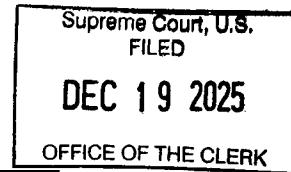


No. 25-1102



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In the Supreme Court of the United States

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JAMES SAYLOR,

*Petitioner,*

v.

ROB JEFFREYS, Director of the  
Nebraska Department of Correctional Services,  
In His Official Capacity,

*Respondent.*

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On Petition For A Writ of Certiorari To The  
United States Court of Appeals  
For The Eighth Circuit

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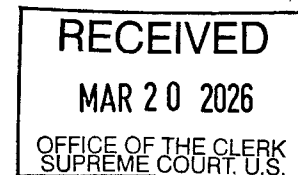
PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. The Eighth Circuit held that it is "lawful" to keep Petitioner in solitary confinement because he has post-traumatic stress disorder. The question is:

Whether it violates the Americans with Disabilities Act and/or the Rehabilitation Act of 1973 to keep a prisoner in prolonged solitary confinement because he has serious mental illness.

2. Whether conflict between the decision of the Eighth Circuit in this case and decisions of the Third and Fourth Circuits concerning the lawfulness of prolonged solitary confinement, both as to prisoners with serious mental illness and generally, constitutes a conflict between decisions of multiple United States courts of appeals on the same important matter that cannot be tolerated.

3. Whether the denial of a post-judgment Rule 59(e) motion to amend the complaint constitutes a "final judgment on the merits" for res judicata purposes, and if so, whether such precludes new facts which did not develop until a year after the first suit was dismissed from being the basis for a new suit.

4. Whether a prisoner with serious mental illness serving a life sentence, who has been held in solitary confinement for many years because she or he has serious mental illness, can be doomed to spend the rest of their life in solitary confinement simply because they lost a previous suit and now have no way to bring a new suit to challenge the conditions described.

**RELATED PROCEEDINGS**

- *Saylor v. Jeffreys*, No. 8:20cv264, U.S. District Court, D.Neb. Judgment entered 06/27/2022.
- *Saylor v. Jeffreys*, No. 23-3414, U.S.C.A.8. Judgment entered 03/19/2025.

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**PETITION FOR A WRIT OF CERTIORARI**

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Petitioner James Saylor respectfully petitions for certiorari to summarily reverse the judgment of the United States Court of Appeals for the Eighth Circuit in this case or, alternatively, to review the same.

**OPINIONS BELOW**

The Court of Appeals' opinion (App. 1-9) is reported at 131 F.4th 864. Both district court opinions (App. 10-22; App. 23-63) are reported at, 2023 U.S. Dist. LEXIS 175038 and, 2022 U.S. Dist. LEXIS 113085, respectively.

**JURISDICTION**

The Court of Appeals judgment was entered March 19, 2025. The Court of Appeals denied panel rehearing and rehearing en banc July 22, 2025. App. 117. On October 16, 2025, Justice Kavanaugh extended the time to petition for certiorari to December 19, 2025. This court has jurisdiction under 28 U.S.C. § 1254(1).

**STATUTES AND REGULATIONS INVOLVED**

[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such public entity.

## 42 U.S.C. § 12132

No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . .

## 29 U.S.C. § 794(a)

Public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals.

## 28 C.F.R. § 35.152(b)(2)

## STATEMENT

This is a lawsuit alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1973 (RA). The basis for federal jurisdiction in the district court was 28 U.S.C. §1331(a).

### A. Essence Of Petitioner's Problem

This lawsuit involves a prisoner with serious mental illness (SMI), solitary confinement, and res judicata. Petitioner has been held in prolonged solitary confinement for many years because he has post-traumatic stress disorder (PTSD). App. 2; App. 118-120. Due to a previous lawsuit dismissed in 2016, the Eighth Circuit held that Petitioner's current suit alleging he was being held in solitary confinement because he has PTSD was res judicata. App. 8, 9. Petitioner is serving a life sentence. App. 2. Unless permitted to bring a new suit to challenge the conditions described, Petitioner will likely spend the rest of his life in solitary confinement simply because he has PTSD.

### B. Summary Of Case

Petitioner James Saylor, a state prisoner, alleges Rob Jeffreys, Director of the Nebraska Department of Correctional Services (NDCS), has held him in prolonged solitary confinement for many years because he has PTSD. App. 3. The Eighth Circuit held that Petitioner's instant suit is barred by res judicata resulting from the denial of a post-judgment Rule 59(e) motion to amend in *Saylor I*, a previous suit,

App. 3-4, and because the current suit arises from the same nucleus of operative facts as *Saylor I*. App. 5.

Following the dismissal of *Saylor I* on November 28, 2016, Petitioner filed a Rule 59(e) motion that included a motion to amend. The proposed amended complaint contained an ADA claim. The Rule 59(e) motion, including the motion to amend, was denied on February 6, 2017. App. 3.

According to the Eighth Circuit, the denial of the Rule 59(e) motion to amend on February 6, 2017 was a final judgment on the merits with a claim-preclusive effect that extended into the future and precluded new facts that did not develop until nearly a year later, on January 24, 2018. App. 4-6. These “rescission facts” are the cornerstone of the current suit.

Meanwhile, in 2016, Petitioner suffered a mental breakdown from six years of continuous solitary confinement and, as a result, in July 2016, was removed from solitary confinement and placed on the Mental Health Unit (MHU), where he was accommodated with a single cell for his disability PTSD. App. 118-119.

However, after 1½ years on MHU, in January 2018, Respondent suddenly, and for no apparent reason, removed Petitioner from MHU, rescinded his accommodations, and returned him to prolonged solitary confinement, where Petitioner has remained. App. 119. These facts from January 2018 are referred to as the “rescission facts.”

Petitioner argued below that the rescission facts create a new claim because, among other things: (1) the rescission facts did not develop until January 2018, a year after *Saylor I* ended with the denial of the motion to amend, App. 4; and (2) the discrimination that had occurred in *Saylor I* ended for 1½ years, from

2016 to 2018, following Petitioner's removal from solitary confinement and placement on MHU. In other words, the new discrimination that began in 2018 was a new transaction. The Eighth Circuit rejected these arguments. App. 5-7.

In rejecting Petitioner's argument, the Eighth Circuit held that the February 6, 2017 denial of the motion to amend was a final judgment on the merits that precluded the rescission facts, even though the rescission facts did not develop until January 24, 2018, a year later. App. 4-6.

Based on Rule 12(b)(6), the Eighth Circuit held that the current suit was barred by res judicata. App. 8, 9.

### C. Questions Have Clear Bases

The Questions Presented above arise from clear and undisputed facts:

#### Question 1

When the Eighth Circuit held in 2025 that "plac[ing] [Saylor] 'back into solitary confinement [in 2018]'" was simply returning him to "the same conditions this Court found lawful in *Saylor I*," it held that it was "lawful" to place Petitioner in prolonged solitary confinement because he has PTSD. App. 6.

The 2025 holding cites *Saylor I* as its basis. App. 6. *Saylor I*, in turn, held that Petitioner's Fourteenth Amendment rights were not violated when prison officials kept him in long-term segregation "*because of PTSD.*" App. 93 (emphasis added).

In 2025, the Eighth Circuit held that it was “lawful” to keep Petitioner in solitary confinement because he has PTSD.

### Question 2

The conflict is two-fold.

First, while the Eighth Circuit held it was lawful to place Petitioner in prolonged solitary confinement because he has PTSD, App. 6, the Third and Fourth Circuits have both held the same conduct is a “clearly established” Eighth Amendment violation. *Infra*, at 15-17.

Second, the same conflict involves disagreement concerning what constitutes “serious harm” from prolonged solitary confinement. The Eighth Circuit found that a mental breakdown Petitioner suffered requiring hospitalization and a worsening of his PTSD were not a “significant deterioration of mental or physical health.” App. 7n.3.

By contrast, the Third and Fourth Circuits have held that merely placing a prisoner at risk of the psychological and emotional harm posed by prolonged solitary confinement is such a serious harm that it violates the Eighth Amendment. *Infra*, 20-22.

### Question 3

The post-judgment Rule 59(e) motion to amend was denied February 6, 2017. App. 3. The denial of the motion to amend was held to be a final judgment on the merits for res judicata purposes, which precluded the rescission facts even though the rescission facts did not develop until January 24, 2018. App. 4-6.

**Question 4**

Facts indicating Petitioner will likely spend the rest of his life in solitary confinement because he has PTSD, if denied a new suit to challenge such conditions, include the following: Petitioner has PTSD and is serving a life sentence. App. 2; As of the filing of the complaint in 2021, Petitioner had spent more than 170 months in solitary confinement and remained there because he has PTSD. App. 118; App. 120.

**REASONS FOR GRANTING THE PETITION****I. IT VIOLATES THE ADA AND RA TO KEEP PETITIONER IN PROLONGED SOLITARY CONFINEMENT BECAUSE HE HAS PTSD.****Question**

Whether it violates the ADA and RA to subject a prisoner to prolonged solitary confinement because he or she has PTSD or any other disability.

In instant suit, Petitioner alleges that, on January 24, 2018, Respondent placed him in prolonged solitary confinement and left him there because he has PTSD.

Petitioner's lawsuit alleges that at the same time as he placed Petitioner in solitary confinement, Respondent also removed Petitioner from MHU and rescinded the necessary accommodations Petitioner had been provided for his disability PTSD so that he could live in the "the most integrated setting appropriate" to his needs. 28 C.F.R. § 35.152(b)(2).

Petitioner's suit alleges that Respondent placed him in solitary confinement and did the other things indicated because Petitioner has the disability PTSD. App. 2-3.

The Eighth Circuit held that it was "lawful" to place and hold Petitioner in prolonged solitary confinement *because* he has PTSD. App. 6. This holding is based on the Eighth Circuit's decision in *Saylor v. Kohl et al.*, (8th Cir., Jan 29, 2016), as amended (March 4, 2016), cert. denied, 580 U.S. 867 (October 3, 2016) (*Saylor I*), App. 79, a previous suit, discussed below.

In 2016, on interlocutory appeal of a decision denying summary judgment based on qualified immunity in *Saylor I*, App. 79, a divided Eighth Circuit panel reversed and held that Petitioner's Constitutional rights had not been violated. App. 80.

In ruling against Petitioner's Fourteenth Amendment claim, the majority held:

Segregation due to a prisoner's request to be kept in a single prisoner cell *because of PTSD* is not an atypical or a significant hardship.

App. 93 (emphasis added). The relevant point is that *Saylor I* held that it did not violate Petitioner's Fourteenth Amendment rights to keep him in segregation "because of PTSD." *Id.*

Such is the basis for the 2025 holding that, in 2018, it was "lawful" to place Petitioner in prolonged solitary confinement because he has PTSD. App. 6.

The Eighth Circuit's 2025 decision made the holding in question – that, in 2018, it was "lawful" to place Petitioner in solitary confinement *because* he has PTSD – while explaining why it was rejecting Petitioner's argument that a new claim was produced in 2018 when Petitioner was suddenly removed from MHU, his necessary accommodations were rescinded, and he was placed back in solitary confinement after 1½ years on MHU even though he was not accused of wrongdoing:<sup>1</sup>

---

<sup>1</sup> In 2016, after many years of solitary confinement, Petitioner suffered a mental breakdown requiring hospitalization. Petitioner was then removed from solitary confinement and placed on MHU where he was accommodated for his PTSD. In 2018, 1½ years after his release from solitary confinement,

The movement into and out of the Mental Health Unit does not give rise to a new claim. Saylor . . . was placed “back into solitary confinement” – the same conditions this Court found *lawful* in Saylor I.

App. 6 (emphasis added).

The Eighth Circuit held that, in 2018, it was “lawful” for Respondent to place and keep Petitioner in solitary confinement because he has PTSD, and it based such on its 2016 decision in *Saylor I*. The citation to *Saylor I* (“ . . . the same conditions this Court found lawful in Saylor I”) makes such clear.

By citing *Saylor I* and its holding that keeping Petitioner in segregation “because of PTSD” did not violate his Fourteenth Amendment rights as the basis for its 2025 holding,<sup>2</sup> the Eighth Circuit clearly held in 2025 that, in 2018, it was “lawful” to keep Petitioner in solitary confinement *because* he has PTSD. App. 6.

The 2025 decision is flawed because *Saylor I* did not hold that the conduct complained of was “lawful”; it held that such did not violate the Fourteenth Amendment. App. 93.

Finding that conduct does not violate the Constitution is narrower than finding that such is “lawful.”

The 2025 Eighth Circuit ignored that conduct found not to violate the Constitution can, and often does, violate other laws.

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Petitioner was suddenly removed from MHU and returned to solitary confinement. App. 118-119.

<sup>2</sup> That all Respondent did in 2018 “was place[] [Saylor] ‘back into solitary confinement’ – the same conditions this Court found *lawful* in Saylor I,” App. 6 (emphasis added).

It violates the ADA and RA to subject a prisoner to prolonged solitary confinement simply because she or he has a disability, including PTSD. 42 U.S.C. § 12132; 29 U.S.C. § 794(a); 28 C.F.R. § 35.152(b)(2) (requiring “inmates . . . with disabilities [be] housed in the most integrated setting appropriate to [their] needs”).

It was not “lawful” to place Petitioner in prolonged solitary confinement in 2018 because he has PTSD. Such violated the ADA and RA.

## II. THE DECISION BY THE EIGHTH CIRCUIT CONFLICTS WITH DECISIONS BY THE THIRD AND FOURTH CIRCUITS ON THE LAWFULNESS OF SOLITARY CONFINEMENT.

The decision from the Eighth Circuit in this case, *Saylor v. Jeffreys*, App. 1 (8<sup>th</sup> Cir. 2025) (*Jeffreys*), conflicts with decisions from the Third and Fourth Circuits “on the same important matter” – the lawfulness of prolonged solitary confinement.

The Third and Fourth Circuits have held that prolonged solitary confinement poses a substantial risk of serious harm to the health of prisoners subjected to it and violates the Eighth Amendment.

Relevant cases include: *Williams v. Sec’y of Pa. Dep’t of Corr.*, 117 F.4th 503, 524 (3d Cir. 2024), cert. denied, 2025 U.S. LEXIS 2939 (Oct. 6, 2025); *Clark v. Coupe*, 55 F.4th 167, 179, 181-82, 184-85 (3d Cir. 2022); *Palakovic v. Wetzel*, 854 F.3d 209, 225-26 (3d Cir. 2017); *Porter v. Pa. Dep’t of Corr.*, 974 F.3d 431, 441-43, 451 (3d Cir. 2020); *Porter v. Clarke*, 923 F.3d 348, 357, 361, 364 (4th Cir. 2019); and *Thorpe v. Clarke*, 37 F.4th 926, 933-34 (4th Cir. 2022).

By contrast, *Jeffreys* held that it was “lawful” to place and keep Petitioner in prolonged solitary confinement *because* he has PTSD, App. 6, and that serious health-related injuries Petitioner suffered as a result of prolonged solitary confinement were not a “significant deterioration of mental or physical health,” App. 7n.3., *i.e.*, were not “serious harms.”

While two U.S. courts of appeals have held that the conditions in question are unlawful because they violate the Eighth Amendment and unreasonably threaten *inmate health*, a third has held that it is “lawful” to subject a prisoner to prolonged solitary confinement simply *because* he has the SMI PTSD, and that serious *health*-related injuries the prisoner has suffered as a result of prolonged solitary confinement are not a “significant deterioration” of health.

### **A Question of National Importance**

Question 2, based on a conflict between three U.S. courts of appeals concerning the lawfulness of solitary confinement, is a question of national importance:

- If the holding in *Jeffreys* that it was “lawful” to keep Petitioner in solitary confinement because he has PTSD is allowed to stand, prisoners with SMI, as well as other disabilities, both in and outside the Eighth Circuit, will be subjected to prolonged solitary confinement simply because they have a disability.

## Defining The Conflict

*Jeffreys* conflicts with the decisions from the Third and Fourth Circuits identified above concerning two questions:

- Whether it is lawful to knowingly subject a prisoner with preexisting SMI to prolonged solitary confinement without penological justification; and
- What constitutes “serious harm” from prolonged solitary confinement.

### A. Conflict Concerning Whether It Is “Lawful” To Knowingly Subject A Prisoner With Preexisting SMI To Prolonged Solitary Confinement Without Penological Justification.

*Jeffreys* and the Third and Fourth Circuit decisions cited above conflict concerning whether it is lawful to knowingly subject a prisoner with preexisting SMI to prolonged solitary confinement without penological justification.

As explained in Reason I above, by citing and relying on *Saylor I* for its basis, *Jeffreys* held that, in 2018, it was “lawful” to place and keep Petitioner in prolonged solitary confinement because he has PTSD. App. 6; *supra*, Reason I.

In the Third Circuit, it is “clearly established” law that a prisoner with preexisting SMI has a right not to be subjected to prolonged solitary confinement without penological justification, and knowingly imposing such conditions violates the Eighth Amendment.

Since 2017, the Third Circuit has entered three decisions holding as follows:

[W]e hold that individuals with a known history of serious mental illness have a clearly established right not to be subjected to prolonged, indefinite solitary confinement – without penological justification – by an official who was aware of that history and the risks that solitary confinement pose to someone with those health conditions.

*Williams*, 117 F.4th at 524. *See also Clark*, 55 F.4th 167, 179, 181-82, 184-85; *Palakovic*, 854 F.3d 209, 225-26.

Since 2019, the Fourth Circuit has held that prolonged solitary confinement “pose[s] a ‘substantial risk’ of serious psychological and emotional harm,” *Porter*, 923 F.3d 348, 357, and that subjecting a prisoner to that risk without “legitimate penological justification” violates the Eighth Amendment. *Id.*, at 362-63n.2. Such is “clearly established” law in the Fourth Circuit. *Thorpe*, 37 F.4th 926, 933-34.

*Jeffreys* conflicts with the Third and Fourth Circuit decisions on the question of whether the conduct at issue is lawful as follows:

### 1. Direct Conflict Concerning Lawfulness

While *Jeffreys* held it was “lawful” to place Petitioner in prolonged solitary confinement because he has PTSD, App. 6; *supra*, Reason I, the Third and Fourth Circuit decisions held that the same conduct violates the Eighth Amendment, *supra*, thereby also holding that the conduct in question was “unlawful.”

The Third and Fourth Circuit decisions held that the same conduct that *Jeffreys* found “lawful” violates the Eighth Amendment and is, therefore, “unlawful.” Such is a direct conflict.

## 2. Direct Conflict Concerning Prisoners with SMI

*Jeffreys*’ holding that it was lawful to place Petitioner in prolonged solitary confinement *because* he has PTSD conflicts directly and obviously with the Third Circuit decisions concerning whether it is lawful to impose prolonged solitary confinement on a prisoner with mental illness.

The Third Circuit decisions specifically protect prisoners with preexisting SMI from knowingly being subjected to prolonged solitary confinement, finding an Eighth Amendment violation if such occurs. *Williams, supra*, at 524. By contrast, based on *Saylor I*, *Jeffreys* held that it was “lawful” to place Petitioner in prolonged solitary confinement *because* he has PTSD. *Supra*, Reason I.

## 3. Direct Conflict Concerning Penological Justification

*Jeffreys* is unconcerned that there is no penological justification in using Petitioner’s PTSD as the basis for keeping him in prolonged solitary confinement, holding that such was “lawful”. App. 6; *supra*, Reason I.

The Third and Fourth Circuits both held that it violates the Eighth Amendment, and is therefore “unlawful,” to impose prolonged solitary confinement without penological justification. *Williams, supra*, at

524; *Porter*, 974 F.3d at 451; *Porter*, 923 F.3d at 362-63n.2.

Such is a direct conflict.

#### **B. Conflict Concerning What Constitutes “Serious Harm” From Prolonged Solitary Confinement**

*Jeffreys* conflicts with the Third and Fourth Circuit decisions cited above concerning what constitutes “serious harm” from prolonged solitary confinement.

In *Jeffreys*, the Eighth Circuit held that serious injuries to Petitioner’s mental and physical health resulting from prolonged solitary confinement were not serious harms.

The Third and Fourth Circuit decisions held just the opposite: that the harm prolonged solitary confinement causes – including mental harm – is so serious that exposing a prisoner to the risk of such harm without penological justification violates the Eighth Amendment.

Petitioner’s pro se complaint, liberally construed, alleges prolonged solitary confinement caused Petitioner to suffer serious health-related injuries, including the following:

- A mental breakdown and deterioration of health requiring eventual hospitalization (“After six years of continuous solitary confinement”). App. 118-119.
- A worsening of his PTSD and symptoms, causing pain; making effective PTSD treatment impossible, causing pain; the ongoing denial of his migraine headache medication, causing

severe pain; serious injuries from repeatedly being placed in restraints, causing pain. App. 118-123.

Even though Petitioner's pro se complaint alleges serious health-related injuries from prolonged solitary confinement, *Jeffreys* held that such were not a "significant deterioration of mental or physical health over time":

This does not suggest that an extended period in solitary confinement can never produce a new claim.<sup>[3]</sup> *This case does not provide the opportunity to address whether* indefinite solitary confinement might give rise to a new conditions-of-confinement claim if, for example, *the conditions caused significant deterioration of mental or physical health over time.*

App. 7n.3 (emphasis added).

By refusing to accept as true the allegations set forth in Petitioner's pro se complaint<sup>4</sup> and holding that Petitioner's injuries from prolonged solitary confinement were not a "significant deterioration of mental or physical health over time," *Jeffreys* held

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<sup>3</sup> Between 2002 and 2021, when the operative complaint was filed, Petitioner was held in solitary confinement for more than 170 months because he has PTSD. App. 118-120. "[L]ength of confinement cannot be ignored" *Hutto v. Finney*, 437 U.S. 678, 686 (1978).

<sup>4</sup> The Eighth Circuit had a duty to believe the allegations set forth in Petitioner's complaint, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007), and because it was a *pro se* complaint, to liberally construe such. *Fed. Express v. Holowecki*, 552 U.S. 389, 402 (2008). It did neither.

that Petitioner's health-related injuries from prolonged solitary confinement were not "serious harms."

Regarding the Third Circuit, three of its decisions provide special protections to prisoners with preexisting SMI because their health is more susceptible to harm from prolonged solitary confinement, and the "touchstone" when assessing conditions of segregated confinement "is the health of inmate[s], including their mental health." *Williams*, 117 F.4th at 517 (emphasis added).

These holdings are based on two health-related reasons: (1) prisoners with preexisting SMI are more likely to experience pain from solitary confinement, thus resulting in "unnecessary and wanton infliction of pain." *Id.*; and (2) the mental health of prisoners with preexisting SMI, including their SMI, is more susceptible to harm from prolonged solitary confinement. *Id.*, at 518n.93; *Clark*, 55 F.4th at 183. Such is based on *Young v. Quinlan*, 960 F.2d 351, 363-65 (3d Cir. 1992).

In *Young*, an HIV-positive inmate was held in foul and unsanitary conditions for four days. Young's HIV made him "more susceptible to infection and disease" from the conditions of his confinement than someone not suffering from HIV. *Young*, 960 F.2d at 365.

Based on *Young*, *Williams* and *Clark* held that a prisoner with preexisting SMI held in prolonged solitary confinement is more susceptible to harm from prolonged solitary confinement. And it's the same for all prisoners with preexisting SMI. *Williams*, 117 F.4th at 518n.93; *Clark*, 55 F.4th at 183.

These Third Circuit decisions obviously held that a "serious harm" occurs when a prisoner with

preexisting SMI suffers pain or a worsening of her mental health from prolonged solitary confinement.

Regarding the Fourth Circuit, its decisions agree with the Third Circuit concerning what constitutes serious harm from prolonged solitary confinement.

Petitioner's injuries from prolonged solitary confinement – including a mental breakdown and a worsening of his PTSD – are *exactly* what the Fourth Circuit decisions mean by “*serious* psychological and emotional *harm*” caused by prolonged solitary confinement. *Porter*, 923 F.3d at 357 (emphasis added).

Petitioner's injuries are clearly “serious harms” under Fourth Circuit analysis.

#### **Direct Conflict Concerning Serious Harm**

*Jeffreys* and the Third and Fourth decisions conflict directly concerning what constitutes serious harm from prolonged solitary confinement.

*Jeffreys* held that Petitioner's injuries from such, including a mental breakdown requiring hospitalization and a worsening of his PTSD, were not a “serious deterioration of mental or physical health over time.”

By contrast, the Third and Fourth Circuit decisions held just the opposite.

The Third Circuit decisions held that suffering unnecessary pain or a worsening of one's mental health – the same injuries Petitioner suffered – are such serious injuries that it violates the Eighth Amendment to subject a prisoner with preexisting SMI to prolonged solitary confinement because these prisoners are at greater risk of suffering the injuries indicated.

The Fourth Circuit held that the sort of injuries Petitioner suffered are “serious psychological and emotional harm” and violate the Eighth Amendment.

*Jeffreys* held that Petitioner’s injuries were “no big deal”; the Third and Fourth Circuit decisions held that such injuries are “serious harms.”

Such constitutes a direct conflict.

### **C. A Different Result In The Third Or Fourth Circuit**

Had this case been decided by the Third or Fourth Circuit, the result would have been different.

For the foregoing reasons, either the Third or Fourth Circuit would have held that it was not “lawful” and violated the ADA to place Petitioner in prolonged solitary confinement because he has PTSD, and that the 2018 “rescission facts” created a new claim not barred by *res judicata*.

The Third or Fourth Circuit also would have held that Petitioner’s injuries resulted from prolonged solitary confinement, were a “significant deterioration of” Petitioner’s health, *i.e.*, were “serious harms,” and were sufficient to create a new claim.

### **III. THE DENIAL OF A POST-JUDGMENT RULE 59(e) MOTION TO AMEND DOES NOT CONSTITUTE A “FINAL JUDGMENT ON THE MERITS” FOR RES JUDICATA PURPOSES AND DOES NOT PRECLUDE NEW FACTS THAT DID NOT DEVELOP UNTIL A YEAR AFTER THE FIRST SUIT WAS DISMISSED FROM BEING THE BASIS FOR A SECOND SUIT.**

Question 3 and its subsidiaries, including the following, are of national importance:

- Whether the denial of a post-judgment Rule 59(e) motion to amend constitutes a final judgment on the merits for res judicata purposes.
- Whether this Court's holding in *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 501-03 (2001), that an adjudication is not "on the merits" with a "claim-preclusive effect" unless it "passes directly on the substance of [a particular] claim," applies to the denial of a motion to amend a complaint.
- Whether this Court's holding in *Bannister v. Davis*, 590 U.S. 504, 508 (2020), that the filing of a Rule 59(e) motion "suspends the finality of the original judgment," is limited to appeal-related issues.
- Whether this Court's res judicata holding in *Whole Women's Health v. Hellerstedt (WWH)*, 579 U.S. 582, 599 (2016) continues to have vitality in light of the decision in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).
- Whether the Eighth Circuit's holding in *United States v. Bala*, 948 F.3d 948, 951 (8<sup>th</sup> Cir. 2020), which conflicts "direct[ly] and apparent[ly]," and obviously, with this Court's "change of circumstances" holding in *WWH*, 579 U.S. at 600, should be overruled.

**A. Denial Of Petitioner's Post-Judgment Rule 59(e) Motion To Amend Was Not A Final Judgment On The Merits.**

On November 28, 2016, the district court dismissed *Saylor I*. App. 3. Such was a dismissal on the merits. App. 67; App. 79.

Petitioner then filed a timely Rule 59(e) motion including a request to file an amended complaint containing an ADA claim based on facts that developed after *Saylor I* was filed in 2012. App. 3-4.

On February 6, 2017, the court denied the Rule 59(e) motion. App. 3; App. 64. The court neither dismissed with prejudice nor ruled on the merits of Petitioner's proposed amended complaint; it simply found Petitioner had not met the standard for a Rule 59(e) motion, App. 65.

The "rescission facts" on which Petitioner's current suit is based did not develop until January 24, 2018, nearly a year after the denial of the post-judgment Rule 59(e) motion to amend on February 6, 2017. App. 119; App. 6.

*Jeffreys* held that the denial of Petitioner's post-judgment motion to amend was a final judgment on the merits for res judicata purposes as to the proposed amended complaint based on *King v. Hoover Grp., Inc.*, 958 F.2d 219, 222-23 (8<sup>th</sup> Cir. 1992) ("it is 'well settled that denial of leave to amend constitutes res judicata on the merits of the claims which were the subject of the proposed amended pleading.'"). App. 6. *King* and its progeny<sup>5</sup> conflict with Supreme Court

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<sup>5</sup> The *King* line includes *Profl Mgmt. Assocs. v. KPMG LLP*, 345 F.3d 1030, 1032-33 (8<sup>th</sup> Cir. 2003) (*King* applies "even when the denial of leave is based on reasons other than the merits, such as

precedent in *Semtek Int'l, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 501-03 (2001).

*Jeffreys* held that the preclusive effect of the denial of the post-judgment motion to amend on February 6, 2016, extended into the future and precluded the “rescission facts,” which did not develop until January 24, 2018. App. 4-6.

### 1. *Semtek*

The Supreme Court held in *Semtek*, that an adjudication is not “on the merits” with a “claim-preclusive effect” unless it “actually ‘passes directly on the substance of [a particular] claim’ before the court.” *Semtek*, 531 U.S. at 501-02.

### Question

Whether the holding in *Semtek* applies to the denial of a motion to amend the complaint with the result that the denial does not constitute an “adjudication on the merits” with a “claim-preclusive effect” unless it “actually ‘pass[es] directly on the substance of [a particular] claim’.”

Writing for a unanimous Court, Justice Scalia explained that the term “judgment on the merits” has

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timeliness,” making no distinction between denials on the merits and denials for procedural reasons); and *Satanic Temple v. City of Belle Plaine*, 80 F.4th 864, 870-71 (8<sup>th</sup> Cir. 2023) (holding denial of motion to amend was final judgment on the merits for claim preclusion purposes even though dismissal was without prejudice and not a final judgment on the merits). See *Olson v. Brott*, 2009 U.S. Dist. LEXIS 115770 (D.Minn. 2009), at 12-25 (sanctions analysis), for relevant discussion.

lost its original meaning (*i.e.*, “has gradually undergone change”) and “has come to be applied to some judgments . . . that do *not* pass upon the substantive merits of a claim and hence do *not* (in many jurisdictions) entail claim-preclusive effect.” *Semtek, supra*, at 502.

*Jeffreys*’ holding that the denial of the post-judgment motion to amend was a “final judgment on the merits,” App. 5-6, conflicts with *Semtek* and should be reversed. The district court obviously did not “pass on the substantive merits of [the] claim” contained in the proposed amended complaint.

Under *Semtek*, the denial of the post-judgment motion to amend on February 6, 2017, was not an “adjudication on the merits” with a “claim-preclusive effect” because such did not “actually ‘pass[ ] directly on the substance’ of the claim contained in the proposed amended complaint. *Semtek, supra.*, at 501-02.

## **2. Denial of Post-Judgment Motion to Amend Made in Rule 59(e) Motion Not a Final Judgment on the Merits**

The denial of the Rule 59(e) motion and motion to amend on February 6, 2017, was not a final judgment on the merits because the case had already been dismissed, and Rule 59(e) contains no provision indicating that, upon filing a Rule 59(e) motion, the original judgment is automatically vacated, modified or reopened.<sup>6</sup>

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<sup>6</sup> Fed.R.Civ.P. 59(e) states: “A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.”

Because the original judgment remained undisturbed after the Rule 59(e) motion was filed, the denial of Petitioner's Rule 59(e) motion to amend on February 6, 2017, was not a "final judgment on the merits."

### Question

Whether the denial of a Rule 59(e) motion to amend constitutes a final judgment on the merits, since Rule 59(e) does not indicate that the filing of a Rule 59(e) motion automatically vacates or modifies the original judgment.

Petitioner submits that a ruling on a Rule 59(e) motion could only constitute a final judgment on the merits if it vacated or modified the original judgment. Because a denial neither vacates nor modifies the original judgment, it cannot be a "final judgment on the merits."

In *Bannister v. Davis*, 590 U.S. 504, 508 (2020), the Court held that the timely filing of a Rule 59(e) motion "suspends the finality of the original judgment" for purposes of appeal. *Id.* at 508. However, such is limited to appeal-related issues.

*Bannister's* purpose is to ensure that the Rule 59(e) decision and the original judgment are merged into a single appeal. The solution was to suspend the finality of the original judgment, then "restore[ ] th[e] finality" upon disposition of the motion in order to avoid the "starting of the 30-day appeal clock." *Id.*, at 508-09.

*Bannister* is a practical solution to a procedural problem, not a basis for transforming a judgment not

on the merits into one that is purportedly “on the merits” with a “claim-preclusive effect.”

### Question

Whether the holding in *Bannister* suspending finality of the original judgment upon the filing of a Rule 59(e) motion is limited to “purposes of appeal” or whether such is also a basis for finding that the denial of a post-judgment Rule 59(e) motion to amend is a “final judgment on the merits” with a “claim-preclusive effect.”

### 3. The “Rescission Facts” Cannot be Precluded by Denial of the Rule 59(e) Motion to Amend

“[R]es judicata does not bar claims that are predicated on events that postdate the filing of the initial complaint.” *Whole Women’s Health v. Hellerstedt* (*WWH*), 579 U.S. 582, 600 (2016) (holding represents position taken in six decisions from five U.S. courts of appeals cited in *WWH*).

The “rescission facts” postdated the dismissal of *Saylor I* (November 28, 2016) and the denial of the motion to amend (February 6, 2017) by approximately a year.

*WWH* also specifically addresses new facts that do not develop until after the judgment in the first suit – such as the “rescission facts” in this case. 579 U.S. at 599, (“Material operative facts *occurring after the decision of an action* with respect to the same subject matter. . .” (emphasis added)).

In addition, a judgment “cannot be given the effect of extinguishing claims which did not even then exist and which could not possibly have been sued upon in

the previous case.” *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 328 (1955). Such remains true even for a course of conduct or ongoing conduct. *Id.* at 327-28.

The previous disability discrimination ended in July 2016 upon Petitioner’s removal from solitary confinement and placement on the Mental Health Unit (MHU). During his 1½-years on MHU from July 2016 until January 2018, Petitioner experienced no discrimination.

A new transaction of disability discrimination commenced in January 2018 when Respondent rescinded Petitioner’s accommodations on MHU and returned Petitioner to solitary confinement because he has PTSD.

Due to the 1½-year gap between July 2016 and January 2018, there was nothing – no “series of connected transactions” of discrimination – to connect the old pre-July 2016 discrimination transaction to the new discrimination transaction beginning in January 2018.

The finding that Petitioner’s removal from MHU and placement in solitary confinement “is only one ‘transaction’ in a ‘series of connected transactions’ alleging [disability] discrimination” is clearly wrong. App. 7.

Contrary to the holding in *Jeffreys*, App. 5-7, the rescission facts, which developed after 1½-year years of no discrimination, “produce[d] a different nucleus of operative facts” than the *Saylor I* discrimination. App. 7.

During *Saylor I*, Respondent held Petitioner in solitary confinement because he had PTSD.

Then Respondent stopped for 1½ years.

Then, in 2018, Respondent rescinded Petitioner's accommodations and again subjected Petitioner to solitary confinement because he had PTSD.

The 2018 rescission facts arise from a new transaction.

The 2018 "rescission facts" are not precluded by the denial of the post-judgment Rule 59(e) motion to amend in *Saylor I* a year earlier, in 2017.

#### B. "Rescission Facts" Create New Claim

##### Questions

Whether Petitioner's 2018 "rescission facts" create a new claim under *WWH*, including under its "even a slight change of circumstances" holding. 579 U.S. at 600.

And, whether this Court's res judicata holding in *WWH*, supra, at 599, has vitality and remains good law in light of the Court's decision in *Dobbs*, 597 U.S. at 231.

In addition to the foregoing, Petitioner's current suit is not res judicata because the rescission facts are "new material facts" under *WWH*, and, as such, produce a new claim:

[The] development of new material facts can mean that a new case and an otherwise similar previous case do not present the same claim. See Restatement (Second) of Judgments § 24, Comment f (1980) ("Material operative facts occurring after the decisions of an action with respect to the same subject matter may in

themselves, or taken in conjunction with the antecedent facts, comprise a transaction which may be made the basis of a second action not precluded by the first.”)

*WWH*, *supra*, at 599-600.

### 1. Nucleus of Operative Facts Analysis Conflicts with *WWH*

*Jeffreys* held that Petitioner’s current suit was based on the same claim as *Saylor I* because the new suit, including the rescission facts, supposedly shares the same nucleus of operative facts with *Saylor I*. However, *Jeffreys*’ nucleus of operative facts analysis conflicts with this Court’s teaching in *WWH*.

Under *WWH*, even if two suits share a common nucleus of operative facts, the second suit is not barred by res judicata, if it is based on new material facts. *WWH* expressly holds that the new material facts from the second case and the facts from the first case may be “of the same subject matter” and “similar,” *i.e.*, share the same nucleus of operative facts. *WWH*, *supra*, at 599.

*Jeffreys* found the nucleus of operative facts was the same because both suits alleged Petitioner was held in solitary confinement due to PTSD, resulting in disability discrimination. App. 5. However, as explained, such a nucleus of operative facts approach conflicts with *WWH*.

*WWH* also expressly provides for including facts from the old suit with newly developed facts to produce a new transaction for the second suit:

“Material operative facts occurring after the decision of an action with the same subject matter may, . . . *taken in conjunction with the antecedent facts*, comprise a transaction which may be made the basis of a second action not precluded by the first.”

*WWH, supra*, at 599-600.

*Jeffreys'* nucleus of operative facts analysis conflicts with *WWH*.

## 2. *WWH's* “Even a Slight Change of Circumstances” Holding

*WWH* holds that a change of circumstances arising after a previous suit has ended can produce a new claim and allow a second suit. *WWH*, 579 U.S. at 600-02.

Further, *WWH* specifically holds that, where important human values are at stake, a new claim is created even if the new material facts give rise to only “a slight change in circumstances.”

[W]here “important human values – such as the lawfulness of continuing personal disability or restraint – are at stake, even a slight change of circumstances may afford a sufficient basis for concluding that a second action may be brought.”

*WWH, supra*, at 600.

The examples of important human values given in *WWH* – “the lawfulness of a continuing personal disability or restraint” – apply here:

- Because Petitioner's placement in solitary confinement is based on the fact that he has the disability PTSD, the "lawfulness of [Petitioner's] continuing personal disability or restraint" is "at stake" in this case.
- While in solitary confinement, Petitioner has been "disabled" and "restrained" from integrating into the prison's general population and from participating in the prison's programs and services that are available only in general population.

Because the "important human values" at stake in this case match the examples of such given in *WWH*, this case satisfies *WWH*'s requirement concerning important human values, and its "even a slight change of circumstances" holding applies here.

**a. Rescission facts are more than "a slight change of circumstances"**

As set forth below, the 2018 rescission facts are more than "a slight changes of circumstances":

On January 24, 2018, Petitioner's circumstance changed greatly when, after being accommodated for his disability by being placed in a single cell on MHU for 1½ years, Petitioner's accommodations were suddenly rescinded and he was returned to solitary confinement even though he was not accused of violating a rule or doing anything else wrong. App. 119.

Petitioner had been released from solitary confinement and placed on the MHU 1½ years earlier after suffering a mental breakdown. App. 118-19. He

was now in a healthy and “integrated” setting outside solitary confinement being accommodated for his disability. *Id.*

Then, suddenly, the circumstances making it possible for Petitioner to live outside solitary confinement were eliminated and Petitioner was placed back in prolonged – and apparently permanent – solitary confinement, even though he was not accused of doing anything wrong. App. 119.

The change of circumstances described, which was already significant, becomes even moreso when one factors in the risk of harm to Petitioner the changes described necessarily posed, transforming such into *constitutional* harms. Petitioner’s 2016 mental breakdown makes the risk of harm clear.

In 2016, “after six years of continuous solitary confinement,” Petitioner suffered a mental breakdown and deterioration of health requiring hospitalization. App. 118-19. Such was obviously caused by prolonged solitary confinement.

Soon thereafter, on July 25, 2016, Petitioner was removed from solitary confinement, transferred to MHU, and accommodated for his PTSD with a single cell and otherwise. App. 199. This action was taken to prevent Petitioner from being further injured by prolonged solitary confinement.

Respondent and his team were fully aware of Petitioner's breakdown and deterioration of health, and that such was caused by prolonged solitary confinement. That’s why Respondent removed Petitioner from solitary confinement and placed him in a single cell on MHU – because such was necessary in order to prevent further deterioration and injury from prolonged solitary confinement.

Petitioner's 2016 mental breakdown and Respondent's response to such make it clear that Respondent and other prison officials were aware of the risk of serious harm to Petitioner's health that prolonged solitary confinement posed.

Accordingly, on January 24, 2018, when Respondent rescinded Petitioner's accommodations and placed him back in prolonged solitary confinement, even though he was fully aware of the risk of serious harm such posed to Petitioner's health, Respondent disregarded that risk and subjected Petitioner to prolonged solitary confinement anyway, thereby knowingly exposing Petitioner to the serious risk of additional deterioration and harm from solitary confinement.

So, the change of circumstances arising from the rescission facts, in addition to the significant changes resulting from the rescission of Petitioner's accommodations and reimposing prolonged solitary confinement, also include (1) unnecessarily placing Petitioner at risk of suffering additional health-related injuries from prolonged solitary confinement, such as the mental breakdown and deterioration that occurred in 2016, and (2) that such are clear constitutional harms – an Eighth Amendment violation.

Such is a very significant change of circumstances.

Furthermore, the change of circumstances arising directly from the 2018 rescission facts includes the following additional health-related injuries caused by

the prolonged solitary confinement imposed in January 2018:<sup>7</sup>

- Petitioner's PTSD and symptoms worsened, causing in pain. App. 118-23.
- Making effective PTSD treatment impossible, causing pain. App. 120-21.
- An ongoing denial of migraine headache medication, causing pain. App. 122.
- Serious injuries from repeatedly being placed in restraints, causing pain. App. 123.

Causing Petitioner to suffer such serious health injuries is a significant change of circumstances, especially ones that will last for life.

The change in circumstances arising from the 2018 rescission facts is very substantial indeed, much more than "a slight change of circumstances," and produces a new claim.

**b. Eighth Circuit required "dramatic change"**

In rejecting Petitioner's *WWH* argument, *Jeffreys* held that *WWH* requires a "dramatic change of circumstances" to produce a new claim, and that the rescission facts are "not the kind of 'concrete factual development'" that the Supreme Court required when it held in *WWH* that the development of new material

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<sup>7</sup> *Jeffreys* held that the injuries set forth in this paragraph were not a "serious deterioration of mental or physical health over time." App. 7n.3; *supra*, at 19.

facts could create a new claim because the rescission facts do not involve a “dramatic” change of circumstances:

An eighteen-month stay in the Mental Health Unit, and subsequent return to conditions this court held constitutional, is not the kind of “concrete factual development” contemplated by the Supreme Court. *See, WWH*, 577 U.S. at 602.

App. 7.

By invoking the term “concrete factual development” and basing the holding quoted above on the part of *WWH* discussing the “dramatic” effect of the Texas abortion law at issue in *WWH* (“*See* [*WWH*, 579 U.S.] at 602”), which also uses the term “concrete factual development,” *Jeffreys* held that, to create a new claim under *WWH*, new facts must involve a “dramatic” change of circumstances akin to what occurred in Texas after the abortion law was enforced.

Such misstates Supreme Court precedent. *WWH*, does not require a “dramatic” change of circumstances; where important human values are at stake, “even a slight change of circumstances” is sufficient. 579 U.S. at 600.

**c. Supreme Court provides example of “slight” change of circumstance**

*WWH* gives *Bucklew v. Lombardi*, 783 F.3d 1120, 1127 (8<sup>th</sup> Cir. 2015), as an example of a slight change of circumstances that produced a new claim. *WWH*, *supra*, at 600.

*Bucklew* features a death row inmate bringing a second challenge to the method of execution based on his medical condition and resulting pain.

The “slight” change of circumstances in *Bucklew* was limited to differences in the pleadings between the first and second suits. 783 F.3d at 1127. *Bucklew*’s complaint in the second action made more detailed and specific allegations concerning the harm that would occur if standard execution protocol was used than the allegations in the complaint from the first action. *Id.* Also, the defendants’ responses to motions in the second suit tended to support *Bucklew*’s allegations. *Id.*

Differences between the two suit’s pleadings is a “slight” change of circumstances indeed.

**d. Eighth Circuit conflicts directly with Supreme Court precedent**

Whether the holding in *United States v. Bala*, described below, which conflicts directly with Supreme Court precedent in *WWH*, can be ignored.

*Jeffreys* completely ignored Petitioner’s change of circumstances argument. Although such was presented, *Jeffreys* did not address it.

While *Jeffreys* found the rescission facts were not the “concrete factual development” *WWH* requires, App. 6-7, it neither addressed nor even acknowledged Petitioner’s change of circumstances argument.

The Eighth Circuit ignored Petitioner’s argument because it refuses to recognize the Supreme Court’s holding that changed circumstances are a valid defense to res judicata.

In 2020, four years after *WWH* was entered, the Eighth Circuit held:

We have never recognized a general “exception” to the *res judicata* bar based on “changed circumstances.”

*United States v. Bala*, 948 F.3d 948, 951 (8<sup>th</sup> Cir. 2020).

Such conflicts directly with this Court’s “change of circumstances” holding in *WWH*, *supra*, at 600-02.

*Bala* is not some pre-*WWH* relic that never got overruled. *Bala* was decided in 2020, four years after *WWH*. Such defies the Supreme Court.

**IV. PETITIONER SHOULD NOT BE DOOMED TO SPEND THE REST OF HIS LIFE IN SOLITARY CONFINEMENT SIMPLY BECAUSE HE LOST A PREVIOUS SUIT AND NOW HAS NO WAY TO CHALLENGE THE CONDITIONS DESCRIBED**

**Question**

Whether Petitioner can be held in solitary confinement for the rest of his life simply because he lost a previous suit and now has no way to challenge the conditions described.

Unless Petitioner is permitted a new suit to challenge the conditions described, he will remain in solitary confinement for the rest of his life simply because he has PTSD and lost a previous suit.

The Eighth Circuit Court of Appeals will never allow a second suit.

According to the Eighth Circuit, any new suit alleging that Petitioner is being held in solitary confinement because he has PTSD shares the same claim and nucleus of operative facts with *Saylor I*, App. 5-7, and comes under the “judgment on the merits” resulting from the denial of the post-judgment Rule 59(e) motion on February 6, 2017. App. 4-6.

### ***WWHs Contaminated Water Analogy***

Since *Saylor I* ended on February 6, 2017 “factual developments” that were “too remote or speculative” during *Saylor I* have occurred showing “constitutional harm.” Petitioner has been seriously harmed from the “contaminated water” of prolonged solitary confinement. Under *WWHs* contaminated water analogy, such gives rise to a new claim. 579 U.S. at 600.

In the hypothetical analogy, if the prisoners’ first suit was dismissed because the court found the resulting harms were not serious enough to be unconstitutional, a second suit should be allowed to challenge the same conditions if “time and experience” eventually showed that prisoners were dying from the contaminated water, and that the harm posed by such was unconstitutional after all:

Factual developments may show that constitutional harm, which seemed too remote or speculative to afford relief at the time of an earlier suit, was in fact indisputable. In our view, such changed circumstances give rise to a new constitutional claim.

*Id.*, at 600.

Such applies here. “Factual developments” occurring after *Saylor I* show Petitioner has suffered “constitutional harms” that were “too remote or speculative” when *Saylor I* was litigated.

### **Constitutional Harms**

*Saylor I* ended on February 6, 2017, when the Rule 59(e) motion discussed above was denied.

After “time and experience,” the following “factual developments,” which were “too remote or speculative” to afford relief when *Saylor I* was being litigated because they did not occur until after *Saylor I* had ended on February 6, 2017, show “constitutional harm” and give rise to a new claim:

At the center of the factual developments below is the prolonged solitary confinement that was reimposed on January 24, 2018.

On January 24, 2018, when Respondent placed Petitioner back in prolonged solitary confinement, he was fully aware of the risk of serious harm that prolonged solitary confinement posed to Petitioner’s health. Respondent was well aware of Petitioner’s 2016 mental breakdown and deterioration, and that Petitioner had to be removed from solitary confinement and placed on MHU to forestall additional injury from solitary confinement. Despite his knowledge of the risk of serious harm described, Respondent disregarded the lessons from the 2016 mental breakdown and resubjected Petitioner to the same risk of “constitutional harm” all over again. Such

is a clear Eighth Amendment violation and an important “factual development.”<sup>8</sup>

Furthermore, the prolonged solitary confinement to which Petitioner was subjected beginning on January 24, 2018, resulted in serious health-related injuries, including the following:

- Petitioner’s PTSD and symptoms worsened, causing pain. App. 118-120.
- Making effective PTSD treatment impossible, causing pain. App. 120-121.
- An ongoing denial of migraine headache medication, causing pain. App. 122.
- Serious injuries from repeatedly being placed in restraints, causing pain. App. 123.

These injuries show that the prolonged solitary confinement imposed on January 24, 2018, was “constitutional harm” and are an important factual development.

Another important “factual development” showing “constitutional harm” is the six solitary confinement decisions from the Third and Fourth Circuits discussed and identified above, in Reason II. *Supra*. These decisions were not entered until after *Saylor I* had ended.<sup>9</sup>

After *Saylor I* ended in February 2017, both the Third and Fourth Circuits entered precedent-setting decisions holding that it violates the Eighth Amendment to impose prolonged solitary confinement without penological justification because such poses

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<sup>8</sup> “[L]ength of time cannot be ignored in deciding whether confinement meets constitutional standards.” *Hutto v. Finney*, 437 U.S. 678, 686 (1978); *See n.3, supra*, at 19.

<sup>9</sup> The earliest, *Palakovic v. Wetzel*, was entered on April 14, 2017, more than two months after *Saylor I* had ended.

an objective risk of the very kind of mental and psychological injuries alleged in this case.

The Third Circuit decisions specifically find an Eighth Amendment violation when prolonged solitary confinement is knowingly imposed on prisoners with preexisting SMI. *See supra.*, at 16.

The Fourth Circuit agrees, holding that prolonged solitary confinement “pose[s] a ‘substantial risk’ of serious psychological and emotional harm” and violates the Eighth Amendment if imposed without legitimate penological justification. *Porter*, 923 F.3d at 357, 362-63n.2.

These precedent-setting decisions by two U.S. courts of appeals finding an Eighth Amendment violation for the very kind of conduct and conditions at issue in this case are critically important “factual developments” showing “constitutional harm” – an Eighth Amendment violation.

The “factual developments” set forth above were “too remote or speculative” when *Saylor I* was being litigated because they did not occur until after February 6, 2017, when *Saylor I* ended. However, with “time and experience,” the “factual developments” discussed show “constitutional harm.”

Such produces a new claim under the “contaminated water” analogy.

### **Eighth Circuit’s Contaminated Water Holding**

*Jeffreys* held that the contaminated water analogy is “inapplicable” because: (1) there is no “time and experience” effect, and (2) Petitioner’s ADA claim was neither “remote” nor “speculative” when it was rejected in *Saylor I*. App. 7.

(1) "No 'time and experience' effect"

Even though this case involves serious injuries from "extensive time in solitary confinement," *Jeffreys* disregarded such and found incorrectly that there is no "time and experience" effect such that "[prolonged solitary confinement] caused significant deterioration of mental or physical health over time." App. 7n.3 and accompanying text.

Petitioner's pro se complaint alleged that prolonged solitary confinement had caused serious health-related injuries, including: a mental breakdown and "deteriorat[ion]"; a worsening Petitioner's PTSD; an ongoing denial of his migraine headache medication; injuries from restraints; and pain. App. 118-123.

*Jeffreys* neither believed nor liberally construed the allegations in the complaint concerning Petitioner's injuries from prolonged solitary confinement. *See, supra*, at 19n.4.

*Jeffreys'* findings concerning the "rescission facts" exclude that Petitioner's mental breakdown, liberally construed, was caused by "six years of continuous solitary confinement." App. 6; cf. App. 118-119.

However, just below, in its findings concerning whether there is a "time and experience" effect indicating a "deterioration of health" from "an extended period in solitary confinement," *Jeffreys* literally denies that there was a mental breakdown caused by solitary confinement (indicating solitary confinement had not "caused significant deterioration

of mental or physical health over time.”). App. 7n.3 and accompanying text.<sup>10</sup>

*Jeffreys* disregarded Petitioner’s allegations.

Contrary to *Jeffreys*, Petitioner has suffered a deterioration of health from prolonged solitary confinement that shows a “time and experience” effect.

**(2) “ADA claim ‘too remote or speculative’ in *Saylor I*”**

Contrary to *Jeffreys*, Petitioner’s ADA claim was “too remote or speculative” when rejected in *Saylor I*. App. 7.

*Saylor I* ended on February 6, 2017, when the Rule 59(e) motion was denied; Petitioner’s new ADA claim did not develop until January 24, 2018, when his accommodations were rescinded, and he was placed back in prolonged solitary confinement because he has PTSD. These events were “too remote and speculative” on February 6, 2017, because they had not yet occurred.

Petitioner has been seriously harmed by the contaminated water of solitary confinement. A new suit should be allowed.

Petitioner should not be trapped in solitary confinement for the rest of his life with no way to

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<sup>10</sup> It was unfair for the Eighth Circuit to exclude from its finding concerning the rescission facts that if Petitioner’s mental breakdown had been caused by “six years of continuous solitary confinement,” App. 6; cf. App. 118-119, only to hold a few sentences below that there was no “time and experience effect” showing a “deterioration of health” from “an extended period in solitary confinement”. App. 7n.3.

challenge the conditions described simply because he lost a suit many years ago.

### CONCLUSION

This Court should grant the petition and summarily reverse the Court of Appeals' decision holding that Petitioner's current suit is barred by res judicata. Alternatively, the Court should grant the petition, exercise plenary review, and resolve the questions presented.

Respectfully submitted,

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