

No. 17-8768

IN THE
Supreme Court of the United States

OSIEL RODRIGUEZ,

Petitioner

v.

CHARLES RATLEDGE,

Respondent.

On Petition for A Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

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

DANIEL M. GREENFIELD

Counsel of Record

RODERICK & SOLANGE

MACARTHUR JUSTICE CENTER

NORTHWESTERN UNIVERSITY

PRITZKER SCHOOL OF LAW

375 E. Chicago Ave.

Chicago, IL 60611

(312) 503-8538

daniel-greenfield@law.northwestern.edu

Attorney for Petitioner

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INTEREST OF AMICI CURIAE¹

Amici curiae are experts in psychiatry, medicine, psychology, and related fields who have spent decades studying solitary confinement and its psychological and physiological effects on prisoners. Based on their own research as well as an assessment of the professional literature, *amici* have concluded that solitary confinement inflicts grave damage on prisoners' mental and physical health by depriving them of two basic human needs: adequate social contact and positive environmental stimulation.

Several of the *amici* joined a prior amicus brief to the Court in *Wilkinson v. Austin*, 545 U.S. 209 (2005). That brief set forth substantial scientific literature, research and studies, and historical data documenting the grave psychiatric and psychological risks to prisoners placed in solitary confinement. *Amici* submit this brief to provide the Court with an updated review of these sources, which continue to demonstrate that solitary confinement inflicts severe psychological and physiological harms on prisoners.

This Court's review of solitary confinement at the Administrative Maximum Facility ("ADX") is as

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* state that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, *amici curiae* state that all parties, upon timely receipt of notice of intent to file this brief, have consented to its filing.

necessary as its prior review in *Wilkinson* of the process afforded prisoners in solitary confinement at the Ohio State Penitentiary. Although the solitary confinement conditions prisoners must endure at ADX appear comparable to those at issue in *Wilkinson*, see *Rezaq v. Nalley*, 677 F.3d 1001, 1014–15 (10th Cir. 2012), the court below may have foreclosed the only avenues available to challenge them. First, the Fourth Circuit concluded that conditions claims are not cognizable in federal habeas, *Rodriguez v. Ratledge*, 715 F. App'x 261, 266 (4th Cir. 2018) (per curiam), notwithstanding the fact that this Court suggested in *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1860 (2017), that a *Bivens* suit may not be a vehicle for such challenges. Second, relying on Tenth Circuit precedent, the Fourth Circuit implied that due process rights might only attach to an incarnation of solitary confinement that is “atypical and significant” in comparison to the generally prevailing *solitary confinement* regime. *Rodriguez*, 715 F. App'x at 266 n.3.

The severe adverse consequences of solitary confinement warrant allowing inmates an opportunity to challenge those conditions. Accordingly, *amici* respectfully urge this Court to grant the petition for a writ of certiorari, reverse the court below, and hold that (1) the federal habeas statutes permit challenges to conditions of solitary confinement, and (2) general population, not solitary confinement, illustrates the “ordinary incidents of prison life.”

Amici are the following:

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

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

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

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

SUMMARY OF ARGUMENT

1. Meaningful social interaction and positive environmental stimulation—much like adequate nutrition, medical care, and shelter—are basic human needs essential to physical and psychological health. Regular interaction with others is important to maintaining a connection to reality, and consistent

exposure to positive stimuli and productive tasks is critical to normal cognitive function.

The nearly absolute deprivation of meaningful social interaction and positive environmental stimulation, however, is the defining characteristic of solitary confinement. At ADX, where Petitioner was confined, prisoners spend twenty-three hours of every day alone in a stark cell sealed by a solid steel door. Even during the hour that prisoners are afforded exercise, communal activities are prohibited.

2. Decades of medical and scientific research have established that solitary confinement causes grave psychological and physiological harms. Solitary confinement both exacerbates pre-existing psychological disorders and is itself the genesis of such disorders. These effects range from severe cognitive dysfunction to major depressive disorder. Self-mutilation and suicide are all too common among prisoners in solitary confinement. The physical harms inflicted by solitary confinement are also significant: hypertension and gastrointestinal disorders are frequent afflictions. Worse still, the psychological and physical effects of solitary confinement may be permanent, thereby inhibiting reintegration into social environments such as general population or the free world.

3. Solitary confinement is uniquely dangerous. Research consistently demonstrates that it inflicts psychological and physiological harm significantly exceeding the negative effects of incarceration in general population. One data point is particularly stark: prisoners in solitary confinement account for

50% of all prison suicides despite comprising only 2% to 8% of the United States prison population. Prisoners in solitary confinement also suffer psychological injury at a far greater rate than prisoners in general population.

ARGUMENT

I. Meaningful Social Interaction And Positive Environmental Stimulation Are Essential To Human Health, Yet Their Absence Is The Defining Characteristic Of Solitary Confinement.

Meaningful social interaction and positive environmental stimulation (such as exposure to varying surroundings and participation in productive activities) are no less essential to human health than shelter, nutrition, and medical care. *See* Craig W. 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, 504–07 (1997); Terry A. Kupers, *Waiting Alone to Die*, in LIVING ON DEATH ROW: THE PSYCHOLOGY OF WAITING TO DIE 47, 53 (Hans Toch & James Acker eds., 2018) [hereinafter “*Waiting Alone to Die*”]. This is so because “[s]ocial thinking and sensory interpretation are fundamental brain activities on which a healthy brain thrives.” Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment*, 90 IND. L.J. 741, 755 (2015). The near total absence of meaningful social interaction and positive environmental stimulation, however, is the defining

characteristic of solitary confinement.² See Craig W. Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQUENCY 124, 125–27 (2003) [hereinafter “*Mental Health*”].

Some animals are solitary by nature. Jared Reser, *Solitary Mammals Provide an Animal Model for Autism Spectrum Disorders*, 128 J. COMP. PSYCHOL. 1, 2–3 (2013). Such creatures seek out community infrequently, often for limited purposes like reproduction. *Id.* Humans, by contrast, are a social species. Simon N. Young, *The Neurobiology of Human Social Behavior: An Important but Neglected Topic*, 33 J. PSYCHIATRY & NEUROSCIENCE 391, 391 (2008). Throughout our life span, we require regular meaningful interaction with others. *Id.*; see also Craig Haney, *Restricting the Use of Solitary Confinement*, 285 ANN. REV. CRIMINOLOGY, 290 (2018) [hereinafter “*Restricting the Use*”] (collecting studies). Consistent social contact enables humans to “sustain a sense of identity and to maintain a grasp on reality.” Terry A. Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment’s Sake*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL

² The essential attributes of solitary confinement are similar across all of its incarnations, including “administrative segregation,” “disciplinary segregation,” “security housing,” “special management,” and the “supermax” unit at issue here. See Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 CRIME AND JUSTICE 365, 366 n.1 (2018) [hereinafter “*Systematic Critique*”]. For the sake of simplicity, therefore, the phrase “solitary confinement” is employed throughout this brief.

CRIME AND JUSTICE STUDIES 213, 215 (Bruce Arrigo & Heather Bersot eds., 2013) [hereinafter “*Isolated Confinement*”]; *see also, e.g.*, Haney, *Restricting the Use, supra*, at 296. And the “relationship between connectedness to others and physical and mental health” is well-documented in the scientific literature. Haney & Lynch, *supra*, at 504–05.

Likewise, exposure to positive and diverse stimuli is critical to psychological and physical well-being. *See* Haney, *Restricting the Use, supra*, at 294–95 (collecting studies). Such exposure stimulates the brain, permitting us to “maintain[] an adequate state of alertness and attention.” Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL’Y 325, 330 (2006) [hereinafter “*Psychiatric Effects*”]. In contrast, an “unchanging monotonous environment . . . deprives the sensory organs of normal levels of stimulation.” Bennion, *supra*, at 759. Indeed, within days of a prisoner’s solitary confinement, brain scans may reflect “abnormal pattern[s] characteristic of stupor and delirium.” Grassian, *Psychiatric Effects*, at 330–31. Acceptable executive function also depends on adequate positive environmental stimulation. *See, e.g., id.* at 346.

Notwithstanding the scientific consensus that meaningful social interaction and positive environmental stimulation are essential to human health, their absence is the hallmark of solitary confinement, including at ADX. The “most restrictive” federal prison and the “only facility of its kind,” *Rezaq*, 677 F.3d at 1005, ADX has been described by one

former warden as “a clean version of hell.” Scott Pelley, *Supermax: A Clean Version of Hell*, CBS NEWS (Oct. 14, 2007) (quoting Robert Hood, the former warden of ADX Supermax).³ ADX, former warden Hood observed, “is a far more stark environment than any other [federal] prison,” David Abel, *Colorado Prison ‘a High-Tech Version of Hell’*, BOS. GLOBE (Apr. 26, 2015),⁴ and, indeed, “not designed for humanity.” Mark Binelli, *Inside America’s Toughest Federal Prison*, N.Y. TIMES (Mar. 26, 2015).⁵ Likewise, the Tenth Circuit has concluded that “[t]he conditions at ADX are undeniably harsh.” *Rezaq*, 677 F.3d at 1014.

At ADX, prisoners are confined to an “unquestionably small and stark” cell for twenty-three hours a day. *Id.* at 1015. A double set of sliding metal doors, the outer pair of which is solid steel, and thick concrete walls inhibit communication with other prisoners on the cell block. Ray Sanchez & Alexandra Field, *What’s Life like in Supermax Prison?*, CNN (June 25, 2015).⁶ “[S]hout[ing] through” the double doors, which is prohibited, appears to be the primary method by which prisoners attempt to communicate with other prisoners from their cell. *Rezaq*, 677 F.3d at 1015. Some prisoners have also reportedly tried to

³ <https://www.cbsnews.com/news/supermax-a-clean-version-of-hell/>.

⁴ <https://www.bostonglobe.com/metro/2015/04/25/the-alcatraz-rockies/a0BWrZjRpmQatMsfm8FUOL/story.html>.

⁵ <https://www.nytimes.com/2015/03/29/magazine/inside-americas-toughest-federal-prison.html>.

⁶ <https://www.cnn.com/2015/06/25/us/dzhokhar-tsarnaev-supermax-prison/index.html>.

communicate with other prisoners by “yelling through vents and their cell’s plumbing.” Abel, *supra*.

ADX prisoners’ communication with the outside world is similarly limited. They may mail letters and are permitted a maximum of “five ‘no contact’ social visits and two fifteen-minute phone calls per month.” *Rezaq*, 677 F.3d at 1015. Because of the prohibition on contact visits, the only physical human contact an ADX prisoner might experience for years is limited to strip searches, medical examinations, haircuts and the application of physical restraints for escort. Abel, *supra*; see also Bennion, *supra*, at 743, 753; Haney, *Mental Health*, *supra*, at 126; Thomas Hafemeister & Jeff George, *The Ninth Circle of Hell*, 90 DENV. U. L. REV. 1, 17 (2012).

Nor do prisoners at ADX have meaningful social interactions with prison staff. See Binelli, *supra*. At times, prisoners in solitary confinement may not even see guards while outside their cells because surveillance may be accomplished by computerized tracking, cameras, intercoms and automated doors. Bennion, *supra*, at 753. Although guards deliver meals to prisoners, that contact is far from meaningful: ADX inmates receive meals through a chuck hole that inhibits “face-to-face human interaction.” Binelli, *supra*.

The effects of social isolation at ADX are exacerbated both by the paucity of positive stimuli and by forced idleness. The cells at ADX are a cramped 7’ by 12’, containing “a small sink/toilet unit, a concrete stool and table, and concrete bed.” Robert Windrem, *Worse than Guantanamo? Terror Suspects*

Face Infamous Colorado Supermax, NBC NEWS (Apr. 19, 2016).⁷ As a result, prisoners “sleep, eat, and defecate . . . in spaces that are no more than a few feet apart.” *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 72, 75 (2012) (statement of Craig Haney) [hereinafter “Haney Statement”]. There is no meaningful break from this monotony: at ADX, in-cell possessions and activities are strictly limited and prisoners are permitted only a small, black and white television on which they may watch limited content. Abel, *supra*. Further contributing to the tedium, the cell’s single 4-inch-wide window is designed to prevent prisoners from seeing anything beyond the prison walls. *See, e.g., Binelli, supra; Windrem, supra.*

Theoretically, prisoners are to be afforded one hour outside of their cells each day for exercise. However, “recreation is frequently cancelled due to staff shortages, mass shakedowns, or adverse weather.” *Rezaq*, 677 F.3d at 1005. And when the prisoner is allowed outside of the cell, the single hour does little to ameliorate the deprivation of positive stimuli. After an invasive strip search,⁸ *see Pelley, supra*, prisoners

⁷ <https://www.nbcnews.com/news/us-news/new-prison-would-be-safer-harsher-much-colder-guantanamo-n542741>.

⁸ Correctional facility strip searches have been described elsewhere as requiring a prisoner to “lift and shake his genitalia, . . . bend over, spread his buttocks in the direction of the officer so that he may look at [the prisoner’s] anus, then made to squat and cough, and afterwards [the prisoner is] hand cuffed behind

may exercise alone in a “windowless cell with a single chin-up bar,” Binelli, *supra*, or outside in a concrete recreation “tub” designed to restrict views. Ed Pilkington, *ADX Florence Supermax Prison: the Alcatraz of the Rockies*, THE GUARDIAN (Apr. 10, 2012). One prisoner likened the outdoor recreation area at ADX to a “deep, empty swimming pool.” Abel, *supra*. While exercising inside it, prisoners “remain[] alone in fenced-in areas slightly larger than their cells.” *Rezaq*, 677 F.3d at 1015. Such exercise cages “are so constraining they are often referred to as ‘dog runs.’” Haney, *Mental Health*, *supra*, at 126. After only an hour, the prisoner—shackled with stomach chains, leg irons and handcuffs—returns to his cell. Sanchez, *supra*.

Like group exercise, congregate worship and other communal activities are prohibited. *See, e.g.*, Windrem, *supra* (group prayer); Charles Montaldo, *Maximum Security Federal Prison: ADX Supermax*, THOUGHTCO. (Apr. 5, 2018) (group classes).⁹ The cumulative effect of such conditions is “near-total” isolation and idleness. *See* Haney, *Mental Health*, *supra*, at 126.

II. Solitary Confinement Subjects Prisoners To Profound Psychological And Physiological Harms.

Justice Kennedy has written of the “terrible price” imposed by solitary confinement. *Davis v. Ayala*, 135

his back[.]” *Incumaa v. Stirling*, 791 F.3d 517, 522 (4th Cir. 2015), as amended (July 7, 2015).

⁹ <https://www.thoughtco.com/adx-supermax-overview-972970>.

S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring). And with good reason. Decades of scientific research, regardless of methodology, have produced “strikingly consistent” results: the deprivation of meaningful social contact and positive environmental stimulation characteristic of solitary confinement subjects prisoners to profound psychological and physiological harms. *See, e.g.*, Haney, *Systematic Critique, supra*, at 367–68, 370–75 (collecting studies); Grassian, *Psychiatric Effects, supra*, at 335–38; Haney & Lynch, *supra*, at 515–24, 530. The onset of such injuries is swift, often occurring within ten days.¹⁰ Kenneth Appelbaum, *American Psychiatry Should Join the Call to Abolish Solitary Confinement*, 43 J. AM. ACAD. PSYCHIATRY & L. 406, 410 (2015). What’s more, such consequences may be permanent. *See, e.g.*, Haney, *Mental Health, supra*, at 137–41.

Common psychological injury from solitary confinement includes depression, hallucination, cognitive dysfunction, anxiety, paranoia, insomnia, withdrawal, lethargy, stimuli hypersensitivity, and panic. *See, e.g.*, Kupers, *Waiting Alone to Die, supra*, at 53; Haney, *Mental Health, supra*, at 130–31, 134 (collecting more than twenty studies); Grassian, *Psychiatric Effects, supra*, at 335–36, 349, 370–71; Kupers, *Isolated Confinement, supra*, at 216; Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 488–90 (2006). And life-threatening behavior, such as self-mutilation and

¹⁰ Mr. Rodriguez has been consigned to a solitary confinement cell for approximately two years.

suicidal ideation, is all too common among prisoners in solitary confinement. Grassian, *Psychiatric Effects*, at 349; Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450, 1453 (2006). Describing this phenomenon to Congress, one *amici* provided examples of one prisoner who “used a makeshift needle and thread from his pillowcase to sew his mouth completely shut,” and another who “amputated one of his pinkie fingers and chewed off the other, removed one of his testicles and scrotum, sliced off his ear lobes, and severed his Achilles tendon.” Haney Statement, *supra*, at 80–81.

Physiological injury, too, is a consistent effect of solitary confinement, and commonly includes hypertension, heart palpitations, gastrointestinal disorders, headaches, and weight loss. Haney, *Mental Health*, *supra*, at 133; Smith, *supra*, at 488–90. Isolation also causes “increased activation of the brain’s stress systems, vascular resistance, and blood pressure, as well as decreased inflammatory control, immunity, sleep salubrity, and expression of genes regulating glucocorticoid responses and oxidative stress.” Bennion, *supra*, at 762 (quoting John T. Cacioppo & Stephanie Ortigue, *Social Neuroscience: How a Multidisciplinary Field Is Uncovering the Biology of Human Interactions*, CEREBRUM, Dec. 19, 2011, at 7–8). Even the mere perception of social isolation is associated with an increased likelihood of dementia. *See id.* at 755 (summarizing studies).

Physical injury also occurs at the subclinical level. There is a growing consensus in the fields of psychology and psychiatry that a general distinction

between psychological illness and physical illness is no longer accurate or appropriate. Advances in neurobiology, brain chemistry, and neuroimaging technologies have established that the types of traumatic psychological harms associated with solitary confinement often trigger detectable changes in neural pathways and the morphology and neurochemistry of the brain. These changes can be accurately characterized as a physical injury or illness because they adversely affect the nature and functioning of the sufferer's brain. *See generally* Ajai Vyas et al., *Effect of Chronic Stress on Dendritic Arborization in the Central and Extended Amygdala*, 965 BRAIN RESEARCH 290, 290–94 (2003); Carol Schaeffer, “Isolation Devastates the Brain”: *The Neuroscience of Solitary Confinement*, SOLITARY WATCH (May 11, 2016).¹¹

Accounts of prisoners of war and hostages subjected to solitary confinement bear out this research. Senator John McCain, who was held in solitary confinement in Vietnam, describes it as “crush[ing] your spirit and weaken[ing] your resistance more effectively than any other form of mistreatment.” Richard Kozar, JOHN MCCAIN (OVERCOMING ADVERSITY) 53 (2002). Other American soldiers imprisoned in Vietnam characterized solitary confinement as “among the most serious problems” they faced. John E. Deaton et al., *Coping Activities in Solitary Confinement of U.S. Navy POWs in Vietnam*, 7 J. APPLIED SOC. PSYCHOL. 239, 241 (1977). Terry

¹¹ <http://solitarywatch.com/2016/05/11/isolation-devastates-the-brain-the-neuroscience-of-solitary-confinement/>.

Anderson, an American journalist captured and held hostage in Lebanon for seven years, likewise reported that, after just weeks in solitary confinement, his mind went “dead.” Atul Gawande, *Hellhole*, THE NEW YORKER (Mar. 30, 2009).¹² After three years in solitary confinement, Anderson began slamming his head against a wall. *Id.* Later, he feared he would “lose control completely.” *Id.* It is no surprise that solitary confinement is “among the most frequently used psychological torture techniques.” Haney & Lynch, *supra*, at 508.

The adverse effects of solitary confinement may persist for decades after prisoners are released into a less restrictive environment such as general population or the community. *See, e.g.*, Haney, *Restricting the Use*, *supra*, at 297; Terry A. Kupers, *The SHU Post-Release Syndrome: A Preliminary Report*, 17 CORRECTIONAL MENTAL HEALTH REPORT 81, 92 (March/April 2016). For example, prisoners may continue to endure symptoms of post-traumatic stress and anxiety disorders, suffer from cognitive impairments and a pervasive sense of hopelessness, and experience lasting personality changes such as obsessive-compulsive disorder and emotional instability. *See, e.g.*, Stanford Univ. Human Rights in Trauma Mental Health Lab, *Mental Health Consequences Following Release from Long-Term Solitary Confinement in California: Consultative Report Prepared for the Center for Constitutional*

¹² <http://www.newyorker.com/magazine/2009/03/30/hellhole>.

Rights 15–25 (2017);¹³ Grassian, *Psychiatric Effects*, *supra*, at 353. Researchers at NASA reached a similar conclusion, finding that even forty years after release from solitary confinement “symptoms of anxiety, confusion, depression, suspiciousness and detachment from social interactions” may remain. Bennion, *supra*, at 759–60 (internal quotations omitted); *see also, e.g.*, Redacted Expert Rep. of Craig Haney at 29, *Ashker v. Brown*, No. 4:09 CV 05796 CW (N.D. Cal. Mar. 12, 2015), [hereinafter “Haney Report”];¹⁴ Smith, *supra*, at 496 (collecting studies). Physical contact, too, may remain stressful long after solitary confinement is halted. Haney & Lynch, *supra*, at 568.

Such psychological dysfunction may be disabling forever. Haney, *Mental Health*, *supra*, at 137–41. Because solitary confinement can precipitate a transformation in emotion, conduct, personality, and cognition, those subjected to it may be permanently ill-suited to a less restrictive life. Grassian, *Psychiatric Effects*, *supra*, at 332–33. As but one example, Kalief Browder, who spent 17 months in solitary confinement, attempted suicide twice within six months of his release. Jennifer Gonnerman, *Before the Law*, THE NEW YORKER (Oct. 6, 2014).¹⁵ Mr. Browder described himself as “mentally scarred” and

¹³ https://handacenter.stanford.edu/sites/default/files/publications/mental_health_consequences_following_release_from_long-term_solitary_confinement_in_california.pdf.

¹⁴ https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted_Haney%20Expert%20Report.pdf

¹⁵ <http://www.newyorker.com/magazine/2014/10/06/before-the-law>.

fearful that the “things that changed” about his personality “might not go back” with time. *Id.* Less than two years later, Mr. Browder hanged himself. Jennifer Gonnerman, *Kalief Browder, 1993-2015*, THE NEW YORKER (June 7, 2015).¹⁶

A small minority of researchers have asserted that solitary confinement is not dangerous. See Robert D. Morgan et al., *Quantitative Syntheses of the Effects of Administrative Segregation on Inmates’ Well-Being*, 22 PSYCHOL. PUB. POL’Y & L. 439 (2016); Maureen L. O’Keefe, *Reflections on Colorado’s Administrative Segregation Study*, 278 NAT’L INS. JUST. J. 1 (2017). But these conclusions are at odds with the overwhelming scientific consensus that has established the significant harms caused by solitary confinement. See e.g., Haney, *Systematic Critique*, *supra*, at 369–70. The conclusions are also based on fatally flawed methodologies. See, e.g., *id.*; Stuart Grassian & Terry A. Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, 13 CORRECTIONAL MENTAL HEALTH REP. 1, 11 (2011). Justice Breyer has it right: it is “well documented that . . . prolonged solitary confinement produces numerous deleterious harms.” *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting).

III. The Damage Imposed By Solitary Confinement Is Unique To Solitary Confinement, And Is Extreme In

¹⁶ <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>.

**Comparison To The Effects Of
Incarceration In General Population.**

In *Wilkinson*, this Court determined that the imposition of solitary confinement in Ohio inflicted an atypical and significant hardship on prisoners “under any plausible baseline.” 545 U.S. at 223. Research predating and postdating *Wilkinson* demonstrate that the Court was correct. While incarceration is not conducive to optimal psychological and physiological health, research establishes that solitary confinement is uniquely dangerous. Studies, both in the United States and abroad, consistently demonstrate that solitary confinement causes psychological and physiological harm that is extreme in comparison to that endured by prisoners in general population. *See, e.g.,* Haney, *Restricting the Use, supra*, at 292–93. In fact, “[n]early every scientific inquiry into the effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies.” Appelbaum, *supra*, at 410 (quoting David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 AM. J. PUB. HEALTH 18, 21 (2015)).

In one study of California prisoners, researchers examined prisoners in solitary confinement and in general population for psychological decline. Although a meaningful percentage of general population prisoners reported “distress and suffering . . . there was absolutely no comparison to the level of suffering and distress” experienced by prisoners in solitary

confinement. Haney Report, *supra*, at 81. Instead, “[o]n nearly every single specific dimension [] measured, the [solitary confinement] sample was in significantly more pain, were more traumatized and stressed, and manifested more isolation-related pathological reactions.” *Id.* at 81–82. Other studies have similarly concluded that prisoners “in solitary confinement suffered significantly more both physically and psychologically than the prisoners in the [general population] control group.” Smith, *supra*, at 477. And a study in Denmark determined that prisoners who spent more than four weeks in solitary confinement were twenty times more likely to require psychiatric hospitalization than prisoners in general population. Bennion, *supra*, at 758 (citing Dorte Maria Sestoft, et al., *Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody*, 21 INT’L J.L. & PSYCHIATRY 99, 103 (1998)).

Suicide and self-mutilation are also disproportionately high among prisoners in solitary confinement. Haney, *Restricting the Use*, *supra*, at 294 (collecting studies); Grassian & Kupers, *supra*, at 1. Although prisoners in solitary confinement comprise only 2% to 8% of the United States prison population, they account for 50% of all suicides by prisoners. Grassian & Kupers, *supra*, at 1. For example, in a Maine prison “almost every prisoner in the isolation unit had attempted suicide.” Haney & Lynch, *supra*, at 518. And a national survey of jail suicides across a two-year period revealed that two-thirds of suicides were committed by detainees subjected to solitary confinement, causing researchers to designate solitary confinement one of three “key indicators of

suicidal behavior.” Lindsay M. Hayes & Joseph R. Rowan, *National Study of Jail Suicides: Seven Years Later*, 60 PSYCH. Q. 7, 23 (1989). Non-fatal self-mutilation statistics are no less dramatic. During an eight-year period, nearly half of all self-mutilation incidents in the North Carolina prison system occurred in solitary confinement. *Id.* at 525. In Virginia, the data is strikingly similar. *Id.* And in New York City jails, prisoners in solitary confinement were seven times more likely than prisoners in general population to engage in self-mutilation. *See* Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 445 (2014). Even data from the flawed Colorado Study showed higher rates of suicidal and self-destructive behavior among prisoners in solitary confinement than among a comparable population of prisoners in general population. *See* Grassian & Kupers, *supra*, at 7–8.

Prisoners consigned to solitary confinement are also much more likely to suffer from mental illness than prisoners in general population. For example, researchers conducting a comprehensive examination of prisoners in Washington State concluded that mental illness was twice as common in solitary confinement. Hafemeister & George, *supra*, at 46–47. Researchers in Denmark concluded that psychiatric disorders among prisoners in solitary confinement for three months or more was three times more common than among the general population. Smith, *supra*, at 477–78. Even for solitary confinement stints shorter than three months, the disparity remained profound. *Id.* (showing 200% increase in psychiatric disorders

among prisoners relegated to solitary confinement for fewer than three months). Numerous other studies have reached virtually identical conclusions. *See* Hafemeister & George, *supra*, at 46–47; Smith, *supra*, at 477–78.

To be sure, prisoners with mental illness are more likely to be placed in solitary confinement. *See, e.g.*, Haney, *Mental Health, supra*, at 142–43. The disproportionate frequency of mental illness among prisoners in solitary confinement, however, cannot be attributed to preexisting mental illness alone. Rather, solitary confinement results in “acute mental illness in individuals who had previously been free of any such illness.” *See* Grassian, *Psychiatric Effects, supra*, at 333. In this respect, Justice Kennedy’s admonition that solitary confinement “will bring you to the edge of madness, perhaps to madness itself,” *Ayala*, 135 S. Ct. at 2209 (Kennedy, J., concurring), is all too accurate.

CONCLUSION

For the aforementioned reasons, the Court should grant the petition for a writ of certiorari, reverse the court below, and hold that (1) conditions of solitary confinement challenges are cognizable in habeas, and (2) general population is the baseline against which departures from the “ordinary incidents of prison life” must be measured.

Respectfully Submitted,

DANIEL M. GREENFIELD*

Counsel of Record

RODERICK AND SOLANGE

MACARTHUR JUSTICE CENTER

NORTHWESTERN UNIVERSITY PRITZKER

SCHOOL OF LAW

375 E. Chicago Ave.

Chicago, IL 60611

(312) 503-8538

daniel-greenfield@law.northwestern.edu

*Harvard Law School student Benjamin Gunning assisted with the preparation of this brief.