

No. 21-1065

In the
Supreme Court of the United States

DENNIS WAYNE HOPE,
Petitioner,

v.

TODD HARRIS, ET AL.,
Respondents.

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

**BRIEF OF FORMER CORRECTIONS
DIRECTORS AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICI CURIAE¹

Amici curiae are former corrections officials, each with decades of experience, who have seen first-hand that prolonged solitary confinement of the sort permitted by the Fifth Circuit here—26 years in this case—can cause severe psychological harm. *Amici* assert that in addition to its devastating effects on mental health, long-term solitary confinement also is costly and often unnecessary, as prison security can be maintained effectively through other means. Specifically, *amici* are concerned that the use of long-term solitary confinement has been perpetuated under the misguided belief that prisons have no viable alternative for ensuring security and preventing escape. *Amici* assert that prolonged isolation has proven dangerous and ineffective, whereas alternative prison management methods have successfully eliminated the need for prolonged solitary confinement while decreasing prison violence. In this brief, *amici* provide the Court data showing that eliminating solitary confinement in favor of alternative prison management methods leads to safer and more cost-efficient prisons.

Amici are:

Martin F. Horn served as Secretary of Corrections of Pennsylvania from 1995 to 2000. He also served as

¹ The parties were given timely notice and have consented to the filing of this amicus brief. No counsel for a party authored the brief in whole or in part, and no person or entity other than amici and their counsel made a monetary contribution intended to fund the brief's preparation or submission.

Commissioner of the New York City Departments of Correction and Probation for seven years. Mr. Horn has also served as Executive Director of the New York State Sentencing Commission.

Steve J. Martin is the former General Counsel/Chief of Staff of the Texas prison system and has served in Texas gubernatorial appointments to both a sentencing commission and a council for offenders with mental impairments. He coauthored *Texas Prisons, The Walls Came Tumbling Down*, and has written numerous articles on criminal justice issues.

Ron McAndrew served as the Warden of Florida State Prison. He was responsible for death row and the operation of executions. He is a contributing author to *Death Penalty and the Victims*, a special publication by the United Nations. He has also written numerous articles on this subject in both the USA and France. Since retirement, he has operated a private consulting business for many years.

Richard Morgan was appointed Secretary of the Washington State Department of Corrections in 2016. He also was appointed to Washington State's Parole Board and elected to the Walla Walla City Council, and he has served on the Board for the Washington State Coalition to Abolish the Death Penalty since 2012.

Dan Pacholke is the former Secretary for the Washington State Department of Corrections (WDOC). He started his 33-year career as a Correctional Officer, working his way to the senior most position for the department. In 1985, he worked in one of the first intensive management units (IMUs) in WDOC, and 25

years later he led the efforts to reduce the use of IMUs that resulted in a 50 percent reduction of those housed in IMUs and an over 30 percent reduction in system-wide violence. This work is described in a 2016 Department of Justice Bureau of Justice Policy Brief, *More than Emptying Beds: A Systems Approach to Segregation Reform*.

Phil Stanley is the former Commissioner of the New Hampshire Department of Corrections, reporting directly to the Governor. He has served as Superintendent of three prisons in Washington state, as Regional Administrator, and Probation Officer. He is currently a consultant for jail operations.

Eldon Vail served as Secretary of the Washington Department of Corrections from 2007 until 2011. As Director, he successfully reduced violence in the state prison system and implemented a wide array of evidence-based programs, including an intensive treatment program for people in prison with a mental illness and a step-down program for people held for long terms in solitary.

SUMMARY OF ARGUMENT

Long-term solitary confinement can cause severe psychological and physical harm, and is a costly, ineffective form of punishment that does not advance penological goals or improve prison security. People in solitary confinement are locked alone in a small cell nearly all day, every day. They are unable to freely move about the prison or interact with staff and other incarcerated people. Meals are eaten just feet—sometimes inches—from the toilet and bed. Social interactions are typically limited to correctional officers delivering food or medication through a slot in a cell door; interaction with the outside world is even more limited. For those in solitary confinement, many critical programs and services afforded to people in general population are unavailable, including educational, therapeutic, and vocational programming. Opportunities for exercise are limited and take place in isolated cages, referred to by both staff and incarcerated people as “dog runs.”

Unsurprisingly, the harsh conditions of solitary confinement cause substantial harm. Extensive research demonstrates how solitary confinement inflicts long-lasting physical and psychological trauma and increases the risk of suicidal behavior, as Mr. Hope has experienced firsthand in his twenty-six years in solitary confinement. But individual trauma is not the only harm caused by solitary confinement. The severe isolation increases prison violence and disorder, serves no interest in preventing incarcerated people from escaping, and inhibits rehabilitation.

Aware of isolation’s harmful effects, its failure to ensure prison safety, and its tendency to increase violence in prisons, many state correctional systems have demonstrated that eliminating solitary confinement is possible through three interrelated types of reforms: reducing the number of incarcerated people sent to solitary confinement; providing rehabilitative programming that instills prosocial behaviors; and reducing the length of time incarcerated people spend in solitary. Together, these three strategies have resulted in safer prisons and safer communities while also reducing prison operating costs. Considering the availability and success of these reforms, prison administrators can no longer assert a compelling interest in keeping incarcerated people in long-term solitary confinement, and “[c]ourts and corrections officials must accordingly remain alert to the clear constitutional problems raised by keeping incarcerated people[] . . . in near-total isolation from the living world in what comes perilously close to a penal tomb.”²

ARGUMENT

I. Placement In Solitary Confinement Subjects an Incarcerated Person to Unnecessarily Harsh And Restrictive Conditions.

Solitary confinement units go by many names: “Administrative Confinement,” “Administrative Detention,” “Segregated Housing,” and “Special

² *Apodaca v. Raemisch*, 139 S.Ct. 5, 10 (2018) (Sotomayor, J., respecting denial of cert.) (internal quotation omitted).

Housing Unit,” among others.³ While these labels reflect varying justifications for isolating an incarcerated person, there is no question that the underlying conditions of confinement are “an extraordinary and extreme form of imprisonment.”⁴

People in solitary confinement are confined to small, locked cells for *at least* twenty-two to twenty-four hours per day.⁵ They are typically deprived of virtually all human contact, environmental stimuli, and many programs and services otherwise available to people incarcerated in general population.⁶ People in solitary confinement are only allowed to leave their cells for brief exercise periods (also alone) or other limited purposes, such as legal calls or urgent medical needs.⁷ When allowed out of their cells, they are almost always “shackled at the wrists, waist, and legs, and escorted by one or more correctional officers.”⁸ People enduring isolation are “given only extremely limited or no opportunities for direct and normal social contact with other persons . . . and afforded extremely limited, if

³ U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing: Executive Summary*, 3-6 (Jan. 2016) (*Report and Recommendations*).

⁴ Craig Haney, *Mental Health Issues in Long-term Solitary and “Supermax” Confinement*, 49 *CRIME & DELINQ.* 124, 127 (2003).

⁵ *Report and Recommendations*, *supra* note 3 at 3, 7.

⁶ *Wilkinson v. Austin*, 545 U.S. 209, 214 (2005).

⁷ *Report and Recommendations*, *supra* note 3, at 28-30.

⁸ *Id.* at 28.

any, access to meaningful programming of any kind.”⁹ And even the limited movement a person like Mr. Hope is permitted to make while in solitary confinement is further constrained by staff availability.¹⁰

Opportunities for social interaction and connection are dramatically curtailed for people solitary confinement. Phone calls are rare or entirely non-existent;¹¹ Mr. Hope was allowed only a single call to his mother in 26 years. Visits with loved ones, if permitted at all, are not only limited in frequency and duration, they are also non-contact, preventing people in solitary confinement from ever touching and embracing their children, spouses, or parents.¹² Nor are people in solitary able to interact with other incarcerated people: the physical construction of solitary confinement units, which is designed to

⁹ Craig Haney, *The Social Psychology of Isolation: Why Solitary Confinement is Psychologically Harmful*, 181 PRISON SERVICE JOURNAL 12, 12 n.1 (2009).

¹⁰ See generally Expert Report of Martin Horn at 25, 30, *Parsons v. Shinn*, No. CV-12-00601-PHX-ROS (D. Ariz.) (describing conditions in Arizona Department of Corrections and how understaffing further limits the already-restrictive conditions of confinement of those in segregation).

¹¹ Kenneth McGinnis et al., Report to the Federal Bureau of Prisons, *Federal Bureau of Prisons: Special Housing Unit Review and Assessment*, 217 (2014); *Solitary: The Family Experience*, Citizens for Prison Reform, 16 (2020), http://www.micpr.org/uploads/8/9/7/1/8971956/solitary__the_family_experience_final-compressed.pdf.

¹² McGinnis, *supra* note 11, at 199.

discourage communication, makes association with other incarcerated people difficult or impossible.¹³

In general population units, incarcerated people usually have access to employment, education, or other programs offering some form of intellectual stimulation. Such “diversions [are] no doubt denied to many of today’s” incarcerated people held in solitary confinement.¹⁴ Because the programming available to incarcerated people in solitary confinement is restricted to activities that can take place inside their cell,¹⁵ access to educational or rehabilitative programming is drastically limited or non-existent.¹⁶

With so little contact with the outside world or even other incarcerated people, and so little ability to *do* anything, a person placed in isolation after an escape attempt, like Mr. Hope, is often unable to take meaningful steps to show they are no longer a “high risk” to others. Even when prison officials remove the “high risk” categorization that initially justified the person’s placement in solitary—as prison officials did with Mr. Hope’s “escape-risk” label—it can still be

¹³ See *Report and Recommendations*, *supra* note 3, at 3-4.

¹⁴ *Davis v. Ayala*, 135 S.Ct. 2187, 2209 (2015) (Kennedy, J., concurring in the Court’s opinion but writing separately to discuss the conditions of solitary confinement).

¹⁵ *Ayala*, 135 S.Ct. at 2207-08.

¹⁶ Solitary Watch, et al., *Louisiana on Lockdown: A Report on the Use of Solitary Confinement in Louisiana State Prisons*, 77 (2019); *Solitary Confinement in Arkansas Prisons*, 4, Decarcerate, Disability Rights Arkansas, (2021).

difficult for them to demonstrate they are ready to safely transition to general population. Unable to take meaningful steps to re-integrate into general population, incarcerated people can and do get stuck indefinitely in solitary confinement.¹⁷ As Justice Kennedy reiterated, this Court has long “recognized that...solitary confinement bears ‘a further terror and peculiar mark of infamy’” not present in general population.¹⁸

Solitary confinement has devastating effects on both the mental and physical health of incarcerated people. Numerous empirical studies reporting consistent and corroborative data collected by researchers and clinicians over many decades leave no doubt that long-term solitary confinement causes extensive harm.¹⁹ Prolonged isolation can result in anxiety, panic, post-traumatic stress disorder, psychotic experiences, hostility, and self-injurious behavior.²⁰ People in solitary engage in behaviors like “swallow[ing] razors,

¹⁷ See Horn, *supra* note 10, at 14.

¹⁸ *Ayala*, 135 S.Ct. at 2209.

¹⁹ Craig Haney, *Restricting the Use of Solitary Confinement*, 1 ANN. REV. CRIMINOLOGY 285, 286 (2018) (collecting studies).

²⁰ Association of State Correctional Administrators & The Liman Center for Public Interest Law at Yale Law School, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nation-wide Survey of Time-In-Cell*, 86 (ASCA-Liman 2018 Report); Mimosa Luigi, et al., *Shedding Light on “the Hole”: A Systematic Review and Meta-Analysis on Adverse Psychological Effects and Mortality Following Solitary Confinement in Correctional Settings*, *Frontiers in Psychiatry* Vol. 11 (840) 6 (2020).

smash[ing] their heads into walls, and compulsively cut[ing] flesh” to escape isolation.²¹ Some studies have concluded that solitary confinement’s impact on the human brain “is as brutal as a traumatic physical injury.”²² Some psychological effects of solitary, such as increased hostility, aggression, and loss of impulse control, can lead to unsuccessful re-integration into general population and the community because those housed in solitary encounter barriers in forming and resuming the vital familial and community relationships that are critical for successful reentry.²³

In addition to inflicting psychological harms, solitary confinement can erode physical health, particularly for older people. Indeed, as incarcerated people like Mr. Hope age, it can become increasingly difficult for them to overcome physical and mental health barriers.²⁴ Older adults are more likely to have chronic health conditions such as heart disease, Alzheimer’s disease, diabetes, and lower respiratory

²¹ Horn, *supra* note 10, at 6.

²² American Civil Liberties Union of Texas & Texas Civil Rights Project, *A Solitary Failure: The Waste, Cost, and Harm of Solitary Confinement in Texas*, 24 (2015) (describing results of a survey finding that ninety-five percent of people in segregation in Texas developed at least one psychiatric symptom due to solitary confinement).

²³ *Id.* at 32.

²⁴ *Old Behind Bars: The Aging Prison Population in the United States*, Human Rights Watch, at 43 (Jan. 2012), https://www.hrw.org/sites/default/files/reports/usprisons0112webcover_0_0.pdf.

disease;²⁵ “for the 73% of incarcerated people over 50 who report experiencing at least one chronic health condition, solitary confinement is especially hazardous.”²⁶ Potential harms include a greater risk of fractured bones caused by vitamin D deficiencies due to a lack of sunlight, memory loss caused by sensory deprivation in an empty room, and impaired mobility due to the limited space that people in solitary have to exercise and move around.²⁷ The debilitating effects of solitary confinement compound the difficulties of aging while incarcerated, and risk severely impacting the cognitive and physical capabilities of older adults.²⁸

II. Solitary Confinement Does Not Reduce Violence Within Prison Systems, Does Not Improve Safety, And Is Not Necessary to Prevent Escapes.

Nor can the harms of solitary confinement be justified based on safety concerns, as both history and current correctional practices demonstrate that penal isolation has failed to reduce violence and improve

²⁵ *The State of Aging and Health in America 2013*, Centers for Disease Control and Prevention, US Dep’t of Health and Human Services, at 3, <https://www.cdc.gov/aging/pdf/state-aging-health-in-america-2013.pdf> (2013).

²⁶ Lucius Couloute, *Aging alone: Uncovering the risk of solitary confinement for people over 45*, (May 2, 2017), https://www.prisonpolicy.org/blog/2017/05/02/aging_alone/.

²⁷ Brie Williams, *Older Prisoners and the Physical Health Effects of Solitary Confinement*, 106 *AMERICAN J. PUB. HEALTH* (2016).

²⁸ *See id.* at 45.

safety in prisons. Over a century ago, America nearly abandoned solitary confinement as a failed experiment begetting mental illness rather than rehabilitation.²⁹ As far back as 1890, this Court called it “too severe”³⁰; in 1939, authors of a study on prison psychiatry optimistically stated that solitary confinement was no longer used by “any civilized nation”³¹; and in 1959, the American Correctional Association called for its use only as a last resort.³²

But in the early 1990s, solitary confinement made an exponential resurgence in American corrections, partly in reaction to exploding prison populations.³³ The dismantling of state-run mental health hospitals, the “War on Drugs,” and the shift to mandatory minimum sentencing flooded prisons with more people than cells could hold.³⁴ The resulting overcrowded

²⁹ Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment*, 90 IND. L.J. 741, 747-49 (2015).

³⁰ *In re Medley*, 134 U.S. 160, 168 (1890).

³¹ Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 466 (2006).

³² Richard A. McGee, et al., American Correctional Ass’n, *Manual of Correctional Standards*, 246-47 (1959).

³³ Bennion, *supra* note 29 at 746-47.

³⁴ *See, e.g.*, Kenneth McGinnis, et. al., Report to the Federal Bureau of Prisons, Federal Bureau of Prisons: Special Housing Unit Review and Assessment (2014).

prisons were ill-equipped to address the epidemic of people with mental illness, the growth of prison gangs, and the overall increase in violence.³⁵ Corrections officials believed they could pinpoint the “troublemakers” and the “worst of the worst” who most frequently engaged in prison violence and then isolate them to restore order.³⁶ As a result, many states and the Federal Bureau of Prisons built solitary confinement units and “supermax” prisons.³⁷ in the belief that removing incarcerated people labeled as “difficult” from the general population would reduce prison violence.³⁸ They were wrong.

The increased use of solitary confinement “was not associated with reductions in facility or systemwide misconduct and violence.”³⁹ Instead, studies showed that “[p]risons with higher rates of restrictive housing

³⁵ Bennion, *supra* note 29 at 750.

³⁶ Chad S. Briggs et al., *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 *Criminology* 1341, 1341-42 (2006).

³⁷ Bennion, *supra* note 29, at 751-752.

³⁸ Briggs, *supra* note 36, at 1342.

³⁹ B. Steiner & C.M. Cain, U.S. Dep’t of Justice, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence, Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions* 165, 179 (2016); see also R.M. Labrecque, *The Effect of Solitary Confinement on Institutional Misconduct: A Longitudinal Evaluation* (Aug. 2015) (unpublished Ph.D. dissertation, Univ. of Cin.).

had higher levels of facility disorder.”⁴⁰ Psychologists determined that the social pathology caused by isolation led incarcerated people to “occupy this idle time by committing themselves to fighting against the system.”⁴¹ Texas, for example, experienced a 104 percent increase in assaults involving incarcerated people, which correctional staff directly attributed to the overuse of solitary confinement.⁴²

In addition to solitary confinement causing increased disruption within prisons, studies have shown that those released from long-term isolation are also more likely to recidivate than their counterparts who were housed in general population.⁴³ As Senator Patrick Leahy recognized during a congressional hearing on solitary confinement, “Not only do these studies show that segregation does...nothing to lower overall rates of violence, there is evidence that it actually increases recidivism rates...posing a danger to

⁴⁰ Allen Beck, U.S. Dep’t of Justice, *Use of Restrictive Housing in U.S. Prisons and Jails*, 2011-12 (2015), <https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf>.

⁴¹ Haney, *Mental Health Issues*, *supra* note 4, at 140.

⁴² American Civil Liberties Union of Texas & Texas Civil Rights Project, *supra* note 22, at 32.

⁴³ *Solitary Confinement; Inhumane, Ineffective, and Wasteful*, Southern Poverty Law Center, at 13-14, (2019), https://www.splcenter.org/sites/default/files/com_solitary_confinement_0.pdf.

the public.”⁴⁴ The recidivism rates for those in solitary confinement are higher than average when compared to incarcerated individuals in general population.⁴⁵ Additionally, the significant decrease in recidivism rates among incarcerated people as they age illustrates that solitary confinement is particularly unnecessary in reducing violence among older incarcerated people. For example, people in Mr. Hope’s age category, fifty to fifty-nine, are less than half as likely to recidivate as their younger counterparts.⁴⁶

A. Limiting The Use of Solitary Confinement Actually Improves Safety.

Mindful of isolation’s harm and its failure to reduce prison violence in prisons, states began to reevaluate their use of solitary confinement. By 2015, over one-third of state correctional systems had initiated restrictions on solitary confinement.⁴⁷ Eight

⁴⁴ *Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights*, (2012) (Statement of Sen. Patrick Leahy).

⁴⁵ *Solitary Confinement; Inhumane, Ineffective, and Wasteful*, *supra* note 43, at 13-14; *Facts: The Torture of Solitary Confinement in NY*, New York Campaign for Alternatives to Isolated Confinement (2021), <http://nycaic.org/facts/>.

⁴⁶ Kim Steven Hunt & Billy Easley II, *The Effects Of Aging On Recidivism Among Federal Offenders*, United States Sentencing Commission, at 22 (2017).

⁴⁷ The Association of State Correctional Administrators & The Liman Center for Public Interest Law at Yale Law School, *Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the*

states—Colorado, Idaho, Maine, Nebraska, North Carolina, North Dakota, and Washington—reported substantial, system-wide reforms, reducing the population of people in solitary confinement from nearly 100,000 to approximately 60,000 in four years.⁴⁸ In 2019, twenty-eight states introduced legislation to ban or restrict solitary confinement, and twelve states passed reform legislation.⁴⁹

Putting prisoners into isolation did not reduce violence, and the corollary also proved true: letting incarcerated people out of solitary confinement has not increased violence. Instead, reforms limiting the use of solitary confinement have resulted in a significant *decrease* in prison violence.⁵⁰ A dramatic reduction in

Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms 7, 10 (2016) (ASCA-Liman 2016 Report).

⁴⁸ *Id.*

⁴⁹ Amy Fettig, American Civil Liberties Union, *2019 Was a Watershed Year in the Movement to Stop Solitary Confinement* (2019), <https://www.aclu.org/news/prisoners-rights/2019-was-a-watershed-year-in-the-movement-to-stop-solitary-confinement/>.

⁵⁰ See, e.g., Marc A. Levin, Esq., *Testimony Before the U.S. Senate Judiciary Subcommittee on The Constitution, Civil Rights and Human Rights* 3 (Feb. 25, 2014), <https://www.judiciary.senate.gov/imo/media/doc/02-25-14LevinTestimony.pdf> (*Levin Testimony*); Rick Raemisch, remarks at *Rethinking Restrictive Housing: What's Worked in Colorado?* (Sept. 17, 2018) (*Raemisch Remarks*); *Focused Deterrence Initiatives to Reduce Group Violence in Correctional Facilities: A Review of Operation Workplace Safety and Operation Stop Violence*, ACA 2018 Winter Conference Seminar 18-23 (on file with author) (*Focused Deterrence*).

violence occurred following the adoption of solitary confinement reforms and a group violence deterrence strategy in Washington.⁵¹ “In the model’s first year of implementation at its pilot facility, assaults against staff, the use of weapons, and multi-man fights were reduced by 50%.”⁵² Between 2014 and 2017, violent incidents within the two high-security Washington prisons utilizing this model decreased by nearly sixty percent and staff assaults decreased by nearly ninety percent.⁵³ In Colorado, which reports reducing the population of people in solitary confinement from seven percent of the prison population to one percent, prison officials report that assaults against staff declined by forty to fifty percent, and assaults against other incarcerated people declined by fifty to seventy percent.⁵⁴

Barely a year after launching solitary confinement reforms in 2013, Maine prisons reported substantial reductions in violence and use of force, chemicals, restraint chairs, and self-mutilation, which were

⁵¹ Dan Pacholke & Sandy Felkey Mullins, J.D., *More Than Emptying Beds: A Systems Approach to Segregation Reform* 1, 5 (2016), <https://bja.ojp.gov/sites/g/files/xyckuh186/files/publications/MorethanEmptyingBeds.pdf> (*Pacholke & Mullins*); see generally Terry Kupers, *Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It*, 171-211 (2017) (*Abolishing Isolation*).

⁵² *Pacholke & Mullins*, *supra* note 51, at 8.

⁵³ *Focused Deterrence*, *supra* note 50, at 18.

⁵⁴ *Levin Testimony*, *supra* note 50, at 3; *Raemisch Remarks*, *supra* note 50.

among the most prevalent issues previously facing officials.⁵⁵ In 2018, in North Dakota, extreme incidents like suicide attempts used to occur three or more times every week in solitary, but after dramatic reductions in the use of isolation, these incidents now occur only a few times each year.⁵⁶ In each of these reforming states, housing fewer people in solitary confinement actually *improved* the security of prisons.

B. Long-term Solitary Confinement Is Not Necessary to Prevent Escapes.

Solitary confinement is sometimes invoked, as it was here, as a solution to the problem of prison escapes. But advances in penal technology render segregation unnecessary for this purpose. Advanced security measures provide viable and effective ways of preventing prison escapes, as evidenced by the reduction of escapes in recent years.⁵⁷ In 2000, only .37 percent of incarcerated individuals in adult state and federal correctional facilities escaped.⁵⁸ Nearly twenty

⁵⁵ *Levin Testimony*, *supra* note 50, at 3.

⁵⁶ Cheryl Corley, *North Dakota Prison Officials Think Outside the Box to Revamp Solitary Confinement*, NPR Morning Edition (July 31, 2018, 5:01 a.m.), <https://www.npr.org/2018/07/31/630602624/north-dakota-prison-officials-think-outside-the-box-to-revamp-solitary-confineme>.

⁵⁷ *See Handbook on Dynamic Security and Prison Intelligence*, UN Office on Drugs and Crime, 14 (2015).

⁵⁸ Allen J. Beck & Paige M. Harrison, *Prisoners in 2000*, Bureau of Justice Statistics (Aug. 2001), <https://bjs.ojp.gov/content/pub/pdf/p00.pdf>; *Number of escapees from state and federal*

years later, as the total number of people in prison grew by 3.5 percent, the number of escapees dropped—with only .15 percent of incarcerated individuals escaping.⁵⁹

This 132 percent decrease in escapes is largely due to the security measures in use in modern prisons.⁶⁰ Prisons implement a range of measures to prevent escapes depending on the security level of the facility. These include the architecture of the buildings, the strength of the walls, the specifications of the perimeter wall and fences, and the placement of watchtowers, as well as cameras, metal detectors, x-ray machines and scanners and other security devices.⁶¹

Beyond these additional physical security measures in and around the facility, prisons have successfully implemented other new technologies to prevent escapes, including improved surveillance and alarm

prisons in the United States from 2000 to 2019, Statista (Oct. 2021), <https://www.statista.com/statistics/624069/number-of-escapees-from-prisons-in-the-us/>.

⁵⁹ E. Ann Carson, *Prisoners in 2019*, Bureau of Justice Statistics (Oct. 2020), <https://bjs.ojp.gov/content/pub/pdf/p19.pdf>; Statista, *supra* note 57.

⁶⁰ Mark Fahey & Nick Wells, *The Murky Math of Prison Escapes*, CNBC (June 12, 2015), <https://www.cnbc.com/2015/06/12/the-murky-math-of-counting-prison-escapes.html>.

⁶¹ *Handbook on Dynamic Security and Prison Intelligence*, *supra* note 57, at 9-11.

systems.⁶² If the surveillance system detects a breach in security, the technology will alert correctional officers.⁶³ These systems also record footage of the potential security breach, which allows correctional staff as well as other law enforcement to access the video in real-time from inside or outside the prison.⁶⁴ Motion detectors inside prisons can be used to alert staff to unusual movements or concentrations of incarcerated people.⁶⁵ Movement can be stored and studied in order to prevent future security issues, like escapes.

There is increasing recognition of the role of enhanced technology in correctional security, including the prevention of escapes. In a recent example, Senator Jon Osoff introduced the Prison Camera Reform Act of 2021,⁶⁶ which requires federal prisons to evaluate their basic security technology, such as cameras, report the flaws to Congress, such as blind spots, and create a

⁶² Max Kutner, *Recent Prisoner Escapes Have One Common Factor: Hospital Visits*, Newsweek, (Apr. 5, 2015), <https://www.newsweek.com/recent-prisoner-escapes-have-one-common-factor-hospital-visits-319692>.

⁶³ Subramanian Dharanya, et. al., *Embedded Based 3G Security System for Prison*, Indian J. of Sci. & Tech., Vol 6 (5) 4492-93 (2013).

⁶⁴ *See id.*

⁶⁵ *Id.*

⁶⁶ S.2899 - 117th Congress (2021-2022): Prison Camera Reform Act of 2021, S.2899, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/2899/text>.

plan to improve the deficiencies within three years with annual follow-ups.⁶⁷

In short, modern architectural and technological security measures have dramatically reduced prison escapes, providing corrections officials with viable and robust options to prevent escapes that do not involve solitary confinement. The risk of escape no longer serves as a justification for placing a person in long-term solitary confinement.

III. States Have Reduced the Use of Solitary Confinement by Implementing Alternative Housing, Rehabilitative Programming, and Limiting the Reasons for Placement in Solitary Confinement.

Recognizing the harms caused by isolation, some states have taken steps to reduce the number of incarcerated people in solitary confinement, especially for vulnerable populations. In the early 2000s, prison officials began reform efforts by re-evaluating those who were placed in solitary confinement. They discovered that rather than housing “the worst of the worst,” isolation cells often were filled with people who simply acted disruptively, suffered from mental illness, or sought protective custody.⁶⁸ Self-reports from correctional departments in New Jersey, Nebraska, New York, North Carolina, and Oregon indicated that “[l]ow-level nonviolent offenses were among the most

⁶⁷ *Id.*

⁶⁸ Hans Toch & Terry Kupers, *Violence in Prisons, Revisited*, 45.3 J. OF OFFENDER REHABILITATION 1, 18 (2007).

common infractions to result in disciplinary segregation sanctions,” and in some states, thirty-eight percent of incarcerated people in solitary confinement had been diagnosed with a mental illness.⁶⁹

A number of states—including New York, Colorado, Massachusetts, and Maine—have since implemented reforms to prevent the placement of vulnerable populations, such as people with serious mental illness, in solitary confinement.⁷⁰ To reduce the number of people in solitary confinement, these states also have also placed individuals who may have previously been held in isolation in alternative or less restrictive housing.⁷¹ Pennsylvania has designated therapeutic units for people with serious mental illness as an alternative to solitary confinement.⁷² North Dakota has created specialized programs and intensive treatment units for those who commit violent rule infractions or

⁶⁹ Leon Digard et al., Vera Institute of Justice, *Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems*, 15 (2018); *ASCA-Liman 2016 Report*, *supra* note 47, at 50.

⁷⁰ ACLU, *Briefing Paper: The Dangerous Overuse of Solitary Confinement in the US*, 13 (2014), <https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states> (*The Dangerous Overuse of Solitary*).

⁷¹ *Id.*

⁷² Alison Shames, et al., Vera Institute for Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, 22 (2015), https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf (*Common Misconceptions*).

have a behavioral health need.⁷³ Colorado implemented reforms in 2011 that reduced the number of people in long-term solitary confinement from seven percent of the prison population to a single percent by 2014.⁷⁴ And in 2021, New York passed legislation limiting the use of solitary confinement for all incarcerated people to fifteen days and implementing alternative rehabilitative measures, including Residential Rehabilitation Units (RRU) that will allow additional out of cell time and rehabilitative programming.⁷⁵ These alternatives allow prison officials to achieve penological goals, while abandoning the harmful and counterproductive practice of solitary confinement.

Corrections officials in reforming states have also developed alternative deterrence training and strategies, including privilege restrictions, to reduce “the violent acts posing the greatest risk to staff and offender safety,” like assaults on corrections officers

⁷³ David H. Cloud, et al., “*We Just Needed To Open The Door*”: A Case Study Of The Quest To End Solitary Confinement In North Dakota, 9 (2021).

⁷⁴ Marie Gottschalk, *Staying Alive: Reforming Solitary Confinement in U.S. Prisons and Jails*, 125 YALE L.J FORUM, 253, 263 (Jan. 15, 2016), <https://www.yalelawjournal.org/forum/reforming-solitary-confinement-in-us-prisons-and-jails>.

⁷⁵ Press Release, The New York State Senate, *Senate Majority Passes the ‘HALT’ Solitary Confinement Act* (March 18, 2021), https://www.nysenate.gov/sites/default/files/press-release/attachment/03.18.21_halt_press_release_.pdf (*The NY State Senate Press Release*).

and the use of weapons.⁷⁶ Additionally, correctional staff can be trained to de-escalate potentially violent incidents and prevent infractions that could result in placement in isolation.⁷⁷ Washington State instituted a group violence deterrence strategy that limited group-motivated violence by “target[ing] specific violent acts with swift, certain, and meaningful consequences.”⁷⁸ These consequences included both privilege restrictions and help from trained staff to learn “pro-social alternatives to violence.”⁷⁹ The initiative also included staff-ordered incentives for good behavior, including increased access to commissary, recreation, and educational opportunities.⁸⁰ Other prisons have designated “calm rooms” where agitated people can choose to soothe themselves before they become too angry or act out.⁸¹ In Maine, correctional

⁷⁶ Bernie Warner, Dan Pacholke, & Carly Kujath, Washington State Department of Corrections, *Operation Place Safety: First Year in Review*, 1, 2 (2014) (*Operation Place Safety*); B. Steiner & C.M. Cain, U.S. Department of Justice, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence, Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions* 165, 179 (2016).

⁷⁷ *Pacholke & Mullins*, *supra* note 51, at 8; *see also* TERRY KUPERS, SOLITARY, *supra* note 51 at 171-211.

⁷⁸ *Operation Place Safety*, *supra* note 76, at 2.

⁷⁹ *Id.*

⁸⁰ *Id.* at 14.

⁸¹ *Raemisch Remarks*, *supra* note 50.

officers are trained to consider ways to de-escalate and re-direct situations where conflict may occur.⁸² Instead of using solitary confinement, staff will temporarily restrict privileges like work and visitation.⁸³ In North Dakota, staff still impose sanctions for rule violations, but those sanctions are unlikely to include lengthy placement in isolation.⁸⁴

Reforming states have demonstrated that the creation of alternative housing, rehabilitative programming, and improvements to prison discipline are effective methods for addressing disruptive conduct in prison.⁸⁵ With more effective methods for addressing disruptive conduct in prison, fewer disruptions occur. And, in turn, there is less need for solitary confinement.

IV. Limiting The Use of Solitary Confinement Also Reduces Costs.

Limiting solitary confinement not only reduces violence, it also provides long-term cost savings. The Government Accountability Office calculated that

⁸² American Civil Liberties Union of Maine, *Change is Possible: A Case Study of Solitary Confinement Reform in Maine*, 31 (2013), <https://www.aclu.org/report/change-possible-case-study-solitary-confinement-reform-maine> (*Solitary Confinement Reform in Maine*).

⁸³ *Id.*

⁸⁴ *ASCA-Liman 2018 Report*, *supra* note 20, at 73.

⁸⁵ Toch & Kupers, *supra* note 68, at 187-188; *Operation Place Safety*, *supra* note 76, at 20-21; Digard, *supra* note 69, at 31.

solitary housing costs can be nearly three times as much as general population housing.⁸⁶ Solitary confinement is more expensive, in part, because of the increased costs to construct and operate single-cell units, as well as the security technology used in supermax prisons.⁸⁷ But the greatest expense of solitary confinement comes from increased staffing needs.⁸⁸ Solitary confinement units need a higher ratio of correctional officers to incarcerated people because policies require at least two officers be present to move people between their cells, exercise areas, and showers.⁸⁹

Colorado estimated it costs over \$15,000 more per year to house a person in isolation than in the general population, and spent \$20 million housing people in solitary confinement in 2010 alone.⁹⁰ In 2009, the

⁸⁶ The United States Government Accountability Office, *Bureau of Prisons: Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing* 31 (2013), <https://www.gao.gov/assets/gao-13-429.pdf> (GAO Report).

⁸⁷ *Solitary Confinement; Inhumane, Ineffective, and Wasteful*, *supra* note 43, at 14.

⁸⁸ Sal Rodriguez, Solitary Watch, *Fact Sheet: The High Cost of Solitary Confinement* (2011), <https://solitarywatch.org/wp-content/uploads/2011/06/fact-sheet-the-high-cost-of-solitary-confinement.pdf>.

⁸⁹ *GAO Report*, *supra* note 86, at 11.

⁹⁰ Rick Raemisch, *Testimony Before the U.S. Senate Subcommittee on the Constitution, Civil Rights and Human Rights* 4 (February 25, 2014), <https://www.judiciary.senate.gov/imo/media/doc/02-25->

California Office of the Inspector General investigated the costs per person in California’s administrative segregation units and “estimated that the annual correctional staff cost of a standard [segregation] bed [was] at least \$14,600 more than the equivalent general population bed,” amounting to “nearly \$130 million a year.”⁹¹ In 2015, it cost Texas an extra \$46 million to house incarcerated people in solitary confinement instead of general population.⁹²

CONCLUSION

Viable alternatives to solitary confinement exist. Reforming states have demonstrated that less harmful and more effective alternatives can prevail over long-term isolation. Knowing that “workable alternative systems for long-term [solitary] confinement exist,” the courts have no impediment to determining that “a correctional system should be required to adopt them.”⁹³ The alternatives to solitary confinement employed by a large and growing number of states have enhanced prison security, the welfare of incarcerated people, and societal safety, demonstrating that there is no longer a penological interest in maintaining people in prolonged isolation. Minimizing the harm of solitary

14RaemischTestimony.pdf; *Fact Sheet: The High Cost of Solitary Confinement*, *supra* note 88.

⁹¹ *Id.*

⁹² American Civil Liberties Union of Texas & Texas Civil Rights Project, *supra* note 22, at 39.

⁹³ *Davis v. Ayala*, 135 S. Ct. at 2210.

confinement is not only a moral imperative, but a practical necessity.

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