Far Too Usual Punishment*, 90 Ind. L.J. 741, 753 (2015). These cells contain only a bunk, a toilet, and a sink. *Id.* Within them, prisoners "sleep, eat, and defecate . . . in spaces that are no more than a few feet apart." *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights, & Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 72, 75 (2012) (prepared statement of Dr. Craig Haney, Professor of Psychology, University of California, Santa Cruz).

The only sounds a prisoner will hear from his cell are the slamming of cell doors and intermittent screaming from other prisoners—nothing that "constitute[s] meaningful human communication." Terry A. Kupers,

Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?, *in* The Routledge Handbook for Int'l Crime & Just. Studies 213, 215–16 (Bruce A. Arrigo & Heather Y. Bersot eds., 2014). If anything, such noises exacerbate the other negative environmental stimuli—the stench of feces and urine, the constant glare of fluorescent lights—that surround a prisoner in solitary confinement. See, *e.g.*, Thomas L. Hafemeister & Jeff George, *The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax Solitary Confinement on Inmates with a Mental Illness*, 90 Denv. U. L. Rev. 1, 37–39, 39 n.217 (2012).

The short time prisoners spend outside their cells provides no respite from these conditions. Haney, *Mental Health Issues*, *supra*, at 126. Prisoners in solitary confinement may occasionally leave their cells to exercise, but they must do so alone "in caged-in or cement-walled areas that are so constraining they are often referred to as 'dog runs.'" *Id.* Trips to the "dog runs" are usually preceded by strip and cavity searches so painful and intrusive that many prisoners forego exercise to avoid them. See, *e.g.*, *Williams* v. *Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 554 (3d Cir. 2017) (describing strip searches so invasive that a prisoner sacrificed the opportunity to exercise for nearly seven years to avoid them), *cert. denied sub nom. Williams* v. *Wetzel*, 138 S. Ct. 357 (2017); *Incumaa* v. *Stirling*, 791 F.3d 517, 531 (4th Cir. 2015) (noting that a prisoner in solitary confinement experienced "near-daily cavity and strip searches"). Apart from these strip and cavity searches, prisoners' only human contact while in solitary confinement occurs when guards place them in restraints. Hafemeister & George, *supra*, at 17.

Thus, compared to the general population, prisoners in solitary confinement suffer, "to the fullest extent

possible, complete sensory deprivation and social isolation." *Id.*

B. The Scientific Consensus Shows that Solitary Confinement is Uniquely Harmful

The complete social isolation and sensory deprivation of solitary confinement cause injuries that are different in both kind and degree from those associated with ordinary incarceration. Without environmental stimulation or social interaction, prisoners in solitary confinement endure a condition that "can be as clinically distressing as physical torture," see Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. Am. Acad. Psychiatry & L. 104, 104 (2010), and is, in fact, "frequently used as a component of torture," Haney, *The Psychological Effects of Solitary Confinement*, *supra*, at 373–75. This condition—especially when it is prolonged—imposes grave psychological and physical harms. See *id.* at 367–68, 370–75 (collecting studies); Grassian, *Psychiatric Effects*, *supra*, at 335–38.

Psychological injuries stemming from solitary confinement commonly include cognitive dysfunction, severe depression, memory loss, anxiety, paranoia, panic, hallucinations, and stimuli hypersensitivity. See Haney, *Mental Health Issues*, *supra*, at 130–31, 134–35 (collecting studies); Grassian, *Psychiatric Effects*, *supra*, at 335–36, 349, 370–71; Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime & Just. 441, 488–90 (2006).

Self-mutilation and suicidal ideation are characteristic of prisoners in solitary confinement. See Grassian, *Psychiatric Effects*, *supra*, at 336, 349; Stuart Grassian, *Psychopathological Effects of Solitary*

Confinement, 140 Am. J. Psychiatry 1450, 1453 (1983). Explaining this phenomenon to Congress, Dr. Haney described how one prisoner "used a makeshift needle and thread from his pillowcase to sew his mouth completely shut," and another "amputated one of his pinkie fingers and chewed off the other, removed one of his testicles and scrotum, sliced off his ear lobes, and severed his Achilles tendon." *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 72, 80–81 (2012) (prepared statement of Dr. Craig Haney, Professor of Psychology, University of California, Santa Cruz).

Even when prisoners can overcome the psychological trauma of solitary confinement, they find themselves suffering from a host of serious physiological injuries, including hypertension, heart palpitations, gastrointestinal disorders, headaches, and severe insomnia. Haney, *Mental Health Issues*, *supra*, at 133; Smith, *The Effects of Solitary Confinement on Prison Inmates*, *supra*, at 488–90. Solitary confinement also "increase[s] activation of the brain's stress systems," Bennion, *supra*, at 762 (quoting John T. Cacioppo & Stephanie Ortigue, *Social Neuroscience: How a Multidisciplinary Field Is Uncovering the Biology of Human Interactions*, Cerebrum, Dec. 19, 2011, at 7–8), which eventually kills brain cells and "rewire[s]" the brain. See 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/; Nicole Branan, *Stress Kills Brain Cells Off*, 18 Sci. Am. 10 (June 2007). These physiological changes can affect the hippocampus, a brain area important for emotion regulation and

memory, see Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Sci. Am. (Nov. 9, 2018), https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/, and it can also increase the size of the amygdala, which makes the brain more susceptible to stress, creating a vicious cycle. See Bruce S. McEwen et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 Neuropsychopharmacology 3, 12–14 (2016).

Not only are these psychological and physical injuries devastating in their own right, studies have consistently shown that they are also more severe than the injuries associated with ordinary imprisonment. For instance, one study in Denmark found that prisoners who spent more than four weeks in solitary confinement were *twenty times* more likely to require psychiatric hospitalization. Bennion, *supra*, at 758 (citing Dorte Maria Sestoft et al., *Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody*, 21 Int'l J.L. & Psychiatry 99, 103 (1998)). Similarly, a California study by Dr. Haney concluded that the distress and suffering of general population prisoners bore "absolutely no comparison to the level of suffering and distress" experienced by prisoners in solitary confinement. Expert Report of Craig Haney at 81, *Ashker* v. *Brown*, No. 4:09-cv-05796-CW (N.D. Cal. Mar. 12, 2015) (available at https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted_Haney%20Expert%20Report.pdf). Instead, "[o]n nearly every single specific dimension . . . measured, the [solitary confinement] sample was in significantly more pain, were more traumatized and stressed, and manifested more isolation-related pathological reactions." *Id.* at 81–82.

Other studies have similarly concluded that prisoners "in solitary confinement suffered significantly

more both physically and psychologically than the prisoners in the [general population] control group." Smith, *The Effects of Solitary Confinement on Prison Inmates, supra*, at 477; Hafemeister & George, *supra*, at 46–47 (describing Washington study concluding that mental illness was twice as common for prisoners in solitary confinement). For example, rates of self-mutilation and suicide are far higher for prisoners in solitary confinement. Grassian, *Psychiatric Effects*, *supra*, at 336, 349; Haney, *Restricting the Use*, *supra*, at 294; Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am. J. Pub. Health 442, 445–47 (2014) (finding that inmates in solitary confinement were about 6.9 times as likely to commit acts of self-harm). Indeed, although prisoners in solitary confinement comprise less than 10% of the United States prison population, they generally account for 50% of all prisoner suicides. See Stuart Grassian & Terry Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, 13 Corr. Mental Health Rep. 1, 9 (2011).[4]

Moreover, prisoners need not be in solitary confinement for months or years to realize these psychological and physiological injuries. The onset of adverse symptoms is almost immediate. See, *e.g.*, Grassian, *Psychiatric Effects*, *supra*, at 331 (noting measurable harm within days of solitary confinement). Within days of

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[4] *Accord* Lauren Brinkley-Rubinstein et al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, JAMA Network Open, Oct. 4, 2019, at 1, 5–6, 9, https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350 (studying more than 225,000 prisoners in North Carolina and finding "[c]ompared with individuals who were incarcerated and not placed in restrictive housing, those who spent time in restrictive housing were more likely to die in the first year after release").

placement in solitary confinement, brain scans may reflect "abnormal pattern[s] characteristic of stupor and delirium." *Id.*; U.N. Human Rights Council, *U.N. Special Rapporteur, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, at 9, U.N. Doc. A/66/268 (Aug. 5, 2011) (concluding that "harmful psychological effects of isolation can become irreversible" after only 15 days of solitary confinement). Thus, where, as in Mr. Hamner's case, the deprivation is "prolonged,"[5] some harms are inevitable, even if symptoms are not obvious or take time to manifest.

And the longer solitary confinement persists, the greater the likelihood that the psychological and physiological injuries will be irreversible. Haney, *Mental Health Issues*, *supra*, at 137–41. Prisoners often find the psychological dysfunctions caused by solitary confinement permanently disabling. *Id.* By transforming a person's emotions, personality, and cognition, solitary confinement may render prisoners permanently ill-suited to life in a less restrictive environment. Grassian, *Psychiatric Effects*, *supra*, at 332–33. For example, Kalief Browder, who spent seventeen months in solitary confinement, attempted suicide twice within six months of his release. Jennifer Gonnerman, *Before the Law*, The New Yorker (Oct. 6, 2014), https://www.newyorker.com/magazine/2014/10/06/before-the-law. Freed from isolation, Mr. Browder nevertheless described himself as "mentally scarred" and fearful that the "things that changed" about his personality "might not go back" with time. *Id.* Less than two years later, he hanged himself. Jennifer Gonnerman, *Kalief Browder, 1993-2015*, The New Yorker

[5] Experts generally consider solitary confinement "prolonged" when it exceeds three months. *See* Kupers, *Isolated Confinement*, *supra*, at 214.

(June 7, 2015), http://www.newyorker.com/news/news-desk/kaliefbrowder-1993-2015.

This overwhelming scientific evidence shows that the psychological and physical harms associated with solitary confinement are not endured by prisoners in the general population, are often irreversible, and are so severe that they can be debilitating or fatal.

II. THIS COURT'S PRECEDENT PROVIDED "FAIR NOTICE" THAT RESPONDENTS' CONDUCT VIOLATED THE EIGHTH AND FOURTEENTH AMENDMENTS

Under this Court's qualified immunity jurisprudence, officials can be held liable for constitutional violations only if they had "*fair notice* that [their] conduct was unlawful." *Brosseau* v. *Haugen*, 543 U.S. 194, 198 (2004) (per curiam) (emphasis added). That standard is a high bar, but can easily be overstated. In some contexts, factually similar precedent is needed to provide "fair notice" that conduct is unlawful. In others, like the Eighth Amendment context, on-point precedent is unnecessary. See *Hope*, 536 U.S. at 739 (rejecting any "require[ment] that the facts of previous cases be 'materially similar'" to an alleged violation). That is where the Eighth Circuit erred. Instead of considering whether this Court's precedent—applied to the egregious facts Mr. Hamner alleged—gave respondents "fair notice" that their conduct was unlawful, the Eighth Circuit combed its own precedent for factually identical cases. But this Court's precedent, by itself, is sufficient to give "fair notice" that arbitrarily subjecting a mentally ill prisoner to indefinite solitary confinement without necessary medical care violates both the Eighth and Fourteenth Amendments. *Id.* at 745–46.

1. For decades, prison officials have known that they cannot remain indifferent to a prisoner's serious medical need or delay access to prescribed treatment. *Estelle* v. *Gamble*, 429 U.S. 97, 104–08 (1976). That makes sense. "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." *Id.* at 103. Thus, "the State has a constitutional obligation, under the Eighth Amendment, to provide adequate medical care to those whom it has incarcerated." *West* v. *Atkins*, 487 U.S. 42, 54 (1988).

In light of this precedent, the Eighth Circuit erred in holding that several of its prior decisions failed to provide respondents "fair notice" that their conduct was unlawful because those decisions involved slightly different constitutional violations. Pet. App. 9a–10a.[6] Although neither of those circuit decisions involved denials of medical treatment in the solitary confinement context, see *Langford* v. *Norris*, 614 F.3d 445 (8th Cir. 2010); *Johnson-El* v. *Schoemehl*, 878 F.2d 1043 (8th Cir. 1989), that context plainly exacerbates both the need for mental healthcare and the harm resulting from its denial. See Haney, *The Psychological Effects of Solitary Confinement*, *supra*, at 373–75; Grassian, *Psychiatric Effects*, *supra*, at 335–38. Thus, the cases on which the Eighth Circuit relied involved constitutional violations that were, in some respects, less obvious than those at issue here. Regardless, this Court's precedent undoubtedly gave respondents "fair notice" they could not ignore Mr. Hamner's complaints that

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[6] The Eighth Circuit's speculation that "negligence" rather than "deliberate indifference" may have driven the official misconduct, *see* Pet. App. 8a, is plainly irrelevant at the motion to dismiss stage when Mr. Hamner plausibly alleged that respondents were aware that he was not receiving psychological treatment and were deliberately indifferent to his pleas for help.

his solitary confinement was consistently interfering with his psychiatric and psychological treatment and that he suffered grave, lasting harm as a result. See *Brown*, 563 U.S. at 511 ("A prison that deprives prisoners of . . . adequate medical care[] is incompatible with the concept of human dignity and has no place in civilized society.").

2. Solitary confinement itself "is a form of punishment subject to scrutiny under Eighth Amendment standards." *Hutto*, 437 U.S. at 685. Under *Farmer* v. *Brennan*, an inmate alleging that his solitary confinement was "cruel and unusual" must satisfy two requirements: one "objective," the other "subjective." 511 U.S. 825, 834, 839–40 (1994). Respondents had "fair notice" that their conduct satisfied both.

To satisfy *Farmer*'s "objective" prong, Mr. Hamner was required to allege a condition of confinement that posed "a substantial risk of serious harm." *Id.* There is no question that placing an inmate suffering from severe mental illness in solitary confinement meets this standard. And the Eighth Circuit did not suggest otherwise. Solitary confinement causes cognitive dysfunction, severe depression, memory loss, anxiety, paranoia, panic, and hallucinations. See Haney, *Mental Health Issues*, *supra*, at 130–32, 134 (collecting studies); Grassian, *Psychiatric Effects*, *supra*, at 335–36, 349, 370–71. Especially for the mentally ill, these psychological injuries dramatically increase the likelihood of self-mutilation and suicide, and persist long after prisoners have been removed from solitary. Grassian, *Psychiatric Effects*, *supra*, at 336, 349; Haney, *Restricting the Use*, *supra*, at 294, 298. Nor was there any "penological justification" for subjecting Mr. Hamner—who contemplated suicide and saw his health deteriorate significantly during solitary confinement—to these severe harms. See *Rhodes* v. *Chapman*, 452 U.S.

337, 346 (1981) (explaining that "inflictions of pain . . . that are 'totally without penological justification'" are cruel and unusual). In short, prison officials had "fair notice" that arbitrarily subjecting Mr. Hamner to indefinite solitary confinement posed "a substantial risk of harm."

Farmer's "subjective" prong required Mr. Hamner to allege prison officials' "deliberate indifference" to his conditions of confinement—a standard "[courts] may infer . . . from the fact that the risk of harm is *obvious*." *Hope*, 536 U.S. at 738 (emphasis added). Here, the physical and psychological injuries resulting from solitary confinement are "obvious" and long have been. See, *e.g., Glossip* v. *Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting) (noting, in 2015, that it was already "well documented that . . . prolonged solitary confinement produces numerous deleterious harms"); *In re Medley*, 134 U.S. at 168 (observing that solitary confinement made inmates "semi-fatuous," "violently insane," and prone to "commit[] suicide"). And, if there is any doubt about respondents' "subjective" intent, that is most appropriately dealt with at a later stage—either at summary judgment or trial. See*, e.g.*, *Guertin* v. *Michigan*, 924 F.3d 309, 315 (6th Cir. 2019) (Sutton, J., concurring in the denial of rehearing en banc) (explaining that, under *Hope*, dismissal on qualified immunity grounds is inappropriate where factual development could establish "intentional or reckless" official conduct), *cert. denied*, 140 S. Ct. 933 (2020).

In sum, this Court's Eighth Amendment decisions provided respondents with "fair notice" that their conduct constituted cruel and unusual punishment.

3. The same is true for Mr. Hamner's Fourteenth Amendment claim. Had the Eighth Circuit actually applied this Court's controlling precedent, it could not

have found that qualified immunity shielded respondents from liability for violating Mr. Hamner's procedural due process rights.

To plead a procedural-due-process violation, Mr. Hamner needed to allege that placement in solitary confinement implicated a protected liberty interest by imposing "'atypical and significant hardship' relative to 'ordinary incidents of prison life.'" Pet. App. 13a–14a (quoting *Sandin* v. *Conner*, 515 U.S. 472, 484 (1995)). The Eighth Circuit's sole basis for rejecting Mr. Hamner's claim was that prior circuit precedent had uniformly "said that 'a demotion to [solitary confinement], even without cause, is not itself an atypical and significant hardship." *Id.* (quoting *Phillips* v. *Norris*, 320 F.3d 844, 847 (8th Cir. 2003)). But this Court has already held otherwise.

In *Wilkinson*,[7] this Court unanimously held that placement in solitary confinement *could*—and there, *did*—"impose[] an atypical and significant hardship." 545 U.S. at 223. *Wilkinson* noted three factors supporting its conclusion that solitary confinement was, on the facts of that case, a serious and atypical hardship: (1) the severe limitations on human contact and exercise that solitary confinement imposes; (2) the "indefinite" nature of the confinement at issue; and (3) an inmate's ineligibility for parole while in solitary confinement. *Id.* 223–24. The "hardship" Mr. Hamner faced in solitary confinement was at least as "significant" as what the plaintiffs experienced in *Wilkinson*.

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[7] Because Mr. Hamner's placement in solitary confinement occurred in 2015, *Wilkinson* is a relevant decision for "clearly established law" purposes. *Ashcroft* v. *al-Kidd*, 563 U.S. 731, 741 (2011). The same is true, of course, for older decisions like *Hope* and *Farmer*.

To begin with, solitary confinement of any duration imposes severe harms that are atypical relative to life in the general prison population. See, *e.g.*, Smith, *The Effects of Solitary Confinement on Prison Inmates*, *supra*, at 477 (noting that prisoners "in solitary confinement suffered significantly more both physically and psychologically than the prisoners in the [general population] control group"). The Eighth Circuit's suggestion that solitary confinement is not an "atypical hardship" blinks at reality. And Mr. Hamner's experience was "atypical" even in relation to his fellow prisoners' confinement; the isolated location of Mr. Hamner's cell and its broken lighting system prevented him from mental activity available to the others. See Pet. App. 3a. What's more, Mr. Hamner's social isolation—which involved no meaningful human interaction—was even more extreme than what was at issue in *Wilkinson*. See *Austin* v. *Wilkinson*, 189 F. Supp. 2d 719, 725 (N.D. Ohio 2002) (noting that solitary confinement allowed occasional exercise with other inmates and "group counseling sessions").

As in *Wilkinson*, moreover, Mr. Hamner's detention was "indefinite"—he had no way of knowing whether he would remain in solitary for days, months, or even years. Although Mr. Hamner did not allege that placement in solitary confinement made him ineligible for parole, as Wilkinson had, placement in solitary confinement cost him his prison employment and access to vocational training. Pet. App. 3a.

There is also a critical, additional factor that made Mr. Hamner's hardship more egregious than Wilkinson's—Mr. Hamner is mentally ill. Cf. *Wheeler* v. *Butler*, 209 F. App'x 14, 16 (2d Cir. 2006) (noting that "medical need may bear upon the atypicality" of solitary confinement). Whereas Mr. Hamner was able to

manage his mental illness and receive adequate treatment in general population, the deprivations he faced in solitary confinement caused him enormous suffering and brought him to the brink of suicide. Mr. Hamner plainly alleged a serious and atypical hardship under *Wilkinson*.[8]

In sum, the Eighth Circuit's qualified immunity analysis—and its "rigid, overreliance on [the] factual similarity" of outdated lower court cases—ignored this Court's binding precedent. Cf. *Hope*, 536 U.S. at 742. Faithfully applying that precedent, the prison officials should have known that their conduct violated Mr. Hamner's clearly established rights. Therefore, even if the Eighth Circuit correctly undertook a qualified immunity analysis, the court erred in holding that the doctrine shields respondents from liability.

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[8] Although the Eighth Circuit did not address the issue, Mr. Hamner would also have had to show that respondents' deprived him of due process. *Wilkinson*, 545 U.S. at 225–27. But that would have been straightforward; prison officials denied Mr. Hamner the notice and opportunity to defend himself that their own regulations mandated. *See id.* at 225–26 (explaining that this Court's "procedural due process cases have consistently observed" that "notice of the factual basis leading to consideration for [solitary confinement] and a fair opportunity for rebuttal" are "among the most important procedural mechanisms").

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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