No. 19-742

IN THE

Supreme Court of the United States

JAMES BAILEY-SNYDER,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third 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 lower court decisions denying speedy trial protections to prisoners like Bailey-Snyder uniformly ignore the sci-

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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).

entific consensus that solitary confinement causes severe psychological and physiological harm. *Amici* further believe that the Court should correct this misunderstanding and align its speedy trial precedent with the scientific reality that solitary confinement imposes "undue and oppressive incarceration," causes psychologically debilitating "anxiety," and severely "impair[s] the ability of an accused to defend himself." *United States* v. *Marion*, 404 U.S. 307, 320 (1971).

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, 9 (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)).

In other constitutional contexts, this Court's precedent accommodates the horrific consequences of solitary confinement. The Fourteenth Amendment protects prisoners' liberty interest in avoiding solitary confinement when it "imposes atypical and significant hardship . . . in relation to the ordinary incidents of prison life." *Wilkinson* v. *Austin*, 545 U.S. 209, 223

(2005). And this Court has recognized that confinement "in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards."[3] *Hutto* v. *Finney*, 437 U.S. 678, 685 (1978). The Court's Sixth Amendment jurisprudence, however, does not acknowledge the devastating effects of solitary confinement on mental and physical health.

The petition presents an opportunity to change that. In *United States* v. *Gouveia*, 467 U.S. 180, 189–90, 190 n.6 (1984), the Court left open whether the Sixth Amendment speedy trial right attaches when a prisoner is removed from the general population and placed in solitary confinement pending investigation. The lower courts have uniformly refused to apply the Sixth Amendment speedy trial right in this context because "the curtailment of liberty is the general rule not the exception" in prison. See, *e.g.*, *United States* v. *Clardy*, 540 F.2d 439, 441 (9th Cir. 1976). But these decisions ignore the long-standing scientific consen-

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[3] Although the Court has not directly addressed whether solitary confinement violates the Eighth Amendment's prohibition on cruel and unusual punishment, lower courts and scholars agree that solitary confinement can be unconstitutional. See *Porter* v. *Clarke*, 923 F.3d 348, 357 (4th Cir. 2019); *Palakovic* v. *Wetzel*, 854 F.3d 209, 225–26 (3d Cir. 2017); *Williams* v. *Sec'y Pa. Dep't of Corr.*, 848 F.3d 549, 566–68 (3d Cir. 2017), *cert denied sub nom. Williams* v. *Wetzel*, 138 S. Ct. 357 (2017); Brief of *Amici Curiae* Human Rights Clinics, Law Professors, and Non-Profit Organizations in Support of Plaintiff-Appellant's Petition for Rehearing by Panel or Rehearing *En Banc*, *Hamner* v. *Burls*, No. 18-2181 (8th Cir. Oct. 25, 2019) (arguing that solitary confinement is inconsistent with international law); Brief *Amicus Curiae* of Professor John F. Stinneford in Support of Petition of Plaintiff-Appellant Charles Hamner For Rehearing by Panel and/or Rehearing *En Banc*, *Hamner* v. *Burls*, No. 18-2181 (8th Cir. Oct. 25, 2019) (arguing that solitary confinement is cruel and unusual under the original meaning of the Eighth Amendment).

sus: Solitary confinement not only causes severe psychological and physical harms, it also causes far more "anxiety" and "impair[s] a defendant's ability to present an effective defense" far more than ordinary arrest and imprisonment. *Marion*, 404 U.S. at 320.

The Court should grant the petition to correct the lower courts' grave error and align the Sixth Amendment's protections with the scientific consensus.

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[4] 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.

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[4] "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. Bailey-Snyder'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.

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

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) (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 124, 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) (statement of Dr. Craig Haney).

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) (available at: 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, *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 Correctional Mental Health Rep. 1, 9 (2011).[5]

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 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 Bailey-Snyder's case, the deprivation is "prolonged,"[6] 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

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[5] *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 (available at https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350) (studying 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").

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

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, at 26. 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.* at 32. Less than two years later, he hanged himself. Jennifer Gonnerman, *Kalief Browder, 1993-2015*, The New Yorker (June 7, 2015), http://www.newyorker.com/news/news-desk/kalief browder-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. SOLITARY CONFINEMENT FOR INVESTIGATIVE PURPOSES IMPLICATES THE CONCERNS UNDERPINNING THE SIXTH AMENDMENT SPEEDY TRIAL RIGHT

The Sixth Amendment's right to a speedy trial traces its roots to the Magna Carta and "is one of the most basic rights preserved by our Constitution." *Klopfer* v. *North Carolina*, 386 U.S. 213, 226 (1967). The speedy trial right protects the "accused" from three principle evils of prosecutorial delay: (1) "undue and oppressive incarceration prior to trial"; (2) severe "anxiety and concern accompanying public accusation"; and (3) "the possibilities that long delay will impair the ability of

an accused to defend himself." *Smith* v. *Hooey*, 393 U.S. 374, 378 (1969); *Marion*, 404 U.S. at 320 (quoting *United States* v. *Ewell*, 383 U.S. 116, 120 (1966)). Solitary confinement used for investigative purposes implicates each of these concerns.

First, solitary confinement pending investigation causes "undue and oppressive incarceration prior to trial." While ordinary arrest and imprisonment may "interfere with the defendant's liberty" and "curtail his associations," *Marion*, 404 U.S. at 320, solitary confinement imposes extreme sensory deprivation and social isolation—conditions Bailey-Snyder was forced to endure for eleven months. See Haney, *Restricting the Use*, *supra*, at 292–93. It makes little sense to attach speedy trial protections to the "oppression" imposed by traditional arrest but not to a change in a prisoner's conditions of confinement that "can be as clinically distressing as physical torture," see Metzner & Fellner, *supra*, at 104, and cause physical injuries so severe that courts have deemed them "cruel" and "unusual" under the Eighth Amendment, *Porter* v. *Clarke*, 923 F.3d 348, 357 (4th Cir. 2019); *Palakovic* v. *Wetzel*, 854 F.3d 209, 225–26, 234 (3d Cir. 2017); *Williams*, 848 F.3d at 566–68.

Second, "the anxiety and concern accompanying" ordinary arrest and imprisonment pale in comparison to the psychological injuries resulting from solitary confinement. As discussed above, 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. These psychological injuries dramatically increase the likelihood of self-mutilation and suicide, and persist long after pris-

oners have been removed from solitary. Grassian, *Psychiatric Effects*, *supra*, at 336, 349; Haney, *Restricting the Use*, *supra*, at 294, 298.

That "the curtailment of liberty is the general rule" in prison, see, *e.g.*, *Clardy*, 540 F.2d at 441, is no reason to ignore this reality. This Court long ago rejected the argument that "a person already in prison would be less likely . . . to be affected by [the] anxiety and concern" that the speedy trial right is designed to protect against. *Smith*, 393 U.S. at 379 (internal quotation mark omitted). And, for prisoners placed in solitary confinement pending an investigation, the "anxiety" associated with investigative detention is only heightened. Where ordinary imprisonment pending an untried charge "can have fully as depressive an effect upon a prisoner as upon a person who is at large" and "leave [prisoners] with little inclination toward self-improvement," *id.*, the extreme isolation associated with solitary confinement can drive prisoners to self-mutilate or commit suicide and discourages self-improvement altogether. Prisoners in solitary confinement are denied access to rehabilitative programs and contact visits, which are not only necessary for rehabilitation but are also critical for mental and physical health. See Bennion, *supra*, at 743; Haney, *Mental Health Issues*, *supra*, at 126–27.

Third, placement in solitary confinement during a lengthy investigation will unquestionably "impair the ability of the accused to defend himself." As this Court recognized in *Smith*, "it is self-evident" that even ordinary imprisonment can exacerbate the harms of prosecutorial delay. 393 U.S. at 379–80 ("[A] man isolated in prison is powerless to exert his own investigative efforts to mitigate the[] erosive effects of the passage of time."). While in solitary confinement, prisoners likewise cannot gather evidence, contact witnesses, or

otherwise prepare their defense. Cf. *Marion*, 404 U.S. at 320.

Indeed, the ability to prepare a defense is not only impaired while a prisoner is in solitary confinement, it may be destroyed entirely. Prisoners in solitary confinement commonly fall into a dissociative stupor or mental fog, which causes them to have difficulty grasping concepts, thinking, and focusing. Amber Baylor, *Beyond the Visiting Room: A Defense Counsel Challenge to Conditions in Pretrial Confinement*, 14 Cordozo Pub. L. Pol. & Ethics J. 1, 14–24 (2015). These difficulties can cause prisoners in solitary to become agitated, irritable, and obsessive, making it nearly impossible for counsel to communicate with them effectively. When these effects are coupled with the other psychological harms of solitary confinement—including the likely memory loss, severe depression, paranoia, and hallucinations—a prisoner is often incapable of clearly remembering the circumstances of the alleged crime and meaningfully assisting with his defense. Terry A. Kupers, *Waiting Alone to Die*, *in* Living on Death Row: The Psychology of Waiting to Die 47, 62 (Hans Toch & James Acker eds., 2018).

In sum, the lower courts have held that solitary confinement pending investigation does not implicate the concerns animating the Sixth Amendment's speedy trial right. These cases are inconsistent with the scientific reality and this Court's precedent. Prisoners in solitary confinement pending investigation desperately need, and under this Court's precedents are entitled to, speedy trial protections.

CONCLUSION

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

Respectfully submitted,

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