No. 22-5498

IN THE

SUPREME COURT OF THE UNITES STATES

AARON STRIZ - PETITIONER

VS.

BRIAN COLLIER, et.al. - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

AARON STRIZ
TDCJ-ID No. 00838215
ELLIS UNIT
1697 F.M. 980
Huntsville, Texas 77343
(incarcerated-no phone number)

QUESTIONS PRESENTED

I. Aaron Striz has spent more than 20 years in solitary confinement. The court below affirmed the district court's dismissal, stating that, absent exigent circumstances, administrative segregation (I.E., solitary confinement) does not violate the Eighth Amendment, no matter how long it is imposed for, the reason it is imposed, its validity, or its severely detrimental effects on a prisoner's physical and mental health.

The courts below further ruled that Mr. Striz failed to sufficiently describe the conditions of administrative segregation with enough specificity to support an Eighth Amendment complaint, despite decades of caselaw on this subject, cases which the lower courts cited in their opinions, and which have long-established these conditions and their effects as known facts.

The first question presented is: Does extended, indefinite solitary confinement of an atypical duration, under some circumstances, violate the Eighth Amendment, as at least five circuits have held, or can solitary confinement never violate the Eighth Amendment?

II. Mr. Striz alleges that the periodic reviews of his solitary confinement are a meaningless charade where, for more than a decade, officials have acknowledged documentation in Mr. Striz's prison file that he is no longer a gang member, yet continued to cite that invalid excuse to extend his decades of solitary confinement, only to abruptly change that excuse in 2019 when ordered to answer Mr. Striz's §1983 complaint. The courts below held that these proceedings meet the "constitutional minima" of the

Fourteenth Amendment Due Process Clause.

The second question presented is two-fold:

(a) Does the Due Process Clause require meaningful review hearings where prison officials are open to the possibility of releasing the prisoner from isolation, as some circuits have held; or does a perfunctory hearing with a predetermined result, regardless of the evidence, satisfy Constitutional minima of due process, as the below court held? and,

(b) If this is sufficient, as the below court held, that a perfunctory review with a predetermined outcome meets the Constitutional minima of due process, the followup question presented is: Are prisoners entitled to equality under the law? Because equality goes both ways, and if the law applies equally to prisoners, then conversely, the law as applied to prisoners also applies equally to unincarcerated citizens who, if subject to the same farcical administrative due process as state prisoners, will more easily become prisoners of the administrative state themselves.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

AARON STRIZ, Plaintiff-Appellant

vs.

BRIAN COLLIER, Executive Director, TDCJ; MICHAEL BUTCHER, Senior Warden, Darrington Unit; KURTIS D. PHARR, Major, Darrington Unit; LISA D. DAVIS, Unit Classification Casemanager, Darrington Unit; CARTER (formerly)Senior warden, Estelle Unit; BREWER, Senior Warden, Estelle Unit; CHRISTOPHER S. LACOX, Assistant Warden, Estelle High Security; CLIFF H. PRESTWOOD, (formerly) Assistant Warden, Estelle High Security; BOBBY D. RIGSBY, Major, Estelle High Security; BETCHER (formerly) Senior Warden, Robertson Unit; SIRINGI (formerly) Senior Warden, Robertson Unit; UNKNOWN NAME, Chairman of State Classification, TDCJ-ID; D. RAY, State Classification Representative; V. JONES, State Classification Representative; K. GIBSON, State Classification Representative; JAMES POWERS, MYRA M. MONTEZ,

Defendants-Appellees.

RELATED CASES

·STRIZ V. COLLIER, et.al., USDC No. 3:18-cv-00202 (in the United States District Court for the Southern District of Texas, Galveston Division)

·STRIZ V. COLLIER, et.al., 20-40878 (In the United States Court of Appeals for the Fifth Circuit)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES PAGE No.

Rules and Statutes

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

AARON STRIZ,
Petitioner,

V.

BRIAN COLLIER, et.al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner, AARON STRIZ, respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Fifth Circuit in this case.

OPINIONS BELOW

The Fifth Circuit's opinion is unreported (Appendix-A). The district court's opinion is also unreported (Appendix-B).

JURISDICTION

The judgment of the court of appeals was entered on May 5, 2022. Petitioner's request for an extension to file a petition for rehearing in the Fifth Circuit was denied, therefore he was unable to timely file said petition. The filing deadline for this petition is August 4, 2022, thus it is timely filed. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required. nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No state shall...deprive any person of life, liberty, or property, without due process of law[.]"

STATEMENT OF THE CASE

Aaron Striz has spent more than two decades in solitary confinement; nearly half his lifetime; nearly all of his adult life; longer than he had been alive prior to entering prison at age 18. For more than half of his two decades in solitary confinement TDCJ officials have acknowledged that the original reason he was placed in administrative segregation--STG membership--is no longer valid, and yet they continue to cite that invalid excuse as the reason to extend his indefinite solitary confinement.

In August 1998, while awaiting sentencing for robbery, Aaron Striz assaulted two guards and briefly escaped from the county jail. This resulted in three aggravated life sentences. Within 29 days after this escape, Mr. Striz had been convicted, sentenced, and transferred to the custody of TDCJ whereupon his initial classification assignment was to minimum custody of the general population. At no time was he ever adveresely classified due to the escape from county jail.

After three years in general population, Mr. Striz was identified and "confirmed" as a member of a Security Threat Group ("STG" is TDCJ parlance for prison gangs). Mr. Striz did not violate any rules or harm anyone, he was simply identified as a member, and in accordance with TDCJ policy to assign all confirmed-STG members to administrative segregation, Mr. Striz's term of indefinite solitary confinement began on August 9, 2001.

Upon assignment to administrative segregation, Mr. Striz was informed by officials that the only way for him to be released from ad-seg is to complete the Gang Renouncement and Disassociation

(GRAD) Program. When Mr. Striz requested to participate in this GRAD Program. officials told him that he was ineligible due to a newly implemented Security Precaution Designator Codes policy which went into effect only weeks after Mr. Striz was placed into administartive segregation. And so, although his initial classification upon entering TDCJ was to minimum custody, he was now prohibited from minimum custody for at least ten years, and thus, ineligible for the GRAD Program becausethe final phase of the program requires eligibility for minimum custody. (*footnote-1). For this reason, STG management officials refused to even begin Mr. Striz's GRAD investigation and debriefing process until 2008, when Mr. Striz's ten years had expired. In July 2010, after an exhaustive two year investigation, it was determined that Mr. Striz was no longer an STG-member and this was documented in his file, but classification officials still refused to "deactivate" the SPD Codes so that he could complete the GRAD Program. TDCJ policy also allows for "Non-GRAD Disassociation" as a method to release ex-STG members from ad-seg who are not eligible for the GRAD program. But, when Mr. Striz requested this, officials told him, "We don't do that."

*footnote-1: In the aftermath of the December 2000 "Texas-7" escape fiasco, TDCJ revised their classification guidelines and created the SPD Code policy to place restrictions on any prisoners with a history of escape, staff assault, or other serious security incidents. One of these restrictions prohibits prisoners with SPD Codes from being assigned to minimum custody for a minimum of 10 years from the date of the incident which caused the SPD Code; those prisoners are restricted to medium or close-custody levels. There is no requirement for prisoners with SPD Codes to be placed in administrative segregation. Thus, if Mr. Striz had never been placed in ad-seg as a gang member, he would have never been placed in ad-seg when the new SPD Code policy went into effect. Conversely, if Mr. Striz had never been assigned SPD Codes, he would have been released from ad-seg years ago via the GRAD program. But, since he has both, he has been stuck in a Catch-22 for decades and officials' indifference to resolve the situation has resulted in more than 20 years in solitary.

As a result of this bureaucratic indifference to these conflicting policies, at every periodic review hearing since July 2010, TDCJ officials have told Mr. Striz, "Yes, we know you are no longer a gang member, but you must complete the GRAD Program to be released from seg. But, due to SPD Codes you are not eligible for the GRAD Program, therefore you will remain in seg as a confirmed STG-member until you complete GRAD."

For more than 17 years, the ONLY documented Excuse for Mr. Striz's indefinite solitary confinement was rote repetition of a known invalid excuse: "Confirmed-STG." It was not until officials were ordered to answer Mr. Striz's complaint in February 2019 that they abruptly changed their documented excuse for keeping him in isolation and claimed for the first time that he is now "officially classified" to ad-seg as an escape risk...more than 20 years after the incident occurred and after his initial classification upon entering TDCJ was to minimum custody of general population less than a month after the incident occurred. Then, two weeks after officials made this claim to the district court, officials conducted a classification review hearing where they informed Mr. Striz that he would henceforth be held in ad-seg as an "escape risk," and amended their records to conform with their court filings. Six months later, all subsequent review hearings returned to the old excuse of "confirmed-STG." The below courts condoned this farce under the reasoning that there is nothing which prohibits prison officials from changing their rationale for segregation during the term of segregation.

For more than two decades Aaron Striz has spent virually

every minute of his life alone in a cell the size of a typical walk-in closet. His only human contact is with the guards who strip-search and handcuff him prior to leaving his cell for any reason. Occasional visits with loved ones are through a glass barrier. He exercises alone in a small cage, surrounded by steel walls to prohibit contact with other prisoners, and hasn't experienced direct sunlight on his face in nearly a decade. He has alleged decades of conditions that this Court, and nearly all lower courts, recognize to cause extreme psychological and physical deterioration. All of this, despite officials acknowledging that the original reason for Mr. Striz's placement in the harsh conditions is no longer valid. (*footnote-2)

The panel below held that these conditions do not state a claim because administrative segregation, as such, no matter how long it is imposed for, or the validity of the reason for which it is imposed, can never violate the Eighth Amendment. That conflicts with the opinions of this Court examining atypical and significant in degree or duration (Sandin v. Connor, 515 U.S. 472 (1995), Wilkinson v. Austin, 545 U.S. 209 (2005)), and weighing duration versus the severity of conditions (Hutto v. Finney, 437 U.S. 678, 686-87 (1978)), to trigger due process protections in avoiding such harsh conditions, especially without legitimate penological justification, because, logically, to wantonly impose such condi-

(footnote-2: In January 2022, after a 14-day hunger strike, the Deputy Director of TDCJ-ID intervened and agreed to allow Mr. Striz to complete the GRAD Program. He was transferred to the GRAD Program on March 1, 2022; after 20 years, 6 months, and 19 days in solitary confinement. Officials stated that Mr. Striz "slipped through the cracks" and they were "never aware of his situation." TDCJ has since identified approximately 30 other prisoners in Mr. Striz's circumstances and revised their policies to eliminate the conflict between SPD Codes and GRAD eligibility.

tions without legitimate penological purpose would be considered "cruel and unusual."

The opinion of the Fifth Circuit also conflicts with those of the Second, Third, Fourth, Seventh, and Eleventh circtuits which hold that, in some circumstances, prolonged solitary confinement can violate the Eighth Amendment.

Prolonged solitary confinement violates the original intent of the Eighth Amendment. According to historical research (John F. Stinneford, Experimental Punishments, 95 Notre Dame L. Rev. 39, 65-66, 71-72 (2019); see Bucklew v. Precythe, 139 S.Ct. 1112, 1123 (2019)(quoting Stinneford, The Original Meaning of "Unusual": The Eighth Amendment as a Bar to Cruel Innovation, 102 NW. U. L. Rev. 1739, 1745 (2008)), long-term solitary confinement was practically unheard of at the Founding, attempted and quickly abandoned in the following century, only to be resurrected in recent decades. The Eighth Amendment did not simply prohibit cruel and unusual punishments known at the time of the Founding, it also prohibited unknown, innovative forms of cruel or unusual punishments made available by social or technological advancements, as well as grossly disproportionate punishments. Beyond that, this Court has previously held that the Eighth Amendment prohibitions are subject to "the evolving standards of decency that mark the progress of a maturing society." (Estelle v. Gamble, 429 U.S. 97, 102 (1976)). Among those evolving standards of decency, this Court recognized more than a century ago that solitary confinement imposed a "further terror" over and above a death sentence, In re Medley, 134 U.S. 160, 170 (1890), all of which is confirmed by

various circuits contemporary research which decisively proves that long-term solitary confinement imposes devastating, permanent psychological and physical effects. e.g., Porter v. Clarke, 923 F.3d 348, 356 94th Cir. 2019), Grissom v. Roberts, 902 F.3d 1162, 1175-77 (10th Cir. 2018)(Lucero, J., dissenting opinion), Wilkinson v. Austin, 545 U.S. 509 (2005), Davis v. Ayala, 135 S.Ct. 2187, 2210 (2015)(Kennedy, J., concurring, noting that inmates are brought "to the edge of madness, perhaps to madness itself," by "years on end of near total isolation.").

Inexplicably, even though the lower court has acknowledged the inevitable harm inflicted upon prisoners in long-term solitary confinement, it has nonetheless held that perfunctory review hearings with a predetermined outcome devoid of reason and regardless of the evidence, is sufficient to satisfy due process. (Appendix-A, pps. 3-4; and Hope v. Harris, 861 F.Appx. 571 (5th. Cir. 2021), Bailey v. Fisher, 646 F.Appx 472, 477 n.9 (5th Cir. 2016)). The below court held that as long as officials provided Mr. Striz with advance notice of the hearing and afforded him an opportunity to speak at that hearing, then the constitutional minima of due process were met...nevermind the fact that the committee's decision was an irrational conclusion in contradiction of their own facts. That decision of the below court conflicts with this court and at least seven other circuits that have been presented with this question; all of which have consistently held that the Due Process Clause requires meaningful review, decisions must be based on some evidence, and there must be a continuing valid reason for indefinite solitary confinement. Simply conducting a perfunctory

charade of a review is insufficient because a fundamental component of due process is that it must be meaningful, not a sham proceeding. Hewitt v. Helms, 459 U.S. 460 (1983); Superintendent v. Hill, 472 U.S. 445, 455 (1985); Mathews v. Eldridge, 429 U.S. 319, 333 (1976); Proctor v. LeClaire, 846 F.3d 597, 610-13 (2d Cir. 2017); Incumaa v. Stirling, 791 F.3d517, 534 (4th Cir. 2015); Selby v. Caruso, 734 F.3d 554, 560 (6th Cir. 2013); Isby v Brown, 856 F.3d 508, 526-28 (7th Cir. 2017); Williams v. Hobbs, 662 F.3d 994, 1008 (8th Cir. 2011); Toevs v. Reid, 685 F.3d 903, 915 (10th Cir. 2012); and Quintanilla v. Bryson, 730 F. Appx. 738, 744 (11th Cir. 2018).

REASONS FOR GRANTING THE PETITION

I.

THIS COURT SHOULD RESOLVE THE SPLIT AMONG THE CIRCUITS TO DETERMINE WHETHER INDEFINITE SOLITARY CONFINEMENT OF AN ATYPICAL DURATION CAN, IN SOME CIRCUMSTANCES, VIOLATE THE EIGHTH AMENDMENT

The court below has held that indefinite solitary confinement, no matter for how long, can not possibly violate the Eighth Amendment. At least five circuits hold a contrary position that prolonged solitary confinement can violate the Eighth Amendment due to its significant, and often permanent, negative effects on a prisoner's mental and physical health. This Court should grant certiorari to resolve this division among the federal circuits.

The Second circuit has raised questions of whether a stint in solitary confinement as short as one year was "constitutionally

excessive." Mukmuk v. Comm'r of Dep't. of Corr. Servs., 529 F.2d 272, 276 (2d Cir. 1976); Reynolds v. Quiros, 990 F.3d 286, 294 (2d Cir. 2021); Gonzalez v. Hasty, 802 F.3d 212, 224 (2d Cir. 2015) (solitary confinement can violate the Eighth Amendment depending on duration and conditions of confinement.)

The Third Circuit held that decades in solitary confinement could violate the Eighth Amendment sufficiently to preclude summary judgment. Porter v. Pennsylvania Dep't. of Corr., 974 F.3d 431 (3d Cir. 2020). Applying the two-prong test of Farmer v. Brennan, 511 U.S. 852, 834 (1994), the Third Circuit concluded that the plaintiff satisfied the subjective prong of the test because he proved a sufficiently substantial risk of serious harm due to the serious psychological consequences of prolonged solitary confinement; and that the subjective prong of the test was met, showing that officials were deliberately indifferent to that risk of harm because "the substantial risks of prolonged solitary confinement are obvious, long-standing, pervasive, [and] well-documented." Porter, at 445-46.

Meanwhile, the Fourth Circuit upheld an injunction ending solitary confinement for a group of prisoners, stating that "the undisputed evidence...[established that the challenged conditions]...created a substantial risk of serious psychological and emotional harm and that State Defendants were deliberately indifferent to that risk." That court held that long-term solitary confinement **might** not violate the Eighth Amendment **if used for** a legitimate penological purpose, but it found that the defendants in that case failed to put forth any such purpose in that case.

Porter v. Clarke, 923 F.3d 348, 363-64 (4th Cir. 2019).

The Seventh Circuit has held that "prolonged solitary confinement in administrative segregation may constitute cruel and unusual punishment in violation of the Eighth Amendment," and whether such confinement does violate the Eighth Amendment depends on the duration and nature of the segregation and the existence of feasible alternatives. Walker v. Shansky, 28 F.3d 666, 673 (7th Cir. 1994). See also, Incumaa v. Stirling, 791 F.3d 517 (4th Cir. 2015).

The Eighth Circuit, in Williams v. Hobbs, has expressed similar concerns about the effects of long-term solitary confinement and the meaningless reviews officials use to justify extending it.

The Eleventh Circuit, when faced with the case of a prisoner who had been in solitary confinement for 12 years, held that such solitary confinement would violate the Eighth Amendment where it "shocks the conscience, is grossly disproportionate to the offense, or is totally without penological justification." Sheley v. Dugger, 833 F.2d 1420, 1429 (11th Cir. 1987).

This Court has also expressed a position that confinement in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards (Hutto v. Finney, 437 U.S. at 685 (1978)), and that protection against disproportionate punishment is a central, substantive guarantee of the Eighth Amendment and goes beyond the manner of determining a defendant's sentence. Montgomery v. Louisiana, 577 U.S. 190, 206 (2016), and the conditions of confinement must not be grossly disproportionate to the severity of the crime warranting imprisonment, Rhodes v. Chapman,

452 U.S. 337, 347 (1981). All this, combined with this Court's "evolving standards of decency," would lead one to conclude that this Court would support restrictions on widespread, disproportionate use of indefinite solitary confinement...especially for prisoners who didn't actually commit any infractions or harm anyone.

Although solitary confinement, even for extended periods, is not always unconstitutional, half of the federal circuits have held that, at least in some circumstances, extended solitary confinementcan run afoul of the Eighth Amendment, and the circumstances of Mr. Striz's complaint would have prevailed in any of those circuits. The harsh conditions of his confinement are long-established in the courts, the severely detrimental effects of long-term solitary confinement are universally recognized by courts and prison administrators, and it is clear that Mr. Striz's indefinite solitary confinement is totally without legitimate penological justification because the only reason for his placement in ad-seg--his STG-membership--expired in July 2010 when officials documented his disassociation in his file after a 2-year investigation and debriefing process, and officials had never previously cited "escape risk" on any review hearing records until they were ordered to answer Mr. Striz's §1983 complaint. By any measure, Mr. Striz has more than satisfied both prongs of the Farmer test. Even under TDCJ's SPD Code policy, they cannot justify his continued isolation as they cannot point to a single other prisoner who was in general population without incident when the SPD Code policy went into effect, and who was then transferred to ad-seg simply for the placement of SPD Codes on their file.

The court below, as well as the Sixth, Ninth, and Tenth Circuits, have all held that indefinite, prolonged solitary confinementcan not possibly violate the Eigth Amendment, no matter the duration or how devastating its effects on the prisoner or the legitimacy for which it is imposed, or the existence of other available alternatives. (*footnote-3) see, Hardin-Bey v. Rutter, 524 F.3d 789, 795-96 (6th Cir. 2008); Anderson V. County of Kern, 45 F.3d 1310 (9th Cir. 1995);and Mora-Contreras v. Peters, 851 F.Appx. 73, 73-74 (9th Cir. 2021); Grissom v. Roberts, 902 F.3d 1162 (10th Cir. 2018)(*footnote-4); and Silverstein v. Fed. Bureau of Prisons, 559 F.Appx. 739, 756 (10th Cir. 2014).

The courts below also erred in dismissing Mr. Striz's Eighth Amendment claims for lack of specificity regarding the conditions of his confinement. Mr. Striz's pro se Original Complaint (pps. 11-12) and Amended Complaint (pps. 14-15), in his Eighth Amendment claims, alleges indefinite solitary confinement "depriving him of the basic necessities of life, such as, but not limited to; human contact and social interaction, environmental and mental stimulus, physical activity, education and rehabilitation oppor-

*footnote-3: The First Circuit has yet to resolve the question, but would likely join the opinion that prolonged solitary confinement can, in some instances, violate the Eighth Amendment. see, Jackson v. Meachum, 699 F.2d 578, 583-85 (1st Cir. 1983).

*footnote-4: In a dissenting opinion, Lucero, J., compiles numerous psychological studies on the permanent harmful effects of prolonged solitary confinement and concludes that it "rewires the prisoner's brain, physically changing the way the organ functions." Grissom, at 1175-76, and that "given our society's present understanding that prolonged solitary confinement inflicts progressive brain injury, we cannot consider such prolonged, unjustified confinement as anything other than extreme and atypical."

tunities, work, contact visits, and other deprivations that place him at undue risk of long-term and permanent psychological and physical harm due to the well-established detrimental effects of long-term solitary confinement meeting 8th Amendment criteria of cruel and unusual punishment due to 'evolving standards of decency.'"

Mr. Striz alleged conditions and effects adequately enough for the court, or any rational human, to understand his conditions or make logical conclusions of his conditions. But, the below courts pretended complete ignorance, as if it had never encountered prison litigation challenging indefinite solitary confinement, as if Mr. Striz's allegations exist as a novelty, or as if there was no established caselaw recognizing these conditions (caselaw cited by both Mr. Striz, Defendants, and the courts). The below courts have encountered an abundance of such litigation to be well aware of these conditions as commonly accepted facts; just as the commonly accepted facts that water is wet, the sky is blue, and grass is green. The below courts' opinions cite caselaw that specifically describe Mr. Striz's conditions of confinement, Pichardo v. Kinker, 73 F.3d 612 (5th Cir. 1996); Wilkerson v. Goodwin, 774 F.3d 845 (5th Cir. 2014); and Bailey v. Fisher, 646 F.Appx. 472 (5th Cir. 2016), then pretend ignorance of those conditions.

Furthermore, Mr. Striz is proceeding pro se, and as such, his complaint, however inartfully pleaded, is held to less stringent standards than formal pleadings drafted by lawyers, Hughes v. Rowe, 101 S.Ct. 173 (1980), and could only be dismissed for failure

to state a claim if it appeared beyond a doubt that he could prove no set of facts in support of those claims which would entitle him to relief. Estelle v. Gamble, 97 S.Ct. 285 (1976). Is it truly beyond doubt that there is no set of facts which could possibly entitle Mr. Striz to relief in this case, based on his pleadings? If the courts below genuinely had an incomplete comprehension of the facts regarding Mr. Striz's specific conditions of confinement in administrative segregation, then the courts were required to either issue an order for more definite statement under Fed. R. Civ. P. 12(e), or order an evidentiary hearing in order to establish the relevant and necessary facts prior to issuing judgment. Why did the courts below refuse to liberally construe the allegations of a pro se litigant or request more specificity in the interest of justice prior to issuing judgment? Or, did the court already know what those conditions are and simply did not care because it had already assumed judgment without the relevant facts or an opportunity to develop those facts? Was the court merely using "insufficient specificity" of conditions as an excuse to dismiss a prisoner's complaint? Is that how the law works? Or does that only apply to prison litigation in certain circuits? Are prisoners not entitled to a fair hearing?

The decision below was wrong because it violates the Eighth Amendment and clearly establish caselaw of this Court. The conditions alleged by Mr. Striz, and the well-established effects of those conditions, violate the Eighth Amendment because they are cruel and unusual within the original context and intent of that

provision.

A punishment is "cruel" when it imposes an additional and unnecessary "terror, pain, or disgrace" to an existing sentence. Bucklew v. Precythe, 139 S.Ct. 1112, 1124 (2019). This Court established more than a century ago that solitary confinement imposes additional unnecessary pain, terror, and disgrace even to a death sentence. In re Medley, 134 U.S. 160, 170 (1890). Since that time, prison administrators and researchers have consistently reaffirmed this and documented the effects of it. see, Rick Raemish, My Night in Solitary, The New York Times, (February 20, 2014); Terry A Kupers, Isolated Confinement: Effective Method for Behavior Modification or Punishment for Punishment's Sake?; Jeffery L. Metzner and 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)(Isolation can be as clinically distressing as physical torture.)Physically, symptoms of extended solitary confinement include heart palpitations, headaches, hypertension, and weight loss. Peter Scharff Smith, The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature, 34 Crime & Just. 441, 488-93 (2006). Individuals subject to solitary confinement show significant changes in brain activity. Elizabeth Bennion, Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Unusual Punishment, 90 Ind. L. J. 741, 757-59 (2015)(Summarizing documented changes in brain activity after solitary confinement); Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U. J. L. & Pol'y 325, 330-31 (2006)(Observing abnormal

brain patterns in people exposed to solitary confinement.)
In the case of Mr. Striz, his isolation is particularly unnecessary and troubling, considering that for more than a decade, officials have known that the original--and ONLY--reason for his placement in solitary confinement is no longer valid, yet they continue to use that excuse anyway, displaying a callous indifference to the known harmful consequences of long-term solitary confinement. But, even if Mr. Striz was still a gang member, even that rationale for indefinite isolation is highly questionable given that TDCJ is one of the few remaining prison systems in the nation to place prisoners in indefenite solitary confinement merely for gang membership; most other states and the federal Bureau of Prisons manage gangs through other less restrictive, less harmful, and more effective methods. This Court has previously expressed its position that the evidence of a "feasible and readily implemented alternative method of carrying out a sentence is particularly strong evidence that a punishment or condition of confinement is "cruel." Bucklew, 139 S.Ct. at 1125 (2019). And, the conditions in which a prisoner is confined are as much a part of his "punishment" as the sentence imposed by a court. Helling v. McKinney, 509 U.S. 25, 31-32 (1983). If that **IS** the consistent position of this Court, then TDCJ's widespread use of indefinite solitary confinement for gang members--most of who violated no rules--certainly falls within this Court's criteria for "cruel" and disproportionate pinishment to violate the Eightth Amendment.

Given the circumstances and extraordinary duration of Mr. Striz's solitary confinement, without legitimate penological

justification, any rational individual would conclude that Mr. Striz's 20-plus years in solitary confinement is precisely what the Eighth Amendment prohibits as cruel, unusual, disproportionate, and wanton infliction of harmful conditions by officials who were deliberately indifferent to the risk of serious harm to Mr. Striz's mental and physical health. Farmer v. Brennan, 511 U.S. at 834.

Texas remains an outlier in its use of long-term solitary confinement. Of more than 3000 prisoners held in solitary confinement in the Texas Department of Criminal Justice, more than 500 have spent more than a decade, and Mr. Striz is among the approximately 140 who have spent more than two decades in solitary. As most states move away from widespread use of solitary confinement, and many federal circuits question its continued use, Texas and the Fifth Circuit remain the most notable holdouts to continue and condone this barbaric practice. This Court should grant certiorari to review whether or not solitary confinement, at least when measured in decades, or for no legitimate reason, or when viable alternatives exist, runs afoul of the Eighth Amendment.

II.

THIS COURT SHOULD DECIDE WHETHER OR NOT PRISONERS ARE ENTITLED TO MEANINGFUL DUE PROCESS AND, IF SO, WHAT IS THE CONSTITUTIONAL MINIMA TO WHICH THEY ARE ENTITLED?

and

ARE PRISONERS ENTITLED TO EQUALITY UNDER THE LAW?

When Aaron Striz was placed in administrative segregation on

August 9, 2001, the ONLY reason cited was due to STG-membership. At that time, officials informed him that he must renounce his membership and complete the Gang Renouncement And Disassociation (GRAD) Program. But, as outlined above, he is not eligible for this program due to unrelated SPD Codes, so officials cite, with rote repetition an invalid excuse of "confirmed-STG" as the reason to continue his indefinite solitary confinement...until he completes a program that those same officials refuse to allow him to complete.

For nearly 17 years, "Confirmed-STG" was the ONLY excuse documented on review hearing records to justify Mr. Striz's continued isolation, until he filed this §1983 complaint. Then, in February 2019, officials claimed to the district court that Mr. Striz was in ad-seg as an "escape risk" due to the August 1998 escape from county jail; despite more than 20 years of good behavior; despite the fact that he was placed on minimum custody upon entering TDCJ only 29 days after the escape; despite the fact that he was never placed in ad-seg as an escape risk, officials had never previously documented this at reviews, nor had they ever given Mr. Striz a review to be held for this new excuse. Two weeks after officials made this fraudulent claim to the court, they held a review hearing where they informed Mr. Striz that he would no longer be held in ad-seg as a gang member, but would henceforth be held as an escape risk...even though officials cannot point to a single other prisoner who was removed from general population without incident and placed in segregation simply because SPD Codes were retroactively applied to their file when

that new policy went into effect. That class of prisoners was merely reduced to medium custody and there is no provision in the SPD Code policy requiring placement in administrative segregation. In short, if Mr. Striz had never been placed in segregation as an STG-member, he would have never been held in ad-seg due to SPD Codes stemming from the August 1998 escape from county jail. Conversely, if he did not have SPD Codes, he would have been released from ad-seg via the GRAD Program many years ago. But, since he has both, Mr. Striz has been stuck in this bureaucratic catch-22 for more than two decades due to the inexplicable indifference of prison administrators. And then, when he complained about it to the courts, those administrators misled the court and created a new excuse to continue his solitary confinement.

The courts below accepted this kafkaesque farce and stated that as long as Mr. Striz was provided advance notice of a hearing and an opportunity to speak at that hearing, then the "constitutional minima" of due process was satisfied, regardless of whether officials' decision was based on evidence. served a legitimate penological purpose, or was merely a perfunctory gathering with a predetermined outcome.

WHAT IS THE DUE PROCESS TO WHICH PRISONERS ARE ENTITLED?

The below court's opinion clearly deviates from this Court's precedents. The Due Process Clause of the Fourteenth Amendment requires procedural protections against the deprivation of life, liberty, or property, and when a prisoner is deprived of a liberty interest by imposition of an "atypical and significant hardship," prison officials must provide "such procedural protections as the

particular situation demands." Wilkinson v. Austin, 545 U.S. 209, 221. 224 (2005).

This Court has previously held that, although a flexible concept, a fundamental component of due process is that it must be meaningful and not a sham or a fraud, Mathews v. Eldridge, 424 U.S. 319, 333 (1976), and due process requires meaningful periodic review hearings when subjecting a prisoner to solitary confinement. Hewitt v. Helms, 459 U.S. 460, 477 (1983). Furthermore, administrative segregation may not be used as a pretext for indefinite confinement of an inmate in administrative segregation. Thus, a decision to keep an inmate in segregation must be supported by some evidence." Superintendent v. Hill, 472 U.S. 445 (1985).

In the present case, prison officials have investigated, documented, and repeatedly acknowledged that their original reason for Mr. Striz's placement in administrative segregation was no longer valid since at least July 2010, and yet they continued to cite this invalid excuse--"confirmed-STG"--for another decade-plus; with the sole exception being the one review of February 2019 immediately following their answer to Mr. Striz's complaint.

Officials not only had no evidence to continue his indefinite solitary confinement, they KNEW that the evidence they were using was no longer valid, and thus, Mr. Striz's segregation became a pretext for indefinite solitary confinement merely because he was already in segregation and ineligible for a program due to completely unrelated reasons, even though a viable alternative was available ("Non-GRAD Disassociation" in the TDCJ STG-Plan.)

A clear majority of circuits to consider this question of the due process of prisoners in solitary confinement are in accord with this Court; that hearings must be meaningful and there must be a valid, legitimate penological objective to continue a prisoner's solitary confinement; perfunctory gatherings with a predetermined outcome do not suffice and are tantamount to no review at all. Proctor v. LeClaire, 846 F.3d 597, 611-13 (2d Cir. 2017); Incumaa v. Stirling, 791 F.3d 517, 534 (4th Cir. 2015); Selby v. Caruso, 734 F,3d 554, 560 (6th Cir. 2013); Isby v. Brown, 856 F.3d 508, 526-28 (7th Cir. 2017); Williams v. Hobbs, 662 F.3d 994, 1008 (8th Cir. 2011); Toevs v. Reid, 685 F.3d 903, 915 (10th Cir. 2012); Quintanilla v. Bryson, 730 F.3d 738, 744 (11th Cir. 2018).

And yet, even though the below court pays lip-service to this principle (Wilkerson v. Goodwin, 774 F.3d 845 (5th Cir. 2014)), it held that these perfunctory reviews with predetermined outcome to be sufficient, simply because the prison provided Mr. Striz advance notice of the hearings and an opportunity to speak and submit evidence at those hearings (Appendix-A, pp. 3-4). The below court cited its own precedent in Bailey v. Fisher, 646 F.Appx. 472, 477 n.9 (5th Cir, 2016) to justify this position. That court has accumulated a series of similar decisions (Hope v. Harris, 861 F.Appx. 571 (5th Cir. 2021), Butler v. Porter, 999 F.3d 287 (5th Cir. 2021)). The Fifth Circuit holds that absent exigent or extraordinary circumstances, administrative segregation, no matter the duration,"will never be grounds for a constitutional claim." Hernandez v. Velasquez, 522 F.3d 556, 562

(5th Cir. 2008). (footnote-5). In those rulings, the below court has built upon its own irrational precedents. Butler, at 297 cites Klevenhagen v. Myers. 97 F.3d 91, 94 (5th Cir. 1996), "Our caselaw is clear...that a prison official's failure to follow the prison's own policies, procedures, or regulations does not constitute a violation of due process, if constitutional minima are nevertheless met."

In purely legal terms, this position of the Fifth Circuit clearly contravenes the rulings of this Court; "A liberty interest may arise from the Constitution itself...or it may arise from an expectation or interest created by state laws or policies." Wilkinson v. Austin, 545 U.S 509 (2005), citing Wolff v. McDonnell, 418 U.S. 539, 556-558 (1974). And, due process contains a substantive component that bars certain arbitrary, wrongful government actions, regardless of the "fairness" of the procedures used to implement them. Daniels v. Williams, 474 U.S. 327, 337-38 (1986).

Beyond the legal argument, in purely rational analysis, if these policies are ostensibly established to protect due process rights of prisoners, but officials are not required to follow

*footnote-5: Notably, the Fifth Circuit continuously refers to its "exigent" or extraordinary circumstances" requirement to sustain a due process liberty interest claim challenging indefinite solitary confinement in ad-seg, but, as yet, that court has never defined this criteria. Instead, when faced with an increasingly egregious array of novel and questionable circumstances, that court has simply dismissed them as "not extraordinary enough." How can any court establish such a nebulously subjective legal standard--one above and beyond this Court's "atypical and significant in degree or duration" test outlined in Sandin--without clearly defining the criteria for that standard? Are they allowed to simply make it up as they go? Continuously shift the goalposts until they are no longer attainable?

their own policies to protect due process, then how does this meet the "constitutional minima" of due process?! Of course there also should be not only an expectation, but a requirement that officials will follow their own policies and render rational decisions based on valid facts. To allow officials to disregard their own policies, or to render decisions in opposition to the facts, would be to condone the very definition of arbitrary and capricious disregard of due process. Simply conducting a perfunctory hearing with an irrational, predetermined outcome that disregards facts does not meet the constitutional minima of meaningful review. The only thing "clear" about the below court's caselaw is that its standards of constitutional minima are more aligned with Soviet-era show trials than those of the United States Constitution as defined by this Court and the majority of federal circuits.

The lower court's reasoning (and that of the aligned circuits) is further flawed in that, if the duration of indefinite solitary confinement can establish a liberty interest to trigger due process protections under Sandin and Wilkinson ("atypical or significant in degree or duration"), and said duration is the direct result of years upon years of perfunctory charade reviews with a predetermined outcome, then how do those hearings which create and perpetuate the atypical duration meet the constitutional minima of due process? How can one expect such hearings to correct the problems those hearings created and perpetuate indefinitely?

While courts do--and should--maintain a deference to prison officials in daily operations of prisons, at some point courts have a duty to intervene and protect the limited due process right

rights that prisoners retain, from arbitrary or irrational decisions of prison administrators. What good is it to establish that prisoners retain a limited liberty interest, only to refuse to intervene and protect that right, or to say that he is never allowed to invoke or enforce that right? If that is the case, is that truly a "right?" To say that prisoners have rights, but those rights are hollow, unenforceable, theoretical, and subject to capricious disregard by administrative officials, without recourse, is to say that prisoners have no rights at all. To continuously move the goalposts (as the Fifth Circuit has done with its "extraordinary circumstances" criteria)or set the bar so high as to be unattainable, is to make a mockery of "rights." And so, it begs the question; Do prisoners have rights or not? This Court has consistently held that they do, which raises the next question:

ARE PRISONERS ENTITLED TO EQUALITY UNDER THE LAW?

Any rational individual would answer that question with an immediate and emphatic "YES." And so has every court to consider the question. But, equality is not a one-way street; equality goes both ways. To apply one standard of law to one class of citizens, yet not apply it to anotherclass of citizens, is to establish <u>inequality</u> under the law. Consider the lower court's standard for the "constitutional minima" of due process, where it is simply sufficient for government bureaucrats to drag a citizen--in this case an incarcerated citizen--before an administrative committee where he is allowed to make a perfunctory statement which falls on deaf ears because that committee already

has a predetermined outcome which contravenes what any rational trier of facts would conclude. Would that standard be acceptable in any other circumstance? It certainly is not acceptable in criminal proceedings. Would this Court, or any other court, condone this standard of "due process" for non-incarcerated citizens? Would this Court accept this sort of meaningless hearing with a predetermined outcome in disregard of the facts, if it were conducted by any other administrative agency? The Environemntal Protection Agency? The Food and Drug Administration? The Department of Energy? Department of Education? Heaven forbid this becomes the standard for Internal Revenue Service hearings! If this "due process" standard of the below court, as applied to Mr. Striz's circumstances, were applied to an IRS hearing, it would go something like this:

"Yes sir, you were audited and fined for not paying your taxes. Yes, we have proof that you paid those taxes and the fine, but we are sending you to prison anyway because you stole a car twenty years ago and we feel you weren't sufficiently punished by the courts at that time."

Would any court in this country accept such a farce if applied to non-incarcerated citizens? Of course not, so why is it acceptable for prisoners? If equality goes both ways, what is preventing it from being applied to non-incarcerated citizens? If one believes that standard could never be applied to non-incarcerated citizens, why not? What is preventing that? The below court--and others--regularly cite non-prison litigation caselaw and apply it to prisoners, especially when reviewing issues of

summary judgment, qualified immunity, or motions to dismiss. see, Appendix-A, Fifth Circuit Opinion, p. 3, citing Xtreme Lashes, LLC. v. Xtended Beauty, Inc., 576 F.3d 221, 226 (5th Cir. 2009); or, Hope v. Harris, 861 F.Appx. 571 (5th Cir. 2021) at 576 citing Lujan v. Def's of Wildlife, 504 U.S. 555 (1992) and Hope at 579 citing Alexander v. Verizon Wireless Servs., 875 F.3d 243 (5th Cir. 2017); or Appendix-B, p. 12, district court opinion, summary judgment standards citing Celotex Corp. v. Catrett, 477 U.S. 317, (1986) and Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), among other non-prison litigation cites. None of these are prison litigation cases, but under equality of law theory, they can be applied to prison litigation. Again, equality goes both ways, thus, under the same equality of law theory, prison litigation decisions can--and should--be applied to non-prison litigation cases. And so, what prevents any court in America from applying the below court's standard of "constitutional minima" of due process to any other citizen, to any other hearing conducted by any other governmental administrative agency? Are all citizens required to place blind faith in the ethical infallibility of judges to only apply this unequal standard to prisoners? If equality under the law works both ways, the question is NOT whether prisoners have equality under the law; the more important question in this case is; are citizens equal under the law to prisoners? If the answer is that all citizens are equal under the law, whether or not they are incarcerated, then by the below court's due process standards, how long will it be before all citizens become prisoners themselves of the administrative state?

THIS COURT'S INTERVENTION IS WARRANTED TO UPHOLD THE RIGHTS OF ALL CITIZENS AGAINST THE ADMINISTRATIVE STATE

Although Mr. Striz has been subjected to an extraordinary deprivation of liberty exceeding two decades in solitary confinement, this is not simply a case about prisoner rights or prison administration. This case is an opportunity for this Court to uphold the fundamental rights of all citizens--not just incarcerated citizens--against the encroachment of the administrative state and its unaccountable authority to violate the rights of citizens through extrajudicial administrative hearings. This is an opportunity for the Court to limit the authority of unelected bureaucrats to render arbitrary, capricious, irrational decisions through administrative review hearings. It is not enough to merely drag a citizen before a committee and allow him to make a perfunctory statementprior to the committee's preordained decision regardless of the facts. The United States Constitution was kinda inspired by eliminating those sorts of abuses by the king or his bureaucrats. Throughout the Cold War, Americans were aghast at the televised Soviet show trials that followed this script of a hearing with a predetermined, often irrational, outcome. The only practical difference between those show trials and the hearings condoned by the below courts is that the Soviet trials often ended with immediate execution in the basement of the Lubyanka, whereas Mr. Striz's hearings--and thousands of other prisoners--results in decades of soul-crushing slow death in solitary confinement.

Mr. Striz was not sentenced by a court to indefinite solitary confinement. There is no Texas statute that authorizes his placement in solitary confinement. He was placed in solitary

confinement more than two decades ago by administrators for a dubious reason, and continued to be held for that reason even after those administrators investigated and verified that it was no longer valid. Mr. Striz remained in isolation for more than two decades due to bureaucratic indifference and a reluctance to solve the problem because it would inconvenience them. Allowing unelected, unaccountable bureaucrats of the administrative state to conduct meaningless show-trial review hearings is to allow those bureaucrats to progressively hollow out the fundamental rights of all citizens--not just prisoners--and renders those rights meaningless; which is tantamount to no rights at all.

This long-standing deference to officials and deference to "experts," this reluctance to intervene in prison administration does not mean that courts should never intervene. The lower courts'--and some others'--reluctance to intervene, simply because the consequences would inconvenience prison administrators, has led those courts into such legal contortions that they've tied themselves into a legal Gordian knot, lost sight of basic fundamental principles underpinning the rights of all citizens, and hollowed out the rights of all prisoners until they essentially have no enforceable rights at all. But, hey, after all, they're just prisoners, right? Who cares about prisoners?

A fundamental premise of the First Amendment is that it does not exist to protect popular speech, it exists in order to protect unpopular speech, unpopular ideas, or unpopular people. That same principle applies to equality under the law; it is to protect unpopular classes of citizens the same as any other class of citi-

zens. If excuses can be made to apply unequal standards of law to such a socially unpopular class of citizens as prisoners, who may be the next unpopular class of citizens subject to unequal standards of law, or arbitrary violations of their rights by unelected bureaucrats in administrative agencies? LGBTQ persons? Christians? Muslims? "Right-wing extremists" or "left-wing extremists," as defined by whomever is currently in Executive Office at the time? Or, more applicable, regardless of what one thinks of the January 6th detainees, do they deserve to be held in solitary confinement, as many are now subjected to?

This case is about more than simnply "prisoners' rights"; it is about meaningful due process and equality under the law--equality which goes both ways. The due process standard of the below court, as applied to Mr. Striz and other prisoners, establishes a double standard of due process for incarcerated citizens versus unincarcerated citiznes. Yes, prisoners retain only limited rights, but those limited rights must be rooted in fundamental, inviolable principles that apply to all citizens. The below court's legal opinion is that some are more equal than others, that the rights of some do not matter as much as the rights of others. But, if the rights of some citizens can be trampled by the administrative state, then so can the rights of all citizens be trampled by unelected, unaccountable bureaucrats of the administrative state. This would have been anathema to our Founders and the Constitution they crafted.

CONCLUSION

The Petition for writ of certiorari should be granted.

Aaron Striz August 1, 2022

Aaron Striz, pro se