No. 21-1065

IN THE

Supreme Court of the United States

DENNIS WAYNE HOPE,

Petitioner,

v.

TODD HARRIS, CHAD REHSE, LEONARD ESCHESSA, JONI WHITE, KELLY ENLOE, MELISSA BENET, B. FIVEASH,

Respondents.

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

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

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INTERESTS OF *AMICI CURIAE*[1]

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

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

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[1] Under Supreme Court Rule 37.2(a), counsel for *amici* provided notice to all parties at least ten days prior to the due date, and all parties granted consent. Pursuant to Rule 37.6, *amici* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

[2] *See, e.g.*, *Glossip* v. *Gross*, 576 U.S. 863, 926 (2015) (Breyer, J., dissenting) (citing scholarship by Dr. Craig Haney and Dr. Stuart Grassian); *Davis* v. *Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring) (citing scholarship by Dr. Grassian); *Apodaca* v. *Raemisch*, 139 S. Ct. 5, 9 & n.8 (2018) (Sotomayor, J., respecting denial of certiorari) (citing scholarship by Dr. Grassian); *Brown* v. *Plata*, 563 U.S. 493, 518 (2011) (citing scholarship by Dr. Haney).

especially for prisoners—like Mr. Hope—who already suffer from mental health issues. *Amici* also believe that—based on this Court's precedent and on the overwhelming scientific consensus about solitary confinement's harmful effects—Mr. Hope's allegations that he has spent over twenty-three years (now twenty-seven years) in solitary confinement suffice to state an Eighth Amendment claim. See *Bucklew* v. *Precythe*, 139 S. Ct. 1112, 1123–24 (2019); *Hutto* v. *Finney*, 437 U.S. 678, 686–87 (1978).

Amici are the following:

Lauren Brinkley-Rubinstein, Ph.D., is Associate Professor in the Department of Social Medicine and the Center for Health Equity Research at the University of North Carolina at Chapel Hill. She has studied the health impact of incarceration for the last fifteen years and has shown that any amount of solitary confinement is associated with a higher risk of untimely death after release.

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

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

Angela Hattery, Ph.D., is Professor of Women and Gender Studies at the University of Delaware. She and Professor Smith (below) are coauthors of *Way Down in*

the Hole: Race, Intimacy, and the Reproduction of Racial Ideologies in Solitary Confinement (forthcoming 2022).

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

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

Earl Smith, Ph.D., is Emeritus Distinguished Professor of American Ethnic Studies and Sociology at Wake Forest University and is currently teaching classes in Sociology, African and African American Studies, and Women & Gender Studies at the University of Delaware. He is currently completing work on a three-year project examining the living and working conditions in solitary confinement units in a state prison system.

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

INTRODUCTION AND SUMMARY OF ARGUMENT

More than a century ago, this Court first observed that solitary confinement—even for short periods—causes prisoners to become "violently insane." *In re*

Medley, 134 U.S. 160, 168 (1890). *Amici*'s decades of research and scholarship confirm what this Court observed long ago: Solitary confinement imposes an "immense amount of torture and agony" on prisoners. *Apodaca* v. *Raemisch*, 139 S. Ct. 5, 10 (2018) (Sotomayor, J., respecting denial of certiorari); see *Davis* v. *Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring) ("[R]esearch still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price." (citing Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325 (2006))).

Over the past 150 years, scientists have frequently studied the psychological and physical effects of solitary confinement. And in nearly *every* instance, these studies have "concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies." Kenneth L. Appelbaum, *American Psychiatry Should Join the Call to Abolish Solitary Confinement*, 43 J. Am. Acad. Psychiatry & L. 406, 410 (2015) (quoting David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, 105 Am. J. Pub. Health 18, 21 (2015)).

Because of these severe, debilitating effects, this Court has held that solitary confinement can violate the Eighth Amendment's prohibition on "cruel and unusual punishments." *Hutto* v. *Finney*, 437 U.S. 678, 685 (1978). Mr. Hope's allegations that prison officials have subjected him to indefinite solitary confinement for over twenty-seven years should have been more than enough to state a claim under the Eighth Amendment. See *Bucklew* v. *Precythe*, 139 S. Ct. 1112, 1123–24 (2019); cf. *Ruiz* v. *Texas*, 137 S. Ct. 1246, 1247 (2017) (Breyer, J., dissenting from application for stay

of execution) ("[E]xtended solitary confinement alone raises serious constitutional questions.").

But the Fifth Circuit rejected Mr. Hope's Eighth Amendment claim out of hand. The court spent all of two sentences discussing this claim—both of which cited an opinion from this Court that did not involve solitary confinement. Pet. App. 17a n.5 (quoting *Hutto*, 437 U.S. at 685). The Fifth Circuit ignored this Court's precedents and failed to acknowledge decades of scientific research establishing that long-term solitary confinement is exceptionally—and uniformly—detrimental to prisoners' mental and physical health. This Court's precedent and the scientific evidence demand more.

In short, the Fifth Circuit's decision to dismiss Mr. Hope's Eighth Amendment claim at the threshold conflicts with the long-established scientific consensus. More than a century ago, the scientific community established—and this Court recognized—that long-term solitary confinement poses risks and harms far beyond what a prisoner faces in the general population. See *In re Medley*, 134 U.S. at 168. Yet in the Fifth Circuit's view, as a matter of law, long-term solitary confinement can *never* state a claim under the Eighth Amendment unless there are also allegations that the conditions were "unsanitary." That is wrong. Nothing in this Court's precedent endorses that view, and over a century of scientific research flatly contradicts it.

ARGUMENT

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

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

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

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

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

and attention." Grassian, *Psychiatric Effects*, *supra*, at 330; Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365, 374–75 (2018).

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

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

Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?, *in* The Routledge Handbook of International Crime and Justice Studies 213, 215–16 (Bruce A. Arrigo & Heather Y. Bersot eds., 2014). These sounds do nothing to alleviate solitary confinement's harmful effects. If anything, they exacerbate the other negative environmental stimuli—the stench of feces and urine, the constant glare of fluorescent lights—that surround a prisoner in solitary confinement. See, *e.g.*, Thomas L. Hafemeister & Jeff George, *The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax Solitary Confinement on Inmates with a Mental Illness*, 90 Denv. U. L. Rev. 1, 37–39, 39 n.217 (2012).

And the short time prisoners spend outside their cells provides no respite from these conditions. Haney, *Mental Health Issues*, *supra*, at 126. Prisoners in solitary confinement may occasionally leave their cells to exercise, but they must do so alone "in caged-in or cement-walled areas that are so constraining they are often referred to as 'dog runs.'" *Id.* Trips to the "dog runs" usually come after strip and cavity searches so painful and intrusive that many prisoners forego exercise to avoid them.[4] See, *e.g.*, *Williams* v. *Sec'y Pa.*

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[4] As this Court has recognized, a strip search can involve "instructions to raise arms, to display foot insteps, to expose the back of the ears, to move or spread the buttocks or genital areas, or to cough in a squatting position," which may be done "while an officer observes from a distance of, say, five feet or more [or] may mean a visual inspection from a closer, more uncomfortable distance." *Florence* v. *Bd. of Chosen Freeholders of Cnty. of Burlington*, 566 U.S. 318, 325 (2012); see *id.* at 345 (Breyer, J., dissenting) ("[A]ll courts have recognized the 'severe if not gross interference with a person's privacy' that accompany visual body-cavity searches." (cleaned up)).

Dep't of Corr., 848 F.3d 549, 554 (3d Cir. 2017) (describing strip searches so invasive that a prisoner sacrificed the opportunity to exercise for nearly seven years to avoid them), *cert. denied sub nom. Williams* v. *Wetzel*, 138 S. Ct. 357 (2017); *Incumaa* v. *Stirling*, 791 F.3d 517, 531 (4th Cir. 2015) (noting that a prisoner in solitary confinement experienced "near-daily cavity and strip searches"). Apart from these strip and cavity searches, prisoners' only human contact while in solitary confinement occurs when guards place them in restraints. Hafemeister & George, *supra*, at 17.

Thus, compared to the general population, prisoners in solitary confinement suffer, "to the fullest extent possible, complete sensory deprivation and social isolation." *Id.*

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

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

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

Self-mutilation and suicidal ideation are also characteristic of prisoners in solitary confinement. See Grassian, *Psychiatric Effects*, *supra*, at 336, 349; Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 Am. J. Psychiatry 1450, 1453 (1983). Explaining this phenomenon to Congress, Dr. Haney described how one prisoner "used a makeshift needle and thread from his pillowcase to sew his mouth completely shut," and another "amputated one of his pinkie fingers and chewed off the other, removed one of his testicles and scrotum, sliced off his ear lobes, and severed his Achilles tendon." *Reassessing Solitary Confinement Hearing*, *supra*, at 80–81 (prepared statement of Dr. Craig Haney, Professor of Psychology, University of California, Santa Cruz).

Even when prisoners can overcome the psychological trauma of solitary confinement, they find themselves suffering from a host of serious physiological injuries, including hypertension, heart palpitations, gastrointestinal disorders, headaches, and severe insomnia. Haney, *Mental Health Issues*, *supra*, at 133; Smith, *The Effects of Solitary Confinement on Prison Inmates*, *supra*, at 488–90. Solitary confinement also "increase[s] activation of the brain's stress systems," Bennion, *supra*, at 762 (quoting John T. Cacioppo &

Stephanie Ortigue, *Social Neuroscience: How a Multidisciplinary Field Is Uncovering the Biology of Human Interactions*, Cerebrum, Dec. 19, 2011, at 7–8), which eventually kills brain cells and "rewire[s]" the brain. See Carol Schaeffer, *"Isolation Devastates the Brain": The Neuroscience of Solitary Confinement*, Solitary Watch (May 11, 2016), https://solitarywatch.org/2016/05/11/isolation-devastates-the-brain-the-neuroscience-of-solitary-confinement/; Nicole Branan, *Stress Kills Brains Cells Off*, 18 Sci. Am. 10 (June 2007). These physiological changes can affect the hippocampus, a brain area important for emotion regulation and memory, see Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Sci. Am. (Nov. 9, 2018), https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/, and it can also increase the size of the amygdala, which makes the brain more susceptible to stress, creating a vicious cycle, see Bruce S. McEwen et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 Neuropsychopharmacology 3, 12–14 (2016).

Not only are these psychological and physical injuries devastating in their own right, studies have consistently shown that they are also more severe than the injuries associated with ordinary imprisonment. For instance, one study in Denmark found that prisoners who spent more than four weeks in solitary confinement were *twenty times* more likely to require psychiatric hospitalization. Bennion, *supra*, at 758 (citing Dorte Maria Sestoft et al., *Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody*, 21 Int'l J.L. & Psychiatry 99, 103 (1998)). Similarly, a California study by Dr. Haney concluded that the distress and suffering of general

population prisoners bore "absolutely no comparison to the level of suffering and distress" experienced by prisoners in solitary confinement. Expert Report of Craig Haney at 81, *Ashker* v. *Brown*, No. 4:09-cv-05796-CW (N.D. Cal. Mar. 12, 2015) (available at https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted_Haney%20Expert%20Report.pdf). Instead, "[o]n nearly every single specific dimension . . . measured, the [solitary confinement] sample was in significantly more pain, were more traumatized and stressed, and manifested more isolation-related pathological reactions." *Id.* at 81–82.

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

Supermax Confinement, 13 Corr. Mental Health Rep. 1, 9 (2011).[5]

Moreover, prisoners need not be in solitary confinement for months or years to realize these psychological and physiological injuries. The onset of adverse symptoms is almost immediate. See, *e.g.*, Grassian, *Psychiatric Effects*, *supra*, at 331 (noting measurable harm within days of solitary confinement). Within days of placement in solitary confinement, brain scans may reflect "abnormal pattern[s] characteristic of stupor and delirium." *Id.*; U.N. Human Rights Council, *U.N. Special Rapporteur, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, at 9, U.N. Doc. A/66/268 (Aug. 5, 2011) (concluding that "harmful psychological effects of isolation can become irreversible" after only 15 days of solitary confinement). Thus, where, as in Mr. Hope's case, the deprivation is "prolonged,"[6] some harms are inevitable, even if symptoms are not obvious or take time to manifest.

And the longer solitary confinement persists, the greater the likelihood that the psychological and physiological injuries will be irreversible. Haney,

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

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

Mental Health Issues, *supra*, at 137–41. Prisoners often find the psychological dysfunctions caused by solitary confinement permanently disabling. *Id.* By transforming a person's emotions, personality, and cognition, solitary confinement may render prisoners permanently ill-suited to life in a less restrictive environment. Grassian, *Psychiatric Effects*, *supra*, at 332–33. For example, Kalief Browder, who spent seventeen months in solitary confinement, attempted suicide twice within six months of his release. Jennifer Gonnerman, *Before the Law*, The New Yorker (Oct. 6, 2014), https://www.newyorker.com/magazine/2014/10/06/before-the-law. Freed from isolation, Mr. Browder still described himself as "mentally scarred" and fearful that the "things that changed" about his personality "might not go back" with time. *Id.* Less than two years later, he hanged himself. Jennifer Gonnerman, *Kalief Browder, 1993-2015*, The New Yorker (June 7, 2015), http://www.newyorker.com/news/news-desk/kaliefbrowder-1993-2015.

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

II. ALLEGATIONS OF LONG-TERM SOLITARY CONFINEMENT CAN STATE AN EIGHTH AMENDMENT CLAIM.

More than forty years ago, this Court recognized that solitary confinement can violate the Eighth Amendment's prohibition on "cruel and unusual punishments." *Hutto*, 437 U.S. at 685. Since that time, the Court has never abrogated that holding, much less endorsed the Fifth Circuit's view that—as a matter of law—allegations of long-term solitary confinement

alone can *never* state a claim under the Eighth Amendment. Yet the Fifth Circuit dismissed Mr. Hope's Eighth Amendment claim with just two sentences. The Fifth Circuit's decision eschews common sense, ignores the long-standing scientific evidence, and distorts this Court's precedents.

1. The Fifth Circuit's complete reasoning on Mr. Hope's Eighth Amendment claim was this: First, the court noted that "[l]ong-term solitary confinement is not per se cruel and unusual." Pet. App. 17a (citing *Hutto*, 437 U.S. at 686). And in a footnote, the court expressly held that Mr. Hope's Eighth Amendment claim "based on the sheer length of his confinement" fails because "the length of isolation sentences [i]s not considered in a vacuum." *Id.* at 17a n.5 (quoting *Hutto*, 437 U.S. at 685). This superficial analysis distorts the proper inquiry for Eighth Amendment claims based on long-term solitary confinement and disregards this Court's directions.

The Fifth Circuit's holding that a prisoner can *never* state an Eighth Amendment claim based on the length of his confinement alone depends on a misreading of *Hutto*. There, the Court considered the practice of "punitive isolation," where an "average of 4, and sometimes as many as 10 or 11, prisoners were crowded into" a cell. In *upholding* the district court's decision forbidding Arkansas from sentencing inmates to these conditions for more than 30 days, the Court noted that the district court did not consider the "length of isolation sentences . . . in a vacuum." *Hutto*, 437 U.S. at 682–85. But the Court was equally clear that "the length of confinement *cannot be ignored* when deciding whether the confinement meets the constitutional standards." *Id.* at 686 (emphasis added). And yet the Fifth Circuit divined from this opinion a *per se* rule that requires exactly the opposite

of what *Hutto* commands—that courts *must* ignore the length of time a prisoner has spent in solitary confinement when considering whether they have pleaded an Eighth Amendment claim.

Over 120 years ago, this Court observed that even short periods of solitary confinement cause prisoners to become "violently insane." *In re Medley*, 134 U.S. at 168. And in recent years, as science has advanced, members of this Court have made clear that solitary confinement "exact[s] a terrible price," *Davis*, 576 U.S. at 289 (Kennedy, J., concurring), and inflicts an "immense amount of torture and agony" on prisoners, *Apodaca*, 139 S. Ct. at 10 (Sotomayor, J., respecting denial of certiorari). Indeed, "[t]he dehumanizing effect of solitary confinement," and the "numerous deleterious harms" it causes, can hardly be understated. *Glossip* v. *Gross*, 576 U.S. 863, 926 (2015) (Breyer, J., dissenting). Against this legal backdrop, the Fifth Circuit erred in holding that prisoners subject to solitary confinement can *never* plead an Eighth Amendment violation.

2. The Fifth Circuit's holding similarly disregards the "usual pattern" of "solitary confinement"—years or decades in "a windowless cell no larger than a typical parking spot for 23 hours a day" and "one hour" outside the cell with "little or no opportunity for conversation or interaction with anyone," *Davis*, 576 U.S. at 286–87 (Kennedy, J., concurring)—that makes this punishment uniquely harmful. It forces lower courts to look past the significant (and often irreversible) harms that attend solitary confinement—as established by decades of scientific research, see *supra* Part I—and instead focus solely on whether a prisoner is enduring conditions unrelated to solitary confinement that are unsafe or unsanitary. This approach simply ignores the scientific evidence showing that long-term solitary

confinement alone imposes significant physical and psychological harm not endured by prisoners in the general population. See Haney, *Mental Health Issues*, *supra*, at 125–27.

The allegations in Mr. Hope's complaint track the conditions observed in the scientific literature. Indeed, taking Mr. Hope's allegations as true, it is virtually certain—as a matter of science and logic—that he has experienced exactly the kind of severe psychological and physical harms that have been observed in the literature. And these harms are virtually certain to be more severe than those experienced by prisoners in general population—which is precisely the harm the Eighth Amendment protects against. See *Bucklew*, 139 S. Ct. at 1124 (noting that a punishment is "cruel" when it "superadd[s] terror, pain, or disgrace"); accord *Baze* v. *Rees*, 553 U.S. 35, 96 (2008) (plurality op.) (Thomas, J., concurring in judgment).

Mr. Hope alleged that, when he filed his complaint, he had been held in solitary confinement for over twenty-three years (now over twenty-seven years) in a nine-foot-by-six-foot cell—no larger than a parking space. Pet. App. 61a-62a. With the space taken up by his bed, toilet, and sink, Mr. Hope has only a three-foot-by-three-foot space to move around. *Id.* at 62a. He thus "sleep[s], eat[s], and defecate[s] . . . in spaces that are no more than a few feet apart." *Reassessing Solitary Confinement Hearing*, *supra*, at 75 (prepared statement of Dr. Craig Haney, Professor of Psychology, University of California, Santa Cruz).

Unlike general population prisoners who spend "up to ten hours a day" outside their cells, Haney, *The Psychological Effects of Solitary Confinement*, *supra*, at 388 n.12, Mr. Hope spends almost half the year—174 days, on average—in his cell twenty-four hours a day. Pet. App. 62a. For the remaining 191 days, he

spends all but one or two hours each day inside his cell. *Id.* Mr. Hope thus suffers "to the fullest extent possible, complete sensory deprivation and social isolation," Hafemeister & George, *supra*, at 17, which "can be as clinically distressing as physical torture," Metzner & Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons*, *supra* at 104. And this condition, especially when prolonged (as here), imposes severe psychology and physical harms. See Haney, *The Psychological Effects of Solitary Confinement*, *supra*, at 367–68, 370–75 (collecting studies). More still, before leaving his cell "for any reason," Mr. Hope must "submit to a strip search." Pet. App. 62a.

Unlike prisoners in general population, Mr. Hope is "denied almost all human contact." *Id.* at 63a. In fact, the "only human contact he has had with another human in the last 23 years is with officers and medical staff." *Id.* Mr. Hope is denied "contact visits with family" and, when visits by family are allowed, they must talk over a phone through a plexiglass partition. *Id.* at 64a. Given these horrid conditions, it is unsurprising that studies have shown that the distress and suffering of general population prisoners bears "absolutely no comparison to the level of suffering and distress" experienced by prisoners in solitary confinement. Expert Report of Craig Haney at 81, *Ashker* v. *Brown*, No. 4:09-cv-05796-CW (N.D. Cal. Mar. 12, 2015) (available at https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted_Haney%20Expert%20Report.pdf).

On top of all this, unlike general population prisoners, Mr. Hope is denied the opportunity to participate in "religious activities, group recreation and vocational programs." Pet. App. 64a. And during a six-year period from February 2012 to February 2018,

Mr. Hope alleged that prison officials moved him between cells *263 times*—about once every eight days. *Id.* at 68a–69a. This cocktail of confinement and uncertainty undoubtedly "increase[s] activation of the brain's stress systems," Bennion, *supra*, at 762, which kills brain cells and "rewire[s] the brain," Schaeffer, *"Isolation Devastates the Brain," supra*. Mr. Hope also alleged that the cells are not disinfected or cleaned before he is moved, and that "many times these cells have [had] feces and urine on the walls, floor and door." Pet. App. 69a.

Over twenty-seven years of solitary confinement has caused Mr. Hope to suffer from anxiety, depression, visual and auditory hallucinations, and thoughts of suicide. Pet. App. 71a. These are precisely the psychological injuries researchers have found in people subjected to solitary confinement. See Haney, *Mental Health Issues*, *supra*, at 130–31, 134–35 (collecting studies); Grassian, *Psychiatric Effects*, *supra*, at 335–36, 349, 370–71. The literature shows that the onset of these adverse symptoms is almost immediate. See, *e.g.*, Grassian, *Psychiatric Effects*, *supra*, at 331 (noting measurable harm within days of solitary confinement). And the longer solitary confinements persists, the greater the likelihood that these injuries will be irreversible. Haney, *Mental Health Issues*, *supra*, at 137–41. Thus, there can be no question that Mr. Hope's more than two-and-a-half decades in solitary confinement have permanently transformed his emotions, personality, and cognition. Grassian, *Psychiatric Effects*, *supra*, at 332–33.

* * *

The issue here is not whether long-term solitary confinement is *per se* cruel and unusual. It is simply whether Mr. Hope's decades-long, indefinite solitary confinement *could* be unconstitutional, and therefore

whether a prisoner can *ever* plausibly plead an Eighth Amendment claim on that basis. In the Fifth Circuit's view, prisoners in solitary confinement are categorically barred from pleading Eighth Amendment claims challenging the horrors of solitary confinement—no matter how long they've endured it. That view is legally wrong and factually misguided. Only this Court can correct this grievous error.

CONCLUSION

For these reasons and those in the petition, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

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