

No. 18-2457

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

REGINALD CORNELIUS LATSON,

Plaintiff-Appellant,

v.

HAROLD W. CLARKE, et al.,

Defendants-Appellees.

Appeal from the U.S. District Court for the Western District of Virginia
Case No. 1:16-cv-0039; The Honorable James P. Jones

**BRIEF AMICI CURIAE OF THE AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF VIRGINIA, INC., AMERICAN CIVIL LIBERTIES
UNION OF MARYLAND, CENTER FOR PUBLIC REPRESENTATION,
DISABILITY LAW CENTER OF VIRGINIA, DISABILITY RIGHTS
CALIFORNIA, DISABILITY RIGHTS MARYLAND, DISABILITY
RIGHTS NORTH CAROLINA, THE RODERICK AND SOLANGE
MACARTHUR JUSTICE CENTER, THE UPTOWN PEOPLE'S LAW
CENTER IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

Alan Mills
Liz Mazur
UPTOWN PEOPLE'S LAW CENTER
4413 N. Sheridan Road
Chicago, IL 60640
(773) 769-1411

Vishal Agraharkar
Eden B. Heilman
ACLU OF VIRGINIA
701 E. Franklin Street, Ste. 1412
Richmond, VA 23219
(804) 523-2151

Daniel M. Greenfield
Counsel of Record
RODERICK & SOLANGE MACARTHUR
JUSTICE CENTER
NORTHWESTERN PRITZKER SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-8538
daniel-greenfield@law.northwestern.edu

Maggie E. Filler
RODERICK & SOLANGE MACARTHUR
JUSTICE CENTER
745 Atlantic Avenue, 8th Floor
Boston, MA 02111
(857) 284-1455

Counsel for Amici Curiae

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

The American Civil Liberties Union of Maryland
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

- 1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
- 2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:
- 3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Daniel Greenfield

Date: February 11, 2019

Counsel for: American Civil Liberties Union of Maryland

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Daniel M. Greenfield
(signature)

February 11, 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

American Civil Liberties Union Foundation of Virginia

(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Vishal Agraharkar

Date: February 11, 2019

Counsel for: ACLU Foundation of Virginia, Inc.

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Vishal Agraharkar
(signature)

February 11, 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Center for Public Representation

(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: Center for Public Representation

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Daniel M. Greenfield
(signature)

February 11, 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

disAbility Law Center of Virginia
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: disAbility Law Center of Virginia

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Daniel M. Greenfield
(signature)

February 11, 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Disability Rights California
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Daniel Greenfield

Date: February 11, 2019

Counsel for: Disability Rights California

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Daniel M. Greenfield
(signature)

February 11, 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Disability Rights Maryland
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: Disability Rights Maryland

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Daniel M. Greenfield
(signature)

February 11, 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Disability Rights North Carolina

(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: Disability Rights North Carolina

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Daniel M. Greenfield
(signature)

February 11, 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Roderick & Solange MacArthur Justice Center

(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Daniel M. Greenfield

Date: February 11, 2019

Counsel for: MacArthur Justice Center

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Daniel M. Greenfield
(signature)

February 11, 2019
(date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-2457 Caption: Reginald Cornelius Latson v. Harold W. Clarke, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Uptown People's Law Center

(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Liz Mazur

Date: February 11, 2019

Counsel for: Uptown People's Law Center

CERTIFICATE OF SERVICE

I certify that on February 11, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Liz Mazur
(signature)

February 11, 2019
(date)

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF AMICI CURIAE.....1

INTRODUCTION6

SUMMARY OF THE ARGUMENT8

ARGUMENT10

I. Meaningful Social Interaction And Positive Environmental Stimulation
Are Essential To Human Health, Yet Their Absence Is The Defining
Characteristic Of Solitary Confinement.10

II. Solitary Confinement Subjects Prisoners To Severe Psychological And
Physiological Harms.....13

III. The Damage Inflicted By Solitary Confinement Is Unique.....19

IV. Prisoners With Preexisting Vulnerabilities Like Mr. Latson Are
Especially At Risk Of Harm From Solitary Confinement.22

V. By 2014-2015, It Was Clearly Established That Subjecting a Prisoner
With Mr. Latson’s Vulnerabilities to Prolonged Solitary Confinement
Violated The Eighth Amendment.....24

CONCLUSION.....31

TABLE OF AUTHORITIES

Cases

<i>Allah v. Bartkowski</i> , 574 F. App'x 135 (3d Cir. 2014).....	26
<i>Apodaca v. Raemisch</i> , 139 S. Ct. 5 (2018)	24
<i>Bolding v. Holshouser</i> , 575 F.2d 461 (4th Cir. 1978)	25
<i>Booker v. South Carolina Dep't of Corr.</i> , 855 F.3d 533 (4th Cir. 2017)	29
<i>Clem v. Corbeau</i> , 284 F.3d 543 (4th Cir. 2002).....	29
<i>Davenport v. DeRobertis</i> , 844 F.2d 1310 (7th Cir. 1988).....	26
<i>Davis v. Ayala</i> , 135 S. Ct. 2187 (2015)	8, 13
<i>District of Columbia v. Wesby</i> , 138 S. Ct. 577 (2018)	26
<i>Estelle v. Gamble</i> , 429 U.S. 97 (1976)	25
<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994).....	25
<i>Fogle v. Pierson</i> , 435 F.3d 1252 (10th Cir. 2006)	27
<i>Glossip v. Gross</i> , 135 S. Ct. 2726 (2015)	30
<i>Hope v. Pelzer</i> , 536 U.S. 730 (2002)	27, 28
<i>Hutto v. Finney</i> , 437 U.S. 678 (1978).....	25
<i>Keenan v. Hall</i> , 83 F.3d 1083 (9th Cir. 1996)	27
<i>LaFaut v. Smith</i> , 834 F.2d 389 (4th Cir. 1987).....	26
<i>LaReau v. MacDougall</i> , 473 F.2d 974 (2d Cir. 1972).....	25
<i>McNeill v. Currie</i> , 84 F. App'x 276 (4th Cir. 2003).....	25
<i>In re Medley</i> , 134 U.S. 160 (1890)	25
<i>Meriwether v. Faulkner</i> , 821 F.2d 408 (7th Cir. 1987)	27
<i>Meyers v. Baltimore County</i> , 713 F.3d 723 (4th Cir. 2013)	29
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009).....	29
<i>Rice ex rel. Rice v. Corr. Med. Servs.</i> , 675 F.3d 650 (7th Cir. 2012).....	26

Saucier v. Katz, 533 U.S. 194 (2001)29

Simmons v. Cook, 154 F.3d 805 (8th Cir. 1998).....27

Walker v. Shansky, 28 F.3d 666 (7th Cir. 1994).....26

Wheeler v. Butler, 209 F. App’x 14 (2d Cir. 2006)26

Wilson v. Kittoe, 337 F.3d 392 (4th Cir. 2003).....29

Zadeh v. Robinson, 902 F.3d 483 (5th Cir. 2018)30

Other Authorities

Aaron L. Nielson & Christopher J. Walker, *The New Qualified Immunity*, 89 S. Cal. L. Rev. 1 (2015).....30

Am. Corr. Ass’n, *Performance Based Practices for Adult Local Detention Facilities*, 4th Ed. (2004)23

Am. Corr. Ass’n, *Restrictive Housing Performance Based Standards* (2016).....23

Ajai Vyas et al., *Effect of Chronic Stress on Dendritic Arborization in the Central and Extended Amygdala*, 965 BRAIN RESEARCH 290 (2003).....15

Bruce S. McEwen, et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 Neuropsychopharmacology 3 (2015)16

Bruce S. McEwen, *Protective and Damaging Effects of Stress Mediators*, 338 New Eng. J. Med. 171 (1998)15

Carol Schaeffer, “*Isolation Devastates the Brain*”: *The Neuroscience of Solitary Confinement*, SOLITARY WATCH (May 11, 2016)..... 15-16

Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477 (1997).....17, 21

Craig Haney, “*Infamous Punishment*”: *The Psychological Consequences of Isolation*, 8 NAT’L PRISON PROJECT J. 1 (1993)..... 13-14

Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQUENCY 124 (2003)*passim*

Craig Haney, *Restricting the Use of Solitary Confinement*,
 1 ANN. REV. CRIMINOLOGY 285 (2018).....*passim*

Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Justice 365 (2018)..... 12, 13, 17-18

Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Scientific American (Nov. 2018)15, 16

Diana Arias & Christian Otto, NASA, *Defining the Scope of Sensory Deprivation for Long Duration Space Missions* 20 (2011).....11, 17

Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment*, 90 IND. L.J. 741 (2015)15, 20

Gary C. Mohr and Rick Raemisch, *Restrictive Housing: Taking the Lead*, Corrections Today (2015)..... 23-24

Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442 (2014)21

Jennifer Gonnerman, *Before the Law*, THE NEW YORKER (Oct. 6, 2014) 18

Jennifer Gonnerman, *Kalief Browder, 1993-2015*, THE NEW YORKER (June 7, 2015)..... 18

Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 Yale L.J. 2 (2017)30

Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797 (2018)30

John E. Deaton et al., *Coping Activities in Solitary Confinement of U.S. Navy POWs in Vietnam*, 7 J. APPLIED SOC. PSYCHOL. 239 (1977).....16

Juan E. Méndez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011).....24

Kenneth Appelbaum, <i>American Psychiatry Should Join the Call to Abolish Solitary Confinement</i> , 43 J. AM. ACAD. PSYCHIATRY & L. 406 (2015).....	19
Lindsay M. Hayes & Joseph R. Rowan, <i>National Study of Jail Suicides: Seven Years Later</i> , 60 PSYCH. Q. 7 (1989)	21
M. Malter Cohen, et al., <i>Translational Developmental Studies of Stress on Brain and Behavior</i> , 249 Neuroscience 53 (2013)	16
Maureen L. O’Keefe et al., <i>Reflections on Colorado’s Administrative Segregation Study</i> , 278 NAT’L INS. JUST. J. 1 (2017).....	18
Maurice Chammah, <i>Stepping Down from Solitary Confinement</i> , THE ATLANTIC (Jan. 7, 2016)	28
Nat’l Comm’n on Corr. Health Care, <i>Position Statement: Solitary Confinement (Isolation)</i> (2016)	23
Nicole Branam, <i>Stress Kills Brain Cells Off</i> , 18 Scientific American 10 (June 2007)	16
Peter Scharff Smith, <i>The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature</i> , 34 CRIME & JUST. 441 (2006)	14, 20, 22
<i>Position Statement on Segregation of Prisoners with Mental Illness</i> , AM. PSYCHIATRIC ASS’N (December 2012).....	23
<i>Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary</i> , 112th Cong. 72 (2012).....	14
Redacted Expert Rep. of Craig Haney at 29, <i>Ashker v. Brown</i> , No. 4:09 CV 05796 CW (N.D. Cal. Mar. 12, 2015).....	19, 20
Richard Kozar, JOHN MCCAIN (OVERCOMING ADVERSITY) (2002)	16
Robert D. Morgan et al., <i>Quantitative Syntheses of the Effects of Administrative Segregation on Inmates’ Well-Being</i> , 22 PSYCHOL. PUB. POL’Y & L. 439 (2016)	18

Simon N. Young, *The Neurobiology of Human Social Behavior: An Important but Neglected Topic*, 33 J. PSYCHIATRY & NEUROSCIENCE 391 (2008) 11

Solitary Confinement as a Public Health Issue, AM. PUB. HEALTH ASS’N (Nov. 5, 2013) 23

Stanford Univ. Human Rights in Trauma Mental Health Lab, *Mental Health Consequences Following Release from Long-Term Solitary Confinement in California: Consultative Report Prepared for the Center for Constitutional Rights* (2017) 17

Stuart Grassian & Terry A. Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, 13 CORRECTIONAL MENTAL HEALTH REP. 1 (2011) 19, 20

Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL’Y 325 (2006) *passim*

Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450 (2006) 14

Terry A. Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment’s Sake?*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL CRIME AND JUSTICE STUDIES 213 (Bruce Arrigo & Heather Bersot eds., 2013) 11

Terry A. Kupers, *The SHU Post-Release Syndrome: A Preliminary Report*, 17 CORRECTIONAL MENTAL HEALTH REPORT 81 (March/April 2016) 17

Terry A. Kupers, *Waiting Alone to Die*, in LIVING ON DEATH ROW: THE PSYCHOLOGY OF WAITING TO DIE 47 (Hans Toch & James Acker eds., 2018) 10, 13, 14, 20

Thomas Hafemeister & Jeff George, *The Ninth Circle of Hell*, 90 DENV. U. L. REV. 1 (2012) 21, 22, 23

U.S. DOJ, REP. & RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING: FINAL REP. (Jan. 2016) 28

U.S. GAO, *Improvements Needed in [BOP] Monitoring and Evaluation of Impact of Segregated Housing* (May 2013) 28

INTEREST OF AMICI CURIAE¹

Amici curiae are non-profit organizations that advocate for the humane treatment of prisoners with disabilities. Amici submit this brief for two purposes. First, to provide the Court with a summary of the corpus of scientific literature establishing that solitary confinement inflicts grave damage on vulnerable prisoners' mental and physical health. Second, to provide the Court with an overview of the doctrinal landscape relevant to the question of qualified immunity in cases involving the rights of prisoners with disabilities. Both topics are central to amici's mission of ensuring that prison officials administer their duties humanely and in compliance with constitutional mandates.

Amici are:

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with over 500,000 members dedicated to defending the principles embodied in the Constitution and our nation's civil rights laws. The American Civil Liberties Union of Maryland ("ACLU-MD") is a statewide affiliate of the national ACLU. Since its founding in 1931, the ACLU-MD has worked to

¹ This brief has not been authored, in whole or in part, by counsel to any party in this appeal. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than the amici, its members, or its counsel, contributed money that was intended to fund preparation or submission of this brief.

ensure that people who are incarcerated receive the due process and protection from cruel and unusual punishment to which they are entitled under the Constitution.

The American Civil Liberties Union Foundation of Virginia, Inc. (“ACLU of Virginia”) is the Virginia affiliate of the American Civil Liberties Union, with approximately 27,000 members across the Commonwealth. The ACLU of Virginia is a private, non-profit organization that promotes civil liberties and civil rights for everyone in the Commonwealth through public education, litigation, and advocacy with the goal of securing freedom and equality for all. It regularly appears before this Court and other federal and state courts in Virginia, both as amicus and as direct counsel. The ACLU of Virginia has a significant interest in the outcome of this case and in other cases across the country concerning the fundamental rights of those who are incarcerated.

The Center for Public Representation (“Center”) is a public interest law firm with offices in Massachusetts and Washington D.C. For more than four decades the Center has represented institutionalized people with disabilities in numerous states. The Center’s clients have included adults and youth who are confined in solitary confinement in prisons, jails, and juvenile facilities. Like Reginald Latson, the Center’s clients have experienced the negative psychological and physical effects of isolation. The Center and its clients have a significant interest in the outcome of this appeal.

disAbility Law Center of Virginia (“dLCV”) is the designated protection and advocacy (P&A) agency for the Commonwealth of Virginia. Va. Code § 51.5-39.13. As the designated protection and advocacy agency, dLCV is mandated to protect individuals with disabilities from abuse, neglect, and discrimination, and has the authority to “pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of such individuals.” 29 U.S.C. § 794e(f)(3). The United States Supreme Court affirmed this authority in *Virginia Office for Protection and Advocacy v. Stewart*, 563 U.S. 247 (2011). As the P&A agency for Virginia, dLCV has a strong interest in enforcement of the Americans with Disabilities Act (“ADA”) and other state and federal laws in assuring that incarcerated Virginians with disabilities are not abused or neglected, including being placed in solitary confinement unreasonably.

Disability Rights California (“DRC”), a non-profit legal advocacy organization established in 1978, is California’s Protection & Advocacy system mandated under federal law to advance and defend the civil rights of people with all types of disabilities. DRC investigates the conditions for, and treatment of, individuals who are incarcerated in jails and other detention facilities, and has litigated cases regarding the use of solitary confinement for people with mental illness and other disabilities.

Disability Rights Maryland (“DRM”) is a non-profit legal services organization mandated to advance the civil rights of people with disabilities. Since 1975, DRM has served as the federally mandated Protection and Advocacy for the state of Maryland. As such, DRM has access to facilities where individuals with disabilities may be housed in order to monitor and conduct investigations to keep people with disabilities free from abuse and neglect. One of DRM’s service priorities is to advocate for reduced use of segregation and for the provision of appropriate care in prison facilities. DRM has issued public reports identifying inhumane conditions and rights violations based upon prolonged use of segregation of persons with serious disabilities. DRM has an interest in this case and in having the facts and claims move to trial for a full and complete discussion.

Disability Rights North Carolina (“DRNC”), a 501(c)(3) nonprofit legal advocacy organization, is the designated Protection & Advocacy (P&A) system in North Carolina, dedicated to advancing the legal and human rights of people with disabilities statewide. DRNC recognizes that longstanding, systematic marginalization and discrimination against people with disabilities has resulted in their disproportionate entanglement in the criminal justice system, where they are ill-served and frequently singled out for adverse discipline such as solitary confinement, which is typically contraindicated and severely exacerbates their disabilities. As North Carolina’s P&A charged with protecting disabled persons

against abuse, neglect and discrimination, DRNC regularly monitors conditions in jails and prisons. Through these efforts, we have become well-informed regarding problematic conditions, treatment and practices affecting incarcerated persons with disabilities, including extreme isolation of individuals with mental health care needs that results in heightened risk and incidence of suicide. DRNC is interested in the outcome of this case due to our serious concerns that over-use and misuse of solitary confinement is illegal, inhumane and causes permanent damage to prisoners with disabilities.

The Roderick and Solange MacArthur Justice Center (“RSMJC”) is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. RSMJC has offices at Northwestern Pritzker School of Law, at the University of Mississippi School of Law, in New Orleans, in St. Louis, and in Washington, D.C. RSMJC attorneys have led civil rights battles in areas that include police misconduct, the rights of the indigent in the criminal justice system, compensation for the wrongfully convicted, and the treatment of incarcerated men and women. RSMJC litigates appeals related to the civil rights of incarcerated men and women throughout the federal circuits.

The Uptown People’s Law Center (“UPLC”) provides legal representation, advocacy, and education for poor and working people, and legal assistance to people housed in prisons in cases related to their confinement. UPLC has provided direct

representation to over 100 persons confined in prisons pertaining to their civil rights, including in seven class-action or putative class-action cases that are currently pending. UPLC has litigated several cases involving disabled prisoners, including a class action case challenging Illinois' failure to accommodate the communication needs of deaf and hard of hearing prisoners, and a class action challenging the treatment provided prisoners with mental illness. In addition to UPLC's civil rights work with prisoners, it has also represented scores of formerly incarcerated people who are so profoundly disabled that they are unable to perform any gainful work and must depend on social security's disability payments.

INTRODUCTION

Reginald Latson is a young man with intellectual disability, autism spectrum disorder, and mental illness. JA1856-57. From birth, each disability has impacted his life profoundly. *Id.* Specifically, he has difficulties processing and comprehending language, diminished executive functioning, does not like to be touched, and suffers from depression, anxiety, and post-traumatic stress disorders. JA1856-57; JA1886. He has been suicidal on occasion. JA1858.

In response to manifestations of his disabilities, Mr. Latson was subjected to solitary confinement for nearly eight months. JA1860-64. Throughout that time, his daily existence was defined by social isolation. JA1864-66. He was assigned to a single-occupant cell with a steel door, where he remained for twenty-three or twenty-

four hours most days. JA936-38; JA1864; JA1868-71. Sometimes he was shackled and escorted to the showers or to a barren outdoor cage where he could exercise alone for an hour. JA1866. Sometimes his isolation was interrupted by prison personnel delivering food, mail, or mental health care through a narrow slot in his cell door. JA1864-66. Sometimes he was permitted a phone call with his mother or his lawyer. JA1865. And sometimes he was offered the opportunity to engage in congregate activity for thirty minutes or an hour. JA1867-71. Generally, though, Mr. Latson was cut off from humanity.

Sensory deprivation was a consistent feature, too. Mr. Latson's cell lacked an exterior window. JA1876. At times, he was permitted only a bible in his cell. JA1867. On other occasions, he was allowed secular texts or could listen to a staff radio that was audible through his cell door. *Id.* He was not permitted a television, JA1880, but Defendants sometimes offered stickers and coloring books. JA1878.

Other cruelty abounded. Mr. Latson was sometimes denied necessary nutrition "for no known reason" and often went without basic hygiene supplies. JA 1867; JA1877. Prison personnel taunted him, accused him of malingering, and used racial slurs. JA1875. In response to behavior associated with autism spectrum disorder, a guard threatened to "stomp the dog shit out of" him. JA1876.

As a predictable consequence of his solitary confinement, Mr. Latson "experienced a complete psychiatric breakdown . . . and became acutely psychotic."

JA1890. After public outcry and pressure from several disability rights groups, he was conditionally pardoned. JA698; JA1864. Soon after, Defendants removed him from solitary confinement, and transferred him to a treatment facility. JA1864; JA1929. One expert opined that Mr. Latson “will never fully recover from these experiences.” JA1890.

In 2015, Justice Kennedy observed that “the penal system has a solitary confinement regime that will bring you to the edge of madness, perhaps to madness itself.” *Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring). By reversing the judgment below, this Court has an opportunity to reiterate that the Eighth Amendment does not permit the imposition of such a regime on the most vulnerable among us.²

SUMMARY OF THE ARGUMENT

1. Meaningful social interaction and positive environmental stimulation—like adequate nutrition, medical care, and shelter—are basic human needs essential to physical and psychological health. Regular meaningful interaction with others is important to maintaining a connection to reality, and consistent exposure to positive stimuli is critical to normal cognitive function. The absence of meaningful social

² The district court referred to Mr. Latson’s solitary confinement using the euphemism “restrictive housing.” JA1863. As Justice Kennedy explained, that condition is “better known [as] solitary confinement.” *Davis*, 135 S. Ct. at 2208 (2015) (Kennedy, J., concurring).

interaction and positive environmental stimulation, however, is the defining characteristic of solitary confinement.

2. Among psychiatrists, psychologists, and other scientists who study solitary confinement there is a consensus: solitary confinement both exacerbates pre-existing psychological disorders and is itself the genesis of such disorders. These effects range from paranoia to depression to severe cognitive dysfunction. The physical harms inflicted by solitary confinement are also significant: self-mutilation, suicide, hypertension, and dementia are frequently induced by prolonged isolation. Worse still, the psychological and physical effects of solitary confinement may be permanent, thereby inhibiting reintegration into social environments.

3. Solitary confinement is uniquely dangerous. Research consistently demonstrates that it inflicts psychological and physiological damage significantly exceeding the negative effects of prolonged incarceration in general population. One data point is particularly stark: prisoners in solitary confinement account for 50% of all prison suicides despite comprising only 2% to 8% of the United States prison population. Prisoners in solitary confinement also suffer psychological injury at a far greater rate than prisoners in general population.

4. Solitary confinement inflicts disproportionate harm on those who with preexisting psychological vulnerabilities. Such prisoners are particularly ill-equipped to endure the stress, social isolation, and paucity of stimuli inherent to

solitary confinement. They are also at the greatest risk of being permanently disabled by solitary confinement. Accordingly, there is a consensus that solitary confinement is categorically inappropriate for vulnerable prisoners like Mr. Latson.

5. By the time Mr. Latson emerged from solitary confinement, it had long been clearly established that Defendants' conduct violated the Eighth Amendment. Beyond the precedent of the Supreme Court, this Circuit, and the weight of authority from the other federal circuits, condemnation by governmental entities and correctional associations along with the obvious cruelty of the practice at issue sufficed to give any reasonable prison official fair warning.

ARGUMENT

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

Meaningful social interaction and positive environmental stimulation (such as exposure to varying surroundings) are no less essential to human health than shelter, nutrition, and medical care. *E.g.*, Craig Haney, *Restricting the Use of Solitary Confinement*, 1 ANN. REV. CRIMINOLOGY 285, 298 (2018) [hereinafter "*Restricting the Use*"] (collecting studies); Terry A. Kupers, *Waiting Alone to Die*, in LIVING ON DEATH ROW: THE PSYCHOLOGY OF WAITING TO DIE 47, 53 (Hans Toch & James Acker eds., 2018) [hereinafter "*Waiting Alone to Die*"]; Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325, 354 (2006)

[hereinafter “*Psychiatric Effects*”]; Diana Arias & Christian Otto, NASA, *Defining the Scope of Sensory Deprivation for Long Duration Space Missions* 20, 51 (2011) [hereinafter “NASA, *Long Duration Space Missions*”]. The absence of meaningful social interaction and positive environmental stimulation, however, are the hallmarks of solitary confinement. See Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQUENCY 124, 125-27 (2003) [hereinafter “*Mental Health*”].

Humans are a social species. Simon N. Young, *The Neurobiology of Human Social Behavior: An Important but Neglected Topic*, 33 J. PSYCHIATRY & NEUROSCIENCE 391, 391 (2008). In fact, “the human brain is literally wired to connect to others.” Haney, *Restricting the Use*, *supra*, at 296 (internal quotations omitted). Throughout our life span, therefore, we require regular meaningful interaction with others. Young, *supra*, at 391; see also Haney, *Restricting the Use*, *supra*, at 290. Consistent social contact also enables humans to “sustain a sense of identity and to maintain a grasp on reality.” Terry A. Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment’s Sake?*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL CRIME AND JUSTICE STUDIES 213, 215 (Bruce Arrigo & Heather Bersot eds., 2013); see also, e.g., Haney, *Restricting the Use*, *supra*, at 296 (collecting studies). And the relationship between social connection and physical and psychological health is well-documented in the

scientific literature. See Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 *Crime & Justice* 365, 374-75 (2018) [hereinafter “*A Systematic Critique*”] (collecting studies).

Likewise, exposure to positive and diverse stimuli is critical to psychological and physical well-being. See Haney, *Restricting the Use*, *supra*, at 294-95 (collecting studies). Such exposure stimulates the brain, permitting us to “maintain[] an adequate state of alertness and attention.” Grassian, *Psychiatric Effects*, *supra*, at 330. Acceptable executive function also depends on adequate positive environmental stimulation. *E.g.*, *id.* at 345.

It is critical to note that the phrase “solitary confinement,” as employed in the scientific literature and throughout this brief, does not refer to absolute isolation from other humans in an environment completely devoid of positive environmental stimuli. Indeed, amici are not aware of any facility in the United States or abroad that absolutely deprives prisoners of these necessities. Rather, solitary confinement describes imprisonment under conditions where meaningful social interaction and positive environmental stimuli are severely restricted. Alleged deviations from absolute isolation do not constitute the meaningful social interaction and positive environmental stimuli that research has identified as essential to physical and psychological health.

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

Justice Kennedy wrote of the “terrible price” imposed by solitary confinement. *Davis*, 135 S. Ct. at 2210 (Kennedy, J., concurring). And with good reason. Scientific research, regardless of methodology, has produced “strikingly consistent” results: the deprivation of meaningful social contact and positive environmental stimulation characteristic of solitary confinement subjects prisoners to grave psychological and physiological harms. *E.g.*, Haney, *A Systematic Critique*, *supra*, at 367-68, 370-75 (collecting studies); Grassian, *Psychiatric Effects*, *supra*, at 335-38. Solitary confinement often inflicts harm within days of its institution, Grassian, *Psychiatric Effects*, *supra*, at 331, and longer durations impose greater costs. *E.g.*, Kupers, *Waiting Alone to Die*, *supra*, at 54; Haney, *Restricting the Use*, *supra*, at 291-92. These consequences may be permanent. *E.g.*, Haney, *Mental Health*, *supra*, at 137-41; Kupers, *Waiting Alone to Die*, *supra*, at 54.

Prisoners exposed to solitary confinement consistently develop some or all of the following psychological injuries: cognitive dysfunction, anxiety, paranoia, panic, severe depression, hallucination, memory loss, insomnia, withdrawal, lethargy, and stimuli hypersensitivity. *E.g.*, Kupers, *Waiting Alone to Die*, *supra*, at 53; Haney, *Mental Health*, *supra*, at 130-31, 134 (collecting studies); Grassian, *Psychiatric Effects*, *supra*, at 335-36, 349, 370-71. Impulse control is also negatively affected by solitary confinement. *E.g.*, Craig Haney, “*Infamous Punishment*”: *The*

Psychological Consequences of Isolation, 8 NAT'L PRISON PROJECT J. 1, 6 (1993). And life-threatening behavior, such as self-mutilation and suicidal ideation, is all too common among prisoners in solitary confinement. Grassian, *Psychiatric Effects*, *supra*, at 349; Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. PSYCHIATRY 1450, 1453 (2006). Describing this phenomenon to Congress, one expert provided examples of one prisoner who “used a makeshift needle and thread . . . to sew his mouth completely shut,” and another who “amputated one of his pinkie fingers and chewed off the other, removed one of his testicles and scrotum, sliced off his ear lobes, and severed his Achilles tendon.” *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 72, 80-81 (2012) (statement of Craig Haney).

Physiological injury, too, is a consistent effect of solitary confinement and commonly includes decline in neural activity, hypertension, heart palpitations, gastrointestinal disorders, headaches, severe insomnia, and weight loss. *E.g.*, Kupers, *Waiting Alone to Die*, *supra*, at 54; Haney, *Mental Health*, *supra*, at 133; Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 488-90 (2006). Isolation also causes “increased activation of the brain’s stress systems, vascular

resistance, and blood pressure, as well as decreased inflammatory control, immunity, sleep salubrity, and expression of genes regulating glucocorticoid responses and oxidative stress.” Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment*, 90 IND. L.J. 741, 762 (2015) (citation omitted). Even the mere perception of social isolation is associated with an increased likelihood of dementia. *See id.* at 755 (summarizing studies). Within days of a prisoner’s solitary confinement, brain scans may reflect “abnormal pattern[s] characteristic of stupor and delirium.” Grassian, *Psychiatric Effects*, at 331.

In fact, neurological advances establish that the types of traumatic psychological harms associated with solitary confinement often trigger detectable negative modifications to the brain’s structure and operation. *See generally* Dana G. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, Scientific American (Nov. 2018);³ Ajai Vyas et al., *Effect of Chronic Stress on Dendritic Arborization in the Central and Extended Amygdala*, 965 BRAIN RESEARCH 290, 290-94 (2003); Bruce S. McEwen, *Protective and Damaging Effects of Stress Mediators*, 338 New Eng. J. Med. 171, 175-76 (1998). For example, the type of stress associated with isolation may shrink and “rewire” the brain and kill neurons. *See* Carol Schaeffer, “*Isolation Devastates the Brain*”: *The Neuroscience of Solitary*

³ <https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement>.

Confinement, SOLITARY WATCH (May 11, 2016);⁴ McEwen, *supra*, at 175-76; M. Malter Cohen, et al., *Translational Developmental Studies of Stress on Brain and Behavior*, 249 *Neuroscience* 53, 54-55 (2013); Nicole Branan, *Stress Kills Brain Cells Off*, 18 *Scientific American* 10 (June 2007).⁵ The hippocampus and amygdala, two structures within the brain critical to decision-making, memory, and emotional regulation, are also damaged by chronic stress. See D. Smith, *Neuroscientists Make a Case Against Solitary Confinement*, *supra*; Bruce S. McEwen, et al., *Stress Effects on Neuronal Structure: Hippocampus, Amygdala, and Prefrontal Cortex*, 41 *Neuropsychopharmacology* 3 (2015).

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

⁴ <http://solitarywatch.com/2016/05/11/isolation-devastates-the-brain-the-neuroscience-of-solitary-confinement/>.

⁵ <https://www.scientificamerican.com/article/stress-kills-brain-cells/>.

Unsurprisingly, solitary confinement is “frequently used as a component of torture.” Haney, *A Systematic Critique*, *supra*, at 373 (collecting studies).

The adverse psychological effects of solitary confinement may persist for decades after prisoners are released into a less restrictive environment such as general population or the community. *E.g.*, Haney, *Restricting the Use*, *supra*, at 297; Terry A. Kupers, *The SHU Post-Release Syndrome: A Preliminary Report*, 17 CORRECTIONAL MENTAL HEALTH REPORT 81, 92 (March/April 2016). Prisoners may continue to endure symptoms of post-traumatic stress and anxiety disorders, suffer from cognitive impairments, a pervasive sense of hopelessness, and experience lasting personality changes such as obsessive-compulsive disorder and emotional instability. *E.g.*, Stanford Univ. Human Rights in Trauma Mental Health Lab, *Mental Health Consequences Following Release from Long-Term Solitary Confinement in California: Consultative Report Prepared for the Center for Constitutional Rights* 15–25 (2017);⁶ Grassian, *Psychiatric Effects*, *supra*, at 353; NASA, *Long Duration Space Missions*, *supra*, at 43. Physical contact, too, may remain stressful long after solitary confinement is halted. Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477, 568 (1997).

⁶ https://handacenter.stanford.edu/sites/default/files/publications/mental_health_consequences_following_release_from_long-term_solitary_confinement_in_california.pdf.

Such psychological dysfunction may be disabling forever. Haney, *Mental Health, supra*, at 137–41. Because solitary confinement transforms emotion, conduct, personality, and cognition, those subjected to it may be permanently ill-suited to a less restrictive life. Grassian, *Psychiatric Effects, supra*, at 332–33. For instance, Kalief Browder, just seventeen years old when he entered solitary confinement, attempted suicide twice within six months of his release. Jennifer Gonnerman, *Before the Law*, THE NEW YORKER (Oct. 6, 2014).⁷ Mr. Browder described himself as “mentally scarred” and fearful that the “things that changed” about his personality “might not go back” with time. *Id.* Less than two years later, Mr. Browder hanged himself. Jennifer Gonnerman, *Kalief Browder, 1993-2015*, THE NEW YORKER (June 7, 2015).⁸

A few researchers have asserted that solitary confinement is not dangerous. See Maureen L. O’Keefe et al., *Reflections on Colorado’s Administrative Segregation Study*, 278 NAT’L INS. JUST. J. 1 (2017); Robert D. Morgan et al., *Quantitative Syntheses of the Effects of Administrative Segregation on Inmates’ Well-Being*, 22 PSYCHOL. PUB. POL’Y & L. 439 (2016) [hereinafter “*Quantitative Syntheses*”]. These conclusions are not only at odds with the overwhelming scientific consensus but also predicated on fatally flawed methodologies. *E.g.*, Haney, *A*

⁷ <http://www.newyorker.com/magazine/2014/10/06/before-the-law>.

⁸ <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>.

Systematic Critique, *supra*, at 369–70; Stuart Grassian & Terry A. Kupers, *The Colorado Study vs. The Reality of Supermax Confinement*, 13 CORRECTIONAL MENTAL HEALTH REP. 1, 11 (2011).

III. The Damage Inflicted By Solitary Confinement Is Unique.

While incarceration is not conducive to optimal psychological and physiological health, research establishes that solitary confinement is uniquely dangerous. Studies, both in the United States and abroad, demonstrate that solitary confinement causes psychological and physiological damage that is extreme in comparison to harms experienced by prisoners in general population. *E.g.*, Haney, *Restricting the Use*, *supra*, at 292–93; Kenneth Appelbaum, *American Psychiatry Should Join the Call to Abolish Solitary Confinement*, 43 J. AM. ACAD. PSYCHIATRY & L. 406, 410 (2015).

In one study of California prisoners, researchers examined prisoners in solitary confinement and in general population for psychological decline. Although a meaningful percentage of general population prisoners reported “distress and suffering . . . there was absolutely no comparison to the level of suffering and distress” experienced by prisoners in solitary confinement. Redacted Expert Rep. of Craig Haney at 29, *Ashker v. Brown*, No. 4:09 CV 05796 CW (N.D. Cal. Mar. 12,

2015).⁹ Instead, “[o]n nearly every single specific dimension [] measured, the [solitary confinement] sample was in significantly more pain, were more traumatized and stressed, and manifested more isolation-related pathological reactions.” *Id.* at 81–82. Other studies have similarly concluded that prisoners “in solitary confinement suffered significantly more both physically and psychologically than the prisoners in the [general population] control group.” P. Smith, *supra*, at 477. And a study in Denmark determined that prisoners who spent more than four weeks in solitary confinement were twenty times more likely to require psychiatric hospitalization than prisoners in general population. Bennion, *supra*, at 758 (citing Dorte Maria Sestoft et al., *Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody*, 21 INT’L J.L. & PSYCHIATRY 99, 103 (1998)).

Suicide and self-mutilation are also disproportionately high among prisoners in solitary confinement. *E.g.*, Haney, *Restricting the Use*, *supra*, at 294 (collecting studies); Kupers, *Waiting Alone to Die*, *supra*, at 55; Grassian & Kupers, *supra*, at 1. Although prisoners in solitary confinement comprise only 2% to 8% of the United States prison population, they account for 50% of all suicides by prisoners. *E.g.*, Grassian & Kupers, *supra*, at 1; Kupers, *Waiting Alone to Die*, *supra*, at 55. In one

⁹ https://ccrjustice.org/sites/default/files/attach/2015/07/Redacted_Haney%20Expert%20Report.pdf.

Maine prison, “almost every prisoner in the isolation unit had attempted suicide.” Haney & Lynch, *supra*, at 518. And a national survey of jail suicides across a two-year period revealed that two-thirds of suicides were committed by detainees subjected to solitary confinement, causing researchers to designate solitary confinement one of three “key indicators of suicidal behavior.” Lindsay M. Hayes & Joseph R. Rowan, *National Study of Jail Suicides: Seven Years Later*, 60 PSYCH. Q. 7, 23 (1989). Non-fatal self-mutilation statistics are no less dramatic. During an eight-year period, nearly half of all self-mutilation incidents in the North Carolina prison system occurred in solitary confinement. *Id.* at 525. In Virginia, the data are strikingly similar. *Id.* And in New York City jails, detainees in solitary confinement were seven times more likely than those in general population to self-mutilate. *See* Homer Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 445 (2014).

Prisoners consigned to solitary confinement are also much more likely to suffer from mental illness than prisoners in general population. For example, researchers conducting a comprehensive examination of prisoners in Washington State concluded that mental illness was twice as common in solitary confinement. Thomas Hafemeister & Jeff George, *The Ninth Circle of Hell*, 90 DENV. U. L. REV. 1, 46–47 (2012). Researchers in Denmark concluded that psychiatric disorders among prisoners in solitary confinement for three months or more were three times

more common than among the general population. P. Smith, *supra*, at 477–78. Even for solitary confinement stints shorter than three months, the disparity remained profound. *Id.* (showing 200% increase in psychiatric disorders among prisoners relegated to solitary confinement for fewer than three months). To be sure, prisoners with mental illness are more likely to be placed in solitary confinement. *E.g.*, Haney, *Mental Health, supra*, at 142–43. The disproportionate frequency of mental illness among prisoners in solitary confinement, however, cannot be attributed to preexisting mental illness alone. Rather, solitary confinement results in “acute mental illness in individuals who had previously been free of any such illness.” *See* Grassian, *Psychiatric Effects, supra*, at 333.

IV. Prisoners With Preexisting Vulnerabilities Like Mr. Latson Are Especially At Risk Of Harm From Solitary Confinement.

Prisoners suffering from mental illness and other disabilities—whether pre-existing or solitary-induced—are disproportionately vulnerable to the well-documented psychological and physiological harms caused by solitary confinement, and are also at the greatest risk of having their suffering “deepen into something more permanent and disabling.” Haney, *Mental Health, supra*, at 142; Haney, *Restricting the Use, supra*, at 290. These prisoners are “far less likely to be able to withstand the stress, social isolation, sensory deprivation, and idleness” of solitary confinement. Hafemeister & George, *supra*, at 41-42. For example, when deprived of social interaction, “many prisoners with mental illness experience catastrophic

and often irreversible psychiatric deterioration.” *Id.* at 38-39 (internal quotation marks omitted).

For these reasons, there is interdisciplinary consensus that seriously mentally ill and other vulnerable prisoners should not be consigned to isolation. For example, the American Psychiatric Association states that “[p]rolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential harm to such inmates.” *Position Statement on Segregation of Prisoners with Mental Illness*, AM. PSYCHIATRIC ASS’N (December 2012).¹⁰ Similarly, the American Public Health Association and the National Commission on Correctional Health Care call for the exclusion of individuals with serious mental illness from restricted housing. See NCCHC, *Position Statement: Solitary Confinement (Isolation)*, 4 (2016);¹¹ *Solitary Confinement as a Public Health Issue*, AM. PUB. HEALTH ASS’N (Nov. 5, 2013).¹² Leading correctional associations and prominent prison administrators also condemn the practice of placing vulnerable prisoners in solitary confinement. *E.g.*, ACA, *Restrictive Housing Performance Based Standards* 41, 69 (2016); ACA, *Performance Based Practices for Adult Local Detention Facilities*, 4th Ed. (2004); Gary C. Mohr and Rick Raemisch, *Restrictive Housing:*

¹⁰ http://www.dhcs.ca.gov/services/MH/Documents/2013_04_AC_06c_APA_ps2012_PrizSeg.pdf.

¹¹ <https://www.ncchc.org/filebin/Positions/Solitary-Confinement-Isolation.pdf>.

¹² <https://apha.org/policies-and-advocacy/public-health-policy-statements/policydatabase/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>.

Taking the Lead, Corrections Today (2015). International authorities have voiced similar concerns. *E.g.*, Juan E. Méndez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/66/268, 23 (Aug. 5, 2011).

V. By 2014-2015, It Was Clearly Established That Subjecting a Prisoner With Mr. Latson’s Vulnerabilities to Prolonged Solitary Confinement Violated The Eighth Amendment.

Justice Sotomayor recently emphasized “the clear constitutional problems” with imprisonment in “near-total isolation from the living world, in what comes perilously close to a penal tomb.” *Apodaca v. Raemisch*, 139 S. Ct. 5, 10 (2018) (statement of Sotomayor, J., respecting denial of certiorari) (citation omitted). And with good reason. Well before Mr. Latson’s ordeal, the law of the Supreme Court, the law of this Circuit, the weight of authority of other federal circuits, condemnation by governmental entities and correctional associations, and the obvious cruelty of subjecting prisoners with severe psychological vulnerabilities to prolonged solitary confinement sufficed to give any reasonable prison official fair warning that such conduct violates the Eighth Amendment.

By 1890, the Supreme Court recognized the devastating effects of solitary confinement, explaining that “[a] considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition . . . and others became violently insane, others still, committed suicide, while those who stood the ordeal

better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.” *In re Medley*, 134 U.S. 160, 168 (1890). The Supreme Court again turned its attention to solitary confinement in 1978, emphasizing what was already clear: solitary confinement “is a form of punishment subject to scrutiny under Eighth Amendment standards.” *Hutto v. Finney*, 437 U.S. 678, 685 (1978). And, of course, the Supreme Court has long held that the Eighth Amendment prohibits conditions that result in the deprivation of the “minimal civilized measure of life’s necessities,” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994), or pose a risk to a prisoner’s health, *Estelle v. Gamble*, 429 U.S. 97, 102-04 (1976). Mr. Latson’s solitary confinement does not pass muster under any of these frameworks.

That Mr. Latson could not be subjected to prolonged solitary confinement without violating the Eighth Amendment was also crystal clear in this Circuit by 2014-2015. *E.g.*, *Bolding v. Holshouser*, 575 F.2d 461, 468 (4th Cir. 1978) (plaintiffs in solitary stated Eighth Amendment claim where they alleged inadequate recreation, nutrition, and unsanitary conditions); *LaFaut v. Smith*, 834 F.2d 389, 394 (4th Cir. 1987) (Eighth Amendment violated where prison officials “ignore[d] the basic needs of a handicapped” prisoner in solitary confinement); *McNeill v. Currie*, 84 F. App’x 276, 278 (4th Cir. 2003) (depriving prisoner in solitary confinement of exercise states Eighth Amendment claim).

This Court does not stand alone among the circuits. Rather, a robust “consensus of cases of persuasive authority,” *District of Columbia v. Wesby*, 138 S. Ct. 577, 589-90 (2018) (citation omitted), also put Defendants on notice. *E.g.*, *Wheeler v. Butler*, 209 F. App’x 14, 15-17 (2d Cir. 2006) (summary order) (Eighth Amendment claim stated where hearing-impaired prisoner subjected to three-month solitary confinement without hearing aid); *LaReau v. MacDougall*, 473 F.2d 974, 978 (2d Cir. 1972) (Eighth Amendment violated where solitary “threaten[ed] an inmate’s sanity and sever[ed] his contacts with reality”); *Allah v. Bartkowski*, 574 F. App’x 135, 138-39 (3d Cir. 2014) (per curiam) (solitary confinement in unsanitary conditions stated Eighth Amendment claim); *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 666-67 (7th Cir. 2012) (Eighth Amendment claim stated where mentally ill prisoner languished in solitary cell that he caused to be unsanitary and noting that “prolonged confinement in administrative segregation may constitute a violation of the Eighth Amendment . . . depending on the duration and nature of the segregation and whether there were feasible alternatives to that confinement”); *Walker v. Shansky*, 28 F.3d 666, 668-69, 673 (7th Cir. 1994) (reversing summary judgment, denying qualified immunity on Eight Amendment claims, and concluding that prolonged solitary confinement of prisoner with mental illness states an Eighth Amendment claim); *Davenport v. DeRobertis*, 844 F.2d 1310, 1311-13 (7th Cir. 1988) (Eighth Amendment violated where prisoners held in solitary confinement for

90 days and noting that “isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage”); *Meriwether v. Faulkner*, 821 F.2d 408, 415 (7th Cir. 1987) (prolonged confinement in administrative segregation “may constitute cruel and unusual punishment in violation of the Eighth Amendment”); *Simmons v. Cook*, 154 F.3d 805, 808-09 (8th Cir. 1998) (Eighth Amendment violated where paraplegic prisoners held in solitary confinement for 32 hours); *Keenan v. Hall*, 83 F.3d 1083, 1089-91 (9th Cir. 1996) (Eighth Amendment claim stated where prisoner in solitary confinement denied outdoor exercise and exposed to unsanitary conditions, excessive noise, and constant illumination); *Fogle v. Pierson*, 435 F.3d 1252, 1259-60 (10th Cir. 2006) (Eighth Amendment violated where prisoner in solitary confinement denied outdoor exercise).

The animating principle of this case law is clear: solitary confinement violates the Eighth Amendment when it places a prisoner at risk of harm. That “a reasonable person would have known” that it would violate the Eighth Amendment to isolate Mr. Latson “is buttressed by the fact” that governmental entities and correctional organizations routinely condemned the practice at issue well before Defendants acted. *See Hope v. Pelzer*, 536 U.S. 730, 744-45 (2002). For example, following the U.S. Government Accountability Office’s (GAO) 2013 report on the Federal Bureau of Prison (“BOP”)’s use of solitary confinement, the BOP agreed to reduce its

solitary population and submit to an independent assessment of its practices. U.S. GAO, *Improvements Needed in [BOP] Monitoring and Evaluation of Impact of Segregated Housing*, 61-65 (May 2013).¹³ Leading correctional associations and prominent prison administrators also condemned the practice of placing mentally ill prisoners in solitary confinement. *See supra* at 23. Nor could Defendants have missed the comprehensive state reforms focused on reducing solitary confinement. *See* Maurice Chammah, *Stepping Down from Solitary Confinement*, THE ATLANTIC (Jan. 7, 2016)¹⁴ (noting that since 2009 at least thirty states have undertaken such reforms); U.S. DOJ, REP. & RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING: FINAL REP. 72-78 (Jan. 2016) (discussing state level reforms).¹⁵

Finally, “[t]he obvious cruelty inherent in this practice should have provided [Defendants] with some notice that their alleged conduct violated [Mr. Latson’s] constitutional protection against cruel and unusual punishment.” *Hope*, 536 U.S. at 745. The compulsion to meaningfully interact with other humans is universal. Depriving Mr. Latson of that opportunity for nearly eight months ensured he “was treated in a way antithetical to human dignity,” *id.*, and was “so patently violative of

¹³ <http://www.gao.gov/assets/660/654349.pdf>.

¹⁴ <https://www.theatlantic.com/politics/archive/2016/01/solitary-confinementreform/422565>.

¹⁵ <https://www.justice.gov/archives/dag/file/815551/download>.

[his] constitutional right that reasonable officials would know without guidance from the courts.” *Clem v. Corbeau*, 284 F.3d 543, 553 (4th Cir. 2002) (citation omitted); *see also Booker v. South Carolina Dep’t of Corr.*, 855 F.3d 533, 538 (4th Cir. 2017) (“We must consider not only specifically adjudicated rights, but also those manifestly included within more general applications of the core constitutional principles invoked.”) (citation omitted); *Wilson v. Kittoe*, 337 F.3d 392, 403 (4th Cir. 2003) (“[Q]ualified immunity was never intended to relieve government officials from the responsibility of applying familiar legal principles to new situations.”) (citation omitted); *Meyers v. Baltimore County*, 713 F.3d 723, 734 (4th Cir. 2013) (“[T]he absence of a judicial decision holding that [conduct] . . . unlawful . . . under similar circumstances does not prevent a court from denying a qualified immunity defense.”)

In *Saucier v. Katz*, the Supreme Court held that courts must “turn[] to the existence or nonexistence of a constitutional right as the first inquiry” in order to encourage “the law’s elaboration from case to case.” 533 U.S. 194, 201 (2001). In *Pearson v. Callahan*, however, the Court announced a new rule: courts may conduct the clearly established inquiry before examining the constitutional right. 555 U.S. 223, 236 (2009). Nonetheless, the Court “recognize[d] that it is often beneficial” to reach the constitutional prong first. *Id.*

As scholars and jurists have pointed out, analyzing qualified immunity in reverse may, for several reasons, “render[] the Constitution hollow.” Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 Notre Dame L. Rev. 1797, 1817 (2018) (quoting *Mullenix v. Luna*, 136 S. Ct. 305, 316 (2015) (Sotomayor, J., dissenting)); see also, e.g., Aaron L. Nielson & Christopher J. Walker, *The New Qualified Immunity*, 89 S. Cal. L. Rev. 1 (2015). First, courts which decide solely whether a right is clearly established, perpetuate constitutional uncertainty, offer little guidance to government officials about the scope of constitutional rights, and contribute to constitutional stasis. See Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 Yale L.J. 2, 65 (2017). Second, that analytic approach may undermine public faith in government officials by perpetuating a perception that wrongdoers escape accountability. See *Zadeh v. Robinson*, 902 F.3d 483, 498 (5th Cir. 2018) (Willett, J., concurring).

This Court should reverse the district court’s qualified immunity decision. At a minimum, however, it should reach the constitutional prong of the two-step inquiry, and hold that Defendants violated the Eighth Amendment. Failing to do so will ensure that prisoners like Mr. Latson continue to be subjected to the “well documented . . . numerous deleterious harms,” *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting), inflicted by solitary confinement.

CONCLUSION

To predictably devastating effect, Reginald Latson was unnecessarily subjected to our penal system's cruelest punishment. Through this case, the Court has an opportunity to ensure that does not happen to another vulnerable person. For the foregoing reasons, amici curiae respectfully urge this Court to reverse the district court's judgment.

Date: February 11, 2019

Respectfully submitted,

Alan Mills
Liz Mazur
UPTOWN PEOPLE'S LAW CENTER
4413 N. Sheridan Road
Chicago, IL 60640
(773) 769-1411

Vishal Agraharkar
Eden B. Heilman
ACLU OF VIRGINIA
701 E. Franklin Street, Ste. 1412
Richmond, VA 23219
(804) 523-2151

/s/ Daniel M. Greenfield
Daniel M. Greenfield
Counsel of Record
RODERICK & SOLANGE MACARTHUR
JUSTICE CENTER
NORTHWESTERN PRITZKER SCHOOL OF LAW
375 East Chicago Avenue
Chicago, IL 60611
(312) 503-8538
daniel-greenfield@law.northwestern.edu
Maggie E. Filler
RODERICK & SOLANGE MACARTHUR
JUSTICE CENTER
745 Atlantic Avenue, 8th Floor
Boston, MA 02111
(857) 284-1455

Counsel for Amici Curiae

* MacArthur Justice Center law clerk David Schmutzer and Northwestern Pritzker School of Law student Hillary Chutter-Ames contributed to the preparation of this brief.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 6,493 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Times New Roman 14-point font using Microsoft Word 2016.

Date: February 11, 2019

/s/ Daniel M. Greenfield _____

Daniel M. Greenfield

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: February 11, 2019

/s/ Daniel M. Greenfield

Daniel M. Greenfield