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ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Joshua Adam Schulte — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Second Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joshua Adam Schulte #79471054
(Your Name)

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Brooklyn, NY, 11232
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Several federal courts of appeals hold that long-term solitary confinement is cruel and unusual punishment and therefore unconstitutional.

Thus the first question presented is:

Whether Special Administrative Measures (SAMs) and indefinite solitary confinement violate the United States Constitution.

The second question presented is:

Whether the federal government can create concentration camps to torture those accused of crimes against the government, including, inter alia, through starvation, 24/7 blasting speakers, 24/7 bright lights, 24/7 freezing colds and other arbitrary punishments; habeas corpus relief under 28 U.S.C. § 2241.

Third:

Whether pretrial relief of unconstitutional conditions of confinement is unavailable to poor criminal defendants as declared in this case, barring habeas relief under the criminal court and a separate civil court.

And finally, fourth:

Whether pro se criminal defendants too poor to afford counsel have no right to the courts or appellate review as declared in this case.

LIST OF PARTIES

All parties appear in the Caption of the Case on the cover page

TABLE OF CONTENTS

1	OPINIONS BELOW.
1	JURISDICTION.
2	CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.
3	STATEMENT OF THE CASE
3	A. Introduction.
4	B. Factual Background Relevant to Petition.
8	REASONS FOR GRANTING THE PETITION.
	I. SAMS AND INDEFINITE SOLITARY VIOLATE THE

9	CONSTITUTION.
9	A. SAMS are facially unconstitutional.
9	1. SAMS violate the Fifth Amendment.
14	2. SAMS violate the doctrine of separation of powers.
15	B. Indefinite Solitary Confinement is Unconstitutional.
15	1. Medical experts, authors, historians, politicians, and organizations around the world condemn solitary confinement as cruel torture
15	a. The well-documented deleterious effects of long-term solitary confinement erode a person's sanity and constitute torture.
20	3. Indefinite solitary confinement violates the Eighth/Fifth Amendment.
25	a. Courts across the country have declared indefinite solitary as cruel and unusual.
26	b. Federal appeals courts have declared solitary as cruel/unusual.
27	4. Indefinite solitary confinement violates the Fifth Amendment.
29	a. Liberty interest
29	b. Procedural protections.
	II. PETITION FOR WRIT OF HABEAS CORPUS TO MODIFY
	UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT
30	PURSUANT TO 28 U.S.C. § 2241.

TABLE OF CONTENTS (cont.)

III. PRETRIAL DETAINEES ELIGIBLE FOR HABEAS RELIEF.....	32
IV. THE POOR HAVE CONSTITUTIONAL RIGHT FOR COURT OF APPEALS TO REVIEW MERITS.....	34
V. COURT SHOULD AT LEAST REVIEW AND ORDER COURT OF APPEALS TO CONSIDER BRIEFS AND MERITS OF ARGUMENTS...	35
CONCLUSION.....	36
APPENDIX A	
APPENDIX B	
APPENDIX C	

TABLE OF AUTHORITIES CITED

Cases

Appelka v. Paemisch, 134 S. Ct. 5 (2018).	24
Davis v. Ayola, 576 U.S. 257 (2015).	15, 25
Estelle v. Gamble, 429 U.S. 97 (1976).	24
Giano v. Selsky, 238 F.3d 223 (2d Cir. 2001).	28
Gordon v. Masaka-Hirata, 431 F.3d 708 (Hawaii 2018).	25
Grisson v. Roberts, 902 F.3d 1162 (10th Cir. 2018).	27
Hewitt v. Helms, 459 U.S. 460 (1983).	9-10, 13
In re Medley, 134 U.S. 160 (1890).	25
McLary v. Kelly, 4 F. Supp. 2d 145 (W.D.N.Y. 1998).	25
Porter v. Clarke, 923 F.3d 348 (4th Cir. 2019).	18, 26, 27
Reynolds v. Arnone, 402 F. Supp. 3d 3 (D. Conn. 2019).	14, 26
Ross v. Blake, 136 S. Ct. 1850 (2016).	13
Sandin v. Conner, 515 U.S. 472 (1995).	9, 28
Walker v. Fischer, 523 F. App'x 43 (2d Cir. 2013).	28
Willerson v. Stedler, 639 F. Supp. 2d 654 (M.D. La. 2007).	25
Willenson v. Austin, 543 U.S. 209 (2005).	10, 13, 29
Williams v. Seig Pa. Dept of Corr., 848 F.3d 544 (3d Cir. 2017).	26, 29
Younger v. Harris, 401 U.S. 37 (1971).	7

Statutes

28 U.S.C. § 2241.	30, 32-33
-------------------	-----------

Rules

28 CFR § 501.2.	11-14
28 CFR § 501.3.	14

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of Habeas Corpus issue to review the judgment below.

PARTITIONS BELOW

The opinion of the Second Circuit appears at Appendix A to the petition and is unpublished. U.S. v. Schulte, 21-2877, 21-3124

The opinion of the Southern District of New York appears at Appendix B to the petition and is unpublished. U.S. v. Schulte, 1762548 Dkt. 526, 527

JURISDICTION

The Court of Appeals issued its judgment on December 15, 2022.

A timely petition for rehearing was denied on January 23, 2023.

A copy of this decision could not be obtained from the Court of Appeals, but it is noted on the docket, 21-2877 at 149. See Appendix C.

Accordingly, the petition for a writ of Habeas Corpus is due May 15, 2023

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First, Fifth, Sixth, Eighth Constitutional Amendments;
the Constitutional doctrine of separation of powers;

The Statutes 28 U.S.C. § 2241;

The Rules 28 C.F.R. § 501.2;

STATEMENT OF THE CASE

A. Introduction

This case presents several important questions with respect to conditions of confinement. Several Courts of Appeals have found that long-term solitary confinement is a form of torture and unquestionably unconstitutional; several of these courts have reversed previous positions in light of new scientific data even before people were exposed to very minor forms of solitary during the lockdowns of the COVID-19 pandemic.

This case presents the perfect opportunity for this Court to review the scientific data of the effects of long-term solitary confinement and to finally say that no matter what an individual is accused or even convicted of, torture and long-term solitary confinement are always immoral and wrong.

Moreover, creating concentration camps to torture individuals accused of crimes against the State is repugnant to the ideals of a Republic and must be soundly rejected.

B. Factual Background Relevant to Petition

On October 1, 2018 the partner Joshua Adam Schulte was

moved into the SHU at the Metropolitan Correctional Center (MCC) in New York

City while the FBI searched for a cell phone allegedly used by Mr. Schulte.

The FBI went beyond the limits of the search warrant by seizing Mr. Schulte's

legal notebooks, searching them for evidence of any possible crimes, then

providing them to the CIA for a comprehensive "classification review". During

this review, the government examined a copy of a 100-plus paged document

that Mr. Schulte wrote for counsel, in which it claimed a paragraph on page

84 was "classified". The government superseded Mr. Schulte, indicting him

for committing espionage from prison by allegedly transmitting an unclassified

search warrant and "attempts" to transmit the privileged document.

On November 1, 2018, Mr. Schulte was declared guilty of transmitting

NDT from prison by the attorney general, ordering the imposition of 50M.

Mr. Schulte was then transferred to a concentration camp at McCo. Mr. Schulte was placed into solitary confinement indefinitely, arbitrarily punished through the imposition of 24/7 bright lights freezing colds; severely restricted social calls, visits, commissary, legal resources; banned from recreation, looking outside, television, radios, books; etc. etc. This punishment and torture was imposed without Due Process — in fact, without any process whatsoever.

Mr. Schulte sought relief in the district courts but was denied. Mr. Schulte filed interlocutory appeals of the SAME/Solitary issue on November 19, 2021, Dkt. 21-2877. See Appendix C. Mr. Schulte filed his Brief on December 3, 2021 — a Brief that was never read or reviewed by the Second Circuit. See Dkt. 12. The government filed a motion to dismiss on December 14, 2021, Dkt. 25 — except the government's motion only identified interlocutory appeals 21-2878 and 21-2874. On January 31, 2022 Mr. Schulte moved to preclude the government from briefing since it failed to file its brief in 90 days or move to dismiss. Dkt. 39.

The Court of Appeals denied that motion on February 1, 2022. The government requested a proposed scheduling of its Brief for August 2, 2022, Det. 103, which the Court accepted, Det. 103 despite being over 6 months late. In lieu of filing its Brief, however, the government moved for summary affirmance on August 2, 2022, Det. 114. The government primarily argued that S.M.'s and solitary confinement is not indefinite since it must be ~~renewed~~ renewed each year — the fact that the government simply renews it each year making it effectively indefinite was apparently of no consequence. Mr. Schille filed his opposition, Det. 126, but also sought assignment of counsel — as required in criminal matters — since he realized that the Court of Appeals does not give the same treatment to pro se criminal defendants as it does those wealthy enough to afford an attorney. And sure enough, the Court of Appeals for the Second Circuit did not consider Mr. Schille's brief, motions in opposition or requests for assignment of counsel — but merely disposed of the annoying

Pro se appeal without review. Dkt. 142.

As for the confinement conditions, Mr. Schulte moved under 28 U.S.C. § 2241 for relief from arbitrary and unconstitutional conditions of confinement.

~~Pro se appeal~~ He first moved for this relief as a separate civil action.

See 20-cv-4244-JFO S.D.N.Y. On December 7, 2020, Judge Paul Betten dismissed the petition, claiming that Younger v. Harris, 401 U.S. 37 (1971), precluded consideration since Mr. Schulte was incarcerated pending trial and thus the petition must be raised before the criminal court (Schulte v. Barr).

So, Mr. Schulte moved for relief in the criminal court. That court found it could not grant relief since Mr. Schulte must file for relief "in a separate civil action, not a motion filed in an underlying criminal case." Dkt. 453 526.

Accordingly, the district courts refused to hear Mr. Schulte's petition, both the civil and criminal courts each pointing at each other. Mr. Schulte appealed, requesting the Second Circuit resolve this dispute.

However the Court of Appeals refused to read Mr. Schulte's Brief or consider the merits of his arguments because he is a poor criminal defendant and therefore a second-class citizen. The American Criminal Justice System is a Pay-to-Play Fraud in which only those wealthy enough to pay for attorneys can participate; the poor are summarily dismissed without consideration.

REASONS FOR GRANTING THE PETITION

There is a longstanding and significant circuit split on the questions presented in this case. More and more circuits are reversing prior precedent and finding long-term solitary unconstitutional. State legislatures are likewise passing laws banning the practice entirely. More and more research is conclusively finding permanent physiological and psychological effects of solitary. The recent lockdowns during ~~the~~ COVID-19 gave the general public a very small taste of solitary, and the implications are still not fully known — though it is recognized to be disastrous to health. This case provides an excellent vehicle for resolving the question. This Court's review is therefore warranted.

I. SAMs AND INDEFINITE SOLITARY VIOLATE THE CONSTITUTION

A. SAMs are facially unconstitutional

1. SAMs violate the Fifth Amendment

SAMs are imposed when the Attorney General orders the Bureau of

Prisons to impose indefinite solitary confinement and other inhumane conditions that are consistent with torture. This violates the Due Process Clause by definition because there is literally no process for the defendant.

In Hewitt v. Helms, the Supreme Court held that prison officials must provide an inmate with at least an informal hearing "within a reasonable time after confining him to administrative segregation." 459 U.S. 460, 472 (1983); overruled in part on other grounds by Sandhu v. Conner 515 U.S. 472 (1995). In addition, an inmate must at least "receive some notice of the charges against him and an opportunity to present his views [orally or in writing] to the prison official charged with deciding whether to transfer him to administrative segregation." *Id.* at 476. So long as those two requirements are met "and the decision maker reviews the charges and then—available evidence against the prisoner, the Due Process Clause is satisfied," *Id.*

(footnote omitted). In Wilkinson v. Austin, 545 U.S. 209 (2005), the Court noted the "informal, nonadversary procedures set forth in... [Hewitt]" are the appropriate safeguards for inmates faced with indefinite confinement. *Id.* at 229.

Normally, when an inmate—either pretrial or sentenced—violates prison rules or regulations, there is a Disciplinary Hearing (DH) scheduled where the accused can call witnesses and present evidence. The DH officer (DHO) or committee, as arbiter, then weighs the evidence and pronounces a sentence; this sentence depends upon the level of offense and can vary between loss of good-time credit, loss of commissary, loss of visitation or phone calls, and "threat" in the SHU for a specified period of time. This process ensures due process and allows the accused to appeal any sentences through administrative remedy and then through the courts. This process clearly adheres to Hewitt and Wilkinson and provides due process for the accused.

In contrast, SPAs are imposed through no process—there is no hearing, no presentation of evidence, no calling of witnesses, no arbiter—only the executive branch

directing itself to execute a sentence — whatever sentence it desires — for however

long it desires — to whomsoever it desires. To impose the harshest punishment in the

land, the Federal Government does not need a jury conviction or even a Federal Judge's

concurrence — it need only issue a memorandum and direct the BOP to torture.

"Upon direction of the Attorney General, the Director, Bureau of Prisons, may

authorize the warden to implement special administrative measures.... These... may include

having an inmate in administrative detention and/or limiting certain privileges, including, but

not limited to, correspondence, visiting, interviews with representatives of the news media,

and use of the telephone, as is reasonably necessary to prevent the disclosure of classified

information." 28 ~~CODE~~ CFR § 501.22(a). It is obvious that inmates and pretrial detainees

have a strong liberty interest in avoiding imposition of SAs and the associated punishments

Furthermore, the prison need not even notify the prisoner of the full reasons

for the same determination. "Designated staff shall provide to the affected inmates,

as soon as practicable, written notification of the restrictions imposed and the basis

for these restrictions. The notice's statement as to the basis may be limited in the

interest of prison security or safety or national security." 28 CFR § 501.260 (emphasis added). So not only is there no hearing and no opportunity for the accused to present evidence in his favor but he does not even have the opportunity to know the full accusations and evidence against him!

There is no due process here. There is no procedural due process—the executive branch issues a declaration of torture, and the executive branch commences that torture. This also offends substantive due process as it truly shocks the conscience that torture and infinite punishment can be imposed upon anyone indefinitely—and without justification. There is literally no limitation or restriction to the torture the government can impose—it routinely violates the 1st, 4th, 5th, 6th, and 8th Amendments.

Next, the conditions of confinement are essentially indefinite. "Initial placement of an inmate in administrative detention and/or any limitation of the inmate's privileges in accordance with paragraphs of this section may be imposed... up to one year. Special restrictions imposed in accordance with paragraphs of this section may be extended thereafter... in increments not to exceed one year..." 28 CFR § 501.260.

The Attorney General need only re-authorize the conditions each year — and without

any hearings, presentation of evidence, notice of allegations, arbiters, or any due process

whenever. And this is exactly what has happened in Mr. Schulte's case. Since initial

placement in 2013, the SAMs have been renewed each year — without fail. Mr. has

Mr. Schulte has received notification or justification for those renewals.

Finally, although the regulations state that "like affected inmate may seek

review of any special restrictions imposed in accordance with ~~sub~~ paragraph (a) of this

section through the Administrative Remedy Program," 28 CFR 501.2(d), any such attempt

is futile considering the inmate need not be notified of the full reasons for the

decision or given the evidence against him. Additionally, the BOP has informed Mr. Schulte

that he cannot seek administrative remedy since SAMs is directed by the Attorney General

and administrative remedies can only be sought for BOP-determined restrictions. In any

cases all attempts for administrative remedy of SAMs have failed or simply been

unavailable. See Russ v. Blake, 136 S. Ct. 1850 (2016).

There can be no question that SAMs violate Hewitt and Wilkinson by

failing to provide the accused with an opportunity to present evidence to the decision

makes failing to hold any hearing at all, and by failing to require any meaningful review;

"Kangaroo exercises" simply rubber stamp and renew the SPAs each year for the same

reasons without review. SPAs violate the Fifth Amendment and are unconstitutional.

2. SPAs violate the doctrine of separation of powers

For the same reasons as explained above, SPAs also violate the doctrine of

Separation of powers in that they permit the executive bureaucracy to essentially bypass

both the legislative and judicial branches to impose any arbitrary sentence upon whomever

it so desires; the executive branch, particularly the Attorney General, functions as Congress,

Judges, Jury, and executioner. Both 28 CFR § 501.2 and 501.3 grant the Attorney General

unlimited power to discriminate choose any specific individuals that he dislikes and

impose any additional conditions of confinement upon that individual, including forbes

indefinitely. The AG can and does institute SPAs upon individuals based solely on the

unproven indictments against them; The government routinely imposes SPAs against those

accused of crimes against the government itself.

Both 28 CFR § 501.2 and 501.3 are facially unconstitutional federal regulations.

B. Infinite Solitary Confinement is Unconstitutional

["][The prisoner] is led to the cell from which he never again comes forth,

until his whole term of imprisonment has expired. He never hears of wife and children; home or friends; the life or death of any single creature, he sees the prison-officers, but with that exception he never looks upon a human countenance, or hears a human voice. He is a man buried alive; to be dug out in the slow round of years; and in the meantime dead to ~~everything~~ everything but torturing anxieties and horrible despair."

Charles Dierens, *American Notes for General Circulation* 148 J. Whitley and A. Goldman eds. 1973.

1. Medical experts, authors, historians, politicians and organizations around the world condemn solitary confinement as cruel torture

"The human toll wrought by extended terms of isolation long has been understood,

and questioned, by writers and commentators," Davis v. Ayala, 576 U.S. 257, 287 (2015)

(Kennedy J., concurring).

"Very few men are capable of estimating the immense amount of torture and agony

which this dreadful punishment protracted for years, inflicts upon the sufferers... I hold this slow and daily tapering with the mysteries of the brain to be immeasurably worse than any

to torture of the body... because its wounds are not upon the surface, and it exerts few cries

human ears can hear" Charles Dickens, American Notes for General Circulation at 123-24.

French historian Alexis de Tocqueville added that solitary "denounces the victims incessantly

and unworthily; it does not reform it kills"

There are many organizations that have called for an end to this inhumane torture.

Indeed the United Nations' Nelson Mandela Rules states that anything over 15 consecutive

days in isolation is torture. The American Bar Association concurs, and passed a resolution

in early 2018 that called on state officials to limit the use of solitary confinement, and

allow it "only in exceptional cases as a measure of last resort, where less restrictive settings

are insufficient, and for no longer than necessary to address the specific reason for placement

typically not to exceed 15 consecutive days." Additionally, the National Commission on

Correctional Health (NCH) adopted new standards for solitary confinement in April

2011, while the year before the ASCA issued a report critical of long-term segregation.

The NCH states that "[p]rolonged (greater than 15 consecutive days) solitary confinement

is cruel, inhuman, and degrading treatment, and harmful to an individual's health."

Many experts from the legal and medical fields have come forward calling for an end to this inhumane torture. President Barack Obama ended the use of solitary confinement for juveniles in 2016, citing segregation's "devastating, lasting psychological consequences." David Fathi, director of the ACLU's National Prison Project, said "Solitary confinement is one of the most damaging things that you can do to a human being. People lose their ability to interact with humans, because they've been deprived" of social contact.

Dr. Bruce Williams, criminal justice and health program director and professor at the University of California at San Francisco Medical School, said solitary confinement creates "ubiquitously unhealthy" conditions and causes or worsens chronic mental health issues, especially dementia—common among older prisoners—which leads them to violate rules that land them back in a recurring cycle.

Dr. Mark Lunningham, an expert in clinical and forensic psychology notes "that the associated adverse psychological reactions to solitary confinement detailed in their literature includes psychotic-spectrum symptoms of paranoia and hallucinations; mood-spectrum symptoms of depression, with decreased appetite and sleep disturbance, fatigue and lethargy, and suicidal

ileation; anxiety spectrum symptoms of subjective distress, feelings of impending doom, somatic complaints, dissociative experience, and ruminative thoughts; effective liability characterized irritability, rage, and aggressive impulses; and behavioral self-control symptoms of aggression, assaults, and self-harm^{Mytilation}." Porter v. Clarke, 923 F.3d 348, 356 (4th Cir. 2019).

Dr. Michael Mendricks expert in forensic and clinical psychology reports that "common adverse psychological effects of isolation housing in prison and jail settings (i.e., typically found to have been experienced by at least half of inmates in these settings) include anxiety, headaches, and other psychosomatic symptoms, lethargy, insomnia, decreased appetite, and nightmares." *Id.*

New Mexico's Center on Law and Poverty's legal director Gail Evans stated "[H]olding people for months in solitary confinement is contrary to any notion of rehabilitation, or reintegration. The evidence is clear that isolation results in cognitive deterioration, which can be irreversible, meaning that our prisons and jails are inflicting brain damage on our citizens."

Dr. Bianca McDermott former head of the New Mexico Corrections Department's

Behavioral Health Bureau stated 'I have personally seen inmates kept in solitary confinement in New Mexico for years. The worst outcome, of course, is suicide. Other inmates seem to manifest extreme rage, paranoia and impulsivity. Others become lethargic, passive, and seem to have lost social skills and coping mechanisms.

Harvard psychiatrist Dr. Stuart Grassian is a renowned expert and academic who has published several papers illustrating the ill effects of solitary confinement. His first paper in the early 1980s noted what he named Special Housing Unit (SHU) Syndrome; he concludes "[i]t's unassailable that solitary confinement causes psychiatric harm." In

Reynolds v. Annone, 402 F. Supp. 3d 3, 17 (D. Conn. 2019), Dr. Grassian described similar conditions to Pettibone's as "psychologically toxic, cruel, ineffective, and counterproductive."

Dr. Grassian noted that inmates like Pettibone, who do not have a pre-existing mental illness, are placed at great risk of psychiatric decompensation in solitary confinement leading to self-harm and suicidal tendencies. "After controlling for the presence of mental illness, there remains overwhelming evidence that solitary confinement causes many inmates to become suicidal and self-destructive, on average demonstrating that such acts

are about seven times as prevalent among those housed in solitary as they are among those housed in general population." *Id.*

As the mental effects of solitary confinement garner national attention, calls to abolish or reform its use are increasing nationwide. See, e.g. Editorial Board, Solitary

Confinement is torture. Will the Bureau of Prisons finally stop using it?, *Wash. Post*, July 15, 2017; Joe Hernandez, New Jersey considers restricting the use of solitary confinement

The Rile. Tribune, June 7, 2014. "As of the spring of 2018, legislation to eliminate or to limit restrictive housing for subpopulations had been enacted in California, Colorado,

Washington D.C., and Tennessee, and proposed in several other jurisdictions, including Connecticut, Hawaii, Nebraska, New Jersey, New York, and Virginia." Reforming

Restrictive Housing: The 2018 ASCA-Lyman Nationwide Survey of Time-in-Cell, Yale

Law School 2018, at 88. At least New York has since passed such legislation in 2022.

8. The well-documented deleterious effects of long-term solitary confinement erode a person's sanity and constitute torture.

In recent years, advances in our understanding of psychology and neuroimaging methods have allowed researchers to characterize and quantify the nature

and severity of the adverse psychological effects attributable to prolonged placement of inmates in isolated conditions materially indistinguishable from the challenged conditions implemented through SAINs.

¹Direct studies of the effects of prison isolation have documented a wide range of harmful psychological effects, including increases in negative attitudes and affect, insomnia, anxiety, panic, withdrawal, hypervigilance/hypertoxicity, rumination, cognitive dysfunction, hallucinations, loss of control, aggression, rape, paranoia, hopelessness, lethargy, depression, emotional breakdowns, self-mutilations, and suicidal impulses... There is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects." Craig Haney & Mona Lynch, Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement, 23 N.Y.U. Rev. L. & Soc. Change 477, 531 (1997).

Numerous studies reveal that prolonged detention of inmates in conditions akin to those Mr. Schulte faces also leads to "psychological deterioration," including "declines in mental functioning, difficulties in thinking,

concentration and memory problems, and problems with impulse control."

Jessica Ritzero & Vanja M.K. Stenius, Supreme Prisons: The Rise, Current Practices, and Effect on Inmates, 84 Prison J. 248, 256 (2004). Based on the extensive body of research, scholars have concluded that "solitary confinement has potentially serious psychiatric risks." *Id.* at 256.

The confinement of a "prisoner alone in a cell for all, or nearly all, of the day with minimal environmental stimulation and minimal opportunity for social interaction — can cause severe psychiatric harm." Stuart Grassian, Psychiatric Effects of

Solitary Confinement, 72 Wash. U.J.L. & Pol'y 323, 337 (2006). "[E]ven a few days of solitary confinement will predictably shift the electroencephalogram (EEG) pattern towards an abnormal pattern characteristic of sleep and delirium." *Id.* at 337. Dr.

Grassian confirms that common side effects of solitary confinement includes anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors.

An abundance of clinical literature regarding the psychiatric effects of solitary confinement supports a near-universal conclusion: "The restriction of environmental

stimulation and social isolation associated with confinement in solitary are strikingly toxic to mental-functioning." Id. at 354.

A new study published February 6, 2020 in *The Lancet* public health journal by Cornell professor Christopher Wildeman and Lars Andersen of Denmark's Rock-wool Foundation has documented a link between being placed in solitary confinement and a significant increase in prisoner death rates within five years of release. The study showed two troubling trends; the first, that people who are released from prison are 10 times likelier to die than those who had not been incarcerated; the second, that prisoners who had been placed in solitary confinement for as little as 72 hours were 15 times likelier to die. The connection between solitary confinement and mortality was not invisible before the study. As far back as the 1840s, colonial officials in Tasmania had noted elevated mortality rates among transported male convicts kept in solitary as opposed to the rest of those transported to the colony. More recently, a 2010 North Carolina study found a high mortality rate among released prisoners who had been in solitary confinement.

especially from homicide, suicide, and opioid overdose. What those studies suggested, however, was shown conclusively in the Danish Study.

In summary, "Scientific research, regardless of methodology, has produced strikingly consistent results: the deprivation of meaningful social contact and positive environmental stimulation characterizes if solitary confinement subjects prisoners to grave psychological and physiological harms." Porter at 356.

3. Indefinite solitary confinement violates the Eighth ^{Fifth} Amendment
The Petitioner contends that indefinite solitary confinement violates the Eighth

Amendment. Whether an inmate's conditions of confinement amount to "cruel and unusual punishment" must be measured against "the evolving standards of decency that mark the progress of a maturing society." Estelle v. Gamble, 429 U.S. 97, 102 (1976). "A punishment need not leave scars to be cruel and unusual." Appelbaum, 139 S.Ct. at 6. "Courts and corrections officials must accordingly remain alert to the clear constitutional problems raised by keeping prisoners... in near-total isolation from the living world in what comes perilously close to a penal tomb." Id. at 10 (internal citations and quotation marks omitted).

In deed, as we have demonstrated it is well-documented that long periods of

Solitary confinement can have devastating effects on the mental well-being of a detainee.

Courts have taken note of this growing and extensive body of literature. This literature

simply confirms what this Court suggested a century ago in In re Medley, 134 U.S. 160, 168

(1890): "Years on end of near-total isolation exact a terrible price." Davis v. Ayala, 135 S.Ct. at

2210 (Kennedy, J., concurring).

a. Courts across the country have declared indefinite solitary as cruel and unusual
[T]hat prolonged isolation from social and environmental stimulation increases the

risk of developing mental illness does not strike this Court as rocket science. "McLary v. Kelly, 4

F. Supp. 2d 145, 208 (W.D.N.Y. 1998). "It is obvious that being housed in isolation in a tiny

cell for 23 hours a day for over three decades results in serious deprivations of basic human

needs." ~~Wyllison~~ ^{Wyllison} v. Stalder, 639 F. Supp. 2d 654, 678-79 (M.D. La. 2007). The Hawaii

Supreme Court held that long-term pretrial solitary confinement was unconstitutional. Gordon

v. Measaka-Hirata, 431 P.3d 708 (Hawaii 2018). An expert report about the conditions of

confinement for a death row inmate — whose conditions were far better than Reshmer's —

found them to be "psychologically toxic, cruel, ineffective, and counterproductive."

~~Reynolds v. Arnone~~

Reynolds v. Arnone, 402 F. Supp. 313, 20 D. Conn. Aug. 27, 2019).

b. Federal appellate courts have declared solitary as cruel and unusual punishment. Several Federal Courts of Appeals have held similar conditions to Mr. Schulte's

Inconsistent with contemporary standards of human decency.

The Third Circuit in Williams v. Seig Ra, Dep't of Corr., reached such a

conclusion. 848 F.3d 544 (3d Cir. 2017). After reviewing the "robust body of scientific

research on the effects of solitary confinement" the Third Circuit found a "scientific consensus"

that such confinement "is psychologically painful, can be traumatic and harmful and puts

many of those who have been subjected to it at risk of long-term... damages" and

therefore held that "the deprivations of protracted solitary confinement so exceeds the

typical deprivations of imprisonment as to be the kind of atypical, significant deprivation...."

which can create a "liberty interest." Id. at 566-67 (internal quotation marks omitted).

The Tenth Circuit found that "solitary confinement, even over relatively short periods, renders prisoners physically sick and mentally ill... These harms, which are

persistent and may become permanent, become more severe the longer a person

is exposed to solitary confinement." Grisson v. Roberts, 902 F.3d 1162, 1176-77 (10th Cir. 2016).

The Fourth Circuit overturned previous precedent affirming solitary

confinement as constitutional in Porter v. Clarke, 923 F.3d 348 (4th Cir. 2019)

(rehearing and rehearing en banc denied). The court noted that its prior rulings

upholding conditions of solitary "lacked the benefit of the recent academic literature"

on the effects of prolonged solitary confinement. Id. at 358. It ^{noted the} ~~found that~~ expert

evidence establishing the risks and serious adverse psychological and emotional effects of

prolonged solitary confinement (and the surveys of the scholarly literature supporting that

evidence." Id. at 356. The court concluded that "[t]he challenged conditions of confinement

on Virginia's death row—under which plaintiffs spent, for years between 23 and 24

hours per day alone, in a small... cell with no access to congregate religious, educational,

or social programming—pose a substantial risk of serious psychological and

emotional harm." Id. at 357 (internal quotation marks omitted).

4. Infinite solitary confinement violates the Fifth Amendment
Returner contends infinite solitary confinement imposed through SAMS

violates his rights under the Due Process Clause by depriving him of a protected liberty interest without any meaningful review. To assert a due process claim in connection with a classification decision, Mr. Schulte must show that he had a protected liberty interest in remaining free from the classification and, if he had such an interest that he was deprived of such without affording him the process of law. See Walker v. Fischer, 523 F. App'x 43, 44 (2d Cir. 2013) (summary order) (citing Givens v. Selsley, 738 F.3d 223, 225 (2d Cir. 2014)).

In Sankin v. Conner, 515 U.S. 472 (1995), this Court reexamined the circumstances under which state prison regulations afford inmates a liberty interest protected by the Due Process Clause. Id. at 474. The Court explained that for prisoners, a liberty interest warranting due process protection "will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force... nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Id. at

1484 (internal citation omitted).

'A. Liberty interest

Petitioner has a protected liberty interest in freedom from extreme social isolation; SAMs-imposed solitary is a significant departure from the hardships normally attendant to BOP incarceration. Solitary is imposed indefinitely and without meaningful review.

Wilkinson v. Austin, 545 U.S. 209 (2005) parallels Mr. Schulte's current situation;

He is detained in solitary indefinitely with even more restrictions. There is no opportunity ~~for a hearing, to present evidence, or even to know the reasons for placement.~~ ~~for a hearing, to present evidence, or even to know the reasons for placement.~~ See also Williams, 848 F.3d at 562 ("this indefiniteness contrasts sharply with other common forms of solitary confinement...").

b. Procedural Protections

Petitioner further argues his due process rights were violated when the BOP failed to provide him procedural protections before placing him on SAMs.

See supra, T.A.I. at 9.

~~Accordingly~~

Accordingly, there can be no question that ~~the~~ ^{the} imposition of SAMs and indefinite solitary confinement are unconstitutional

II. PETITION FOR WRIT OF HABEAS CORPUS TO MODIFY
UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT
PURSUANT TO 28 U.S.C. § 2241

Petitioner was moved to⁴ concentration camp in November 2018
and tortured under conditions of confinement worse than any other inmate
in the Western Hemisphere if not the world; Auschwitz is both more
humane and preferable to the American concentration camps managed by
the EOP.

Petitioner is tortured not only through indefinite solitary confinement
but is also exposed to sleep deprivation through 24/7 lighting; the extreme
cold 24/7 with no heating in the winter; 24/7 blasting loud noise through
speakers placed inside torture cages; 24/7 starvation through reduced
food and below required calorie intake.

Petitioner is also banned from any and all forms of entertainment
provided all other inmates: no television; no radio; banned from the institution's
library and all books; banned from regular prison programs; banned from
purchasing any commissary to supplement food, entertainment ^(deck of cards) etc.

Petitioner denied contact family visitation, and significantly reduced phone minutes from 300 to 30. Petitioner denied access to legal materials, contact legal visits, and legal correspondence in violation of the Sixth Amendment. Petitioner mail delayed and restricted in violation of the First Amendment.

Petitioner restricted recreation and all windows so he cannot look outside. Petitioner provided no access to dental or medical care or treatment.

Petitioner is also provided special and non-functioning plumbing: not able to access clean hot water; sink specially configured so must hold down button for water; making washing hands and other hygiene difficult if not impossible.

Petitioner is not provided access to any cleaning supplies. Petitioner not provided any space for legal materials.

Petitioner subject to 24/7 live monitoring through cameras — including when using the toilet; all conversations made by Petitioner subject to FBI monitoring — including visits, phone calls with family and legal calls.

Petitioner also banned from religious services or engaging in religious

practices.

There is no legitimate penological interest in these and other deprivations; they are imposed arbitrarily to punish Petitioner. Confinement conditions violate Due Process Clause of the Fifth Amendment, the First, Fourth, and Sixth Amendments.

There can be no question that conditions do not relate to SAMs, and are imposed with the goal of driving Petitioner to suicide. Accordingly, this court should declare concentration camps and torture unconstitutional, and the arbitrary illegal conditions vacated immediately.

III. PRETRIAL DETAINEES ELIGIBLE FOR HABEAS RELIEF

Petitioner first moved for habeas relief in ²⁰¹⁹~~2020~~. The district court ordered that case administratively closed. See *Schulte v. Attorney General of the United States et al*, 19-CV-3346 (SDNY). So Petitioner filed a second § 2241 Petition in 2020. District Judge Paul Betten entered an order of dismissal claiming Petitioner had no right to file § 2241 Petition as he was under the

supervision of the criminal district court. Judge Detten found he was barred from ~~moving~~ "intervening" in Reithamer's criminal proceeding. See *Schulte v. William Barr*, 20-CV-4244-JPD (SDNY, December 7, 2020 Order of Dismissal). So Mr. Schulte tried a third time — filing for relief in the criminal court. *U.S. v. Schulte*, 17 Cr 548 (SDNY Oct. 453, 456. (see also 447). Judge Crotty found that "the proper vehicle for such a petition is a separate civil action." Det. 526 at 4. Hence, Judge Detten of the "separate civil action" pointed Mr. Schulte to his criminal case and Judge Crotty of the criminal case pointed Mr. Schulte back to civil court. Judge Crotty even noted in his opinion that this was Mr. Schulte's third such attempt, *Id.*, even highlighting Judge Detten's dismissal, *Id.* at n.4.

Accordingly, the courts have declared that Mr. Schulte has no right to ~~be~~ habeas relief from unconstitutional conditions of confinement because he is too poor to pay an attorney to make the same argument. The Supreme Court should grant cert. and reverse both decisions — declaring that both the criminal and civil courts are required to review and decide pretrial § 2241 habeas petitions.

IV THE POOR HAVE CONSTITUTIONAL RIGHT FOR COURT OF APPEALS TO REVIEW MERITS

Despite the clear legal issues presented by SAMS, solitary confinement, the habeas corpus requested relief from unconstitutional conditions of confinement and the clear issue of no court actually undertaking a review of the issues the Second Circuit should have reviewed the merits. Instead, the Second Circuit noted that Mr. Schulte was poor. They saw he had no paid representative, and the American "justice" system is a pay-to-play fraud after all! The Second Circuit decided to rape Mr. Schulte's constitutional rights because they knew he had no advocate and they could get away with it. Who would stop them? The Supreme Court? It's unlikely any justice or his clerk will even read this.

This Court must emphatically declare that the poor have a right to appellate review too. The Courts of Appeal cannot simply summarily dismiss all pro se appeals.

V COURT SHOULD AT LEAST REVERSE AND ORDER COURT OF APPEALS
TO CONSIDER BRIEFS AND MERITS OF ARGUMENTS
If the Court decides not to grant cert on any of the four issues

presented it should at least reverse and order the Second Circuit to do its
job - to consider Mr. Schulte's Briefs and the merits of his arguments.

No court has considered Mr. Schulte's habeas petition - every district court and
court of appeals it was put before simply dismissed it without consideration.

As a result, Mr. Schulte has suffered extreme torture at an American
concentration camp for over five years and is quickly losing his mind.

This is Mr. Schulte's last attempt to find justice - to put an end to his indefinite
fortune. This ~~is~~ is his last hope. Should the court refuse relief, Mr. Schulte will
certainly finally kill himself from this maddening torture and become yet

another meaningless statistic - another man murdered by the American "justice"
system. There is only so much torture any man can take.

CONCLUSION

For those reasons provided herein, this Court should grant certiorari, or alternatively reverse and remand, ordering the Court of Appeals to consider the merits of the Petitioner's Briefs.

Respectfully Submitted,

Joshua Adam Schulte, pro se
3/2/23

Josh Schulte