No. 21-2310

United States Court of Appeals for the Third Circuit

ANGELO LEE CLARK,

Plaintiff-Appellant,

—v.—

ROBERT M. COUPE; PERRY PHELPS; DANA METZGER; DAVID PIERCE; MAJOR JEFFREY CARROTHERS; CAPTAIN BURTON; CAPTAIN RISPOLI; CAPTAIN WILLY, DR. WILLIAM RAY LYNCH; DR. PAOLA MUÑOZ; DR. DAVID YUNIS, RHONDA MONTGOMERY; SUSAN MUMFORD; STEPHANIE D. JOHNSON,

Defendants-Appellees.

On Appeal from the United States District Court for the
District of Delaware
Case No. 1:17-cv-00066-RGA
The Hon. Richard G. Andrews, U.S.D.J. Presiding

BRIEF OF *AMICUS CURIAE* NATIONAL DISABILITY RIGHTS NETWORK IN SUPPORT OF PLAINTIFF-APPELLANT AND SEEKING REVERSAL OF THE COURT'S ORDERS BELOW

PETER SLOCUM
CRAIG DASHIELL
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, New Jersey 07068
973.597.2500
Attorneys for Amicus Curiae National Disability Rights Network

CORPORATE DISCLOSURE STATEMENT AND STATEMENT OF FINANCIAL INTEREST

Pursuant to Federal Rule of Appellate Procedure 26.1 and Local Appellate Rule 26.1, *Amicus Curiae* National Disability Rights Network makes the following disclosure:

1) For non-governmental corporate parties please list all parent corporations:

None.

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

None.

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

None.

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

Not applicable.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

RULES

OTHER AUTHORITIES

IDENTITY AND INTEREST OF AMICUS CURIAE

National Disability Rights Network ("NDRN"), as *amicus curiae*, respectfully submits this brief in support of the appeal by Plaintiff-Appellant Angelo Lee Clark, seeking reversal of those portions of the District Court's (i) Memorandum and Order regarding the Report and Recommendation, dated March 26, 2019, and (ii) Memorandum and Order regarding Plaintiff's Motion for Reconsideration, dated May 14, 2019, which dismissed Mr. Clark's claim that Defendants-Appellees violated the Eighth Amendment by holding him in solitary confinement for long periods of time having knowledge of his serious mental illness on the basis that Defendants were entitled to qualified immunity.[1]

NDRN is the non-profit membership association of Protection and Advocacy ("P&A") agencies that are located in all 50 states, the District of Columbia, Puerto Rico, and the United States Territories. There is also a federally mandated Native American P&A System. P&A agencies are authorized pursuant to various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings.

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), the undersigned counsel hereby certify that this brief was authored solely by NDRN's counsel, that no party's counsel authored the brief in whole or in part, and that no person other than NDRN or its counsel has contributed any money that was intended to fund preparing or submitting this brief. Pursuant to Fed. R. App. P. 29(a)(2), Plaintiff-Appellant and Defendants-Appellees have consented to the filing of this brief.

The P&A System comprises the nation's largest provider of legally based advocacy services for persons with disabilities. NDRN supports its members through the provision of training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination, including the opportunity to secure and maintain competitive, integrated employment.

SUMMARY OF THE ARGUMENT

The District Court improperly dismissed, in part, Count One of Mr. Clark's First Amended Complaint on the grounds that "no clearly established law supported Plaintiff's position that 'housing a mentally ill inmate in solitary confinement for long periods of time violates a clearly established Eighth Amendment prohibition of cruel and unusual punishment'"—*i.e.*, that the individuals Mr. Clark identified as being responsible for isolating him and depriving him of adequate mental health treatment were entitled to qualified immunity.

It is well-documented and widely recognized that prisoners held in solitary confinement are at risk of severe, long-lasting, psychological and self-inflicted physical harm, including suicide. It is equally well-recognized that this risk is exacerbated when the individual confined has serious mental illness. In recognition of these potential (and often realized) harms, the use of solitary confinement for

prisoners with serious mental illness has been condemned by scholars, courts in the Third Circuit, and the same department of corrections that confined Mr. Clark. And because the resulting harms are obvious, prison officials responsible for placing an inmate with serious mental illness in solitary confinement for long periods of time can be held accountable for violating his or her Eighth Amendment right to be free from cruel and unusual punishment.

Accordingly, when a prisoner, like Mr. Clark, with serious mental illness asserts an as-applied Eighth Amendment claim based on the duration of, and deficient conditions in, solitary confinement, a defendant cannot invoke qualified immunity on a motion to dismiss. Widespread knowledge of the harms solitary confinement causes inmates with serious mental illness pre-dates Mr. Clark's lawsuit against actors in the Delaware prison system, and both the District Court for the District of Delaware and the Court of Appeals for the Third Circuit have allowed similar Eighth Amendment claims asserted by prisoners with mental illnesses to proceed to discovery.

LEGAL ARGUMENT

I. SOLITARY CONFINEMENT INFLICTS PSYCHOLOGICAL HARM ON INMATES WITH SERIOUS MENTAL ILLNESS AND CAN ALSO LEAD TO PHYSICAL HARM.

Solitary confinement goes by many names, including restrictive housing, administrative segregation, and isolation. But regardless of label, at its core, the

practice involves confining an inmate in a cell "for approximately 22 hours per day or more, alone or with other prisoners [in the case of overcrowding]," and "limit[ing the prisoner's] contact with others."[2] In light of the well-recognized harms this form of confinement causes, holding a mentally ill inmate in solitary confinement can violate the Eighth Amendment.

"Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment. 'The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.'" *Brown v. Plata*, 563 U.S. 493, 510 (2011) (quoting *Atkins v. Virginia*, 536 U.S. 304, 311 (2002)). "Confinement . . . in an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards." *Hutto v. Finney*, 437 U.S. 678, 685 (1978). When considering whether a constitutional violation has occurred as a result of holding an inmate in solitary confinement, both the "conditions of confinement" and "length of confinement" factor into the calculus. *Id.* at 687. Weighing the treatment an inmate receives, the actions taken by the staff and prison officials responsible for his or her well-being,

---

[2] Letter from Thomas E. Perez, U.S. Dep't of Justice & David J. Hickton, U.S. Att'y, W.D. Penn., to Governor Tom Corbett at 5 (May 31, 2013), www.justice.gov/sites/default/files/crt/legacy/2013/06/03/cresson_findings_5-31-13.pdf; *see also Tillery v. Owens*, 907 F.2d 418, 422 (3d Cir. 1990) (noting that inmates in administrative segregation spent "21 to 22 hours a day in their cells").

whether he or she receives appropriate medical assessments, and also the length of confinement, there is a tipping point under the Eighth Amendment where what might otherwise have started as lawful isolation becomes a constitutional violation. *See id.*

As for accountability for any resulting violation, it is not only those who physically relocate an inmate to solitary confinement that face liability under the Eighth Amendment. Prison officials also can be held responsible for conditions of confinement that present "obvious" risks of serious harm to an inmate's health or safety. *Palakovic v. Wetzel*, 854 F.3d 209, 225 n.17 (3d Cir. 2017). That is, risks that a "reasonable man would realize." *Farmer v. Brennan*, 511 U.S. 825, 842 (1994) (citation omitted). These harms are measured by "evolving standards of decency that mark the progress of a maturing society," *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (citation omitted), and the inquiry focuses on whether the incarcerated person has been denied "the minimal civilized measure of life's necessities," *Rhodes v. Chapman,* 452 U.S. 337, 347 (1981).

Social scientists have long warned that placing inmates in solitary confinement, and especially those with serious mental illness,[3] causes significant

[3] The National Institute of Mental Health defines a serious mental illness as "a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities." NIH, *Mental Health Information: Statistics*, WWW.NIMH.NIH.GOV https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Sept. 27, 2021).

harm. Doctors Stuart Grassian and Craig Haney have devoted their careers to documenting the effects of the solitary confinement on inmate populations, and have been cited by United States Supreme Court Justices as authorities on the topic. *See, e.g., Glossip v. Gross*, 576 U.S. 863, 926 (2015) (Stevens, J. dissenting); *Davis v. Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring); *Apodaca v. Raemisch*, 139 S. Ct. 5, 9 n.8 (2018) (Sotomayor, J., statement).

From their research, Doctors Grassian and Haney concluded that the isolation inflicted by solitary confinement often "cause[s] either severe exacerbation or recurrence of preexisting illness, or the appearance of an acute mental illness in individuals who had previously been free of any such illness." (Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol'y 325, 333 (2006); *accord* Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365, 374 (2018) ("[T]he extreme isolation and harsh conditions of confinement in [solitary confinement] typically exacerbate the symptoms of mental illness." (citation omitted)).)

Specific "frequently occurring adverse psychological reactions to solitary confinement" include:

> stress-related reactions (such as decreased appetite, trembling hands, sweating palms, heart palpitations, and a sense of impending emotional breakdown); sleep disturbances (including nightmares and sleeplessness); heightened levels of anxiety and panic; irritability, aggression, and rage; paranoia, ruminations, and violent

> fantasies; cognitive dysfunction, hypersensitivity to stimuli, and hallucinations; loss of emotional control, mood swings, lethargy, flattened affect, and depression; increased suicidality and instances of self-harm; and, finally, paradoxical tendencies to further social withdrawal.

(Haney, *supra*, at 371–72.) These negative psychological effects begin to manifest with stays in involuntary solitary confinement as short as 10 days. (Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 Crime & Delinq. 124, 132 (2003).)

Compounding matters, prisoners held in solitary confinement, including those with mental illnesses, often face "barriers to accessing necessary medical and mental health care" that might otherwise combat these harms.[4] In many systems, "clinical encounters occur[] at cellside through bars or through openings in solid metal doors. Consequences of this practice include limited privacy, impediments to physically assessing and communicating with patients, and hindrance of the therapeutic alliance."[5] In addition, "[s]ecurity restrictions may result in prisoners being denied access to inpatient psychiatric treatment and modalities such as group therapy."[6]

---

[4] American Public Health Association, *Solitary Confinement as a Public Health Issue*, APHA.ORG (Nov. 5, 2013), https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue.

[5] *Id.*

[6] *Id.*

Based on this growing body of social science, almost every major national mental health organization and penological association in the country has condemned the use of solitary confinement.

In 2016, the United States Department of Justice ("DOJ") issued a comprehensive report warning that the conditions of solitary confinement "can be severe; the social isolation, extreme. At its worst, and when applied without regard to basic standards of decency, restrictive housing can cause serious, long-lasting harm."[7] Thus, while not prohibiting the practice outright, the DOJ advocates that "[g]enerally, inmates with serious mental illness (SMI) should not be placed in restrictive housing."[8]

Under DOJ policy, if it becomes absolutely necessary to hold an inmate with serious mental illness in solitary confinement, the confinement should be for no longer than 30 days, subject to a professional judgment that transfer back "to an alternative housing is clearly inappropriate."[9] The DOJ's best practices for mitigating the resulting harms include: "develop[ing] a clear plan for returning the

---

[7] U.S. Dep't of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* 1-2 (Jan. 2016), https://www.justice.gov/archives/dag/file/815551/download.

[8] *Id.* at 99.

[9] *Id.* at 100.

inmate to less restrictive conditions as promptly as possible"; providing "intensive, clinically appropriate mental health treatment for the entirety of the inmate's placement in restrictive housing"; providing enhanced "opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates" as well as "enhanced . . . in-cell therapeutic activities"; and performing regular mental health evaluations, including developing additional treatment plans or identifying alternative placement if an "evaluation reveals that the inmate's mental health appears to have deteriorated while in restrictive housing."[10] Thus the DOJ made it the responsibility of all correctional facilities to ensure that solitary confinement "is used rarely, applied fairly and subjected to reasonable constraints," and is never used "as a default solution."[11]

The American Psychological Association ("APsyA") has put a finer point on the harms the DOJ identified, stating that "[s]olitary confinement is associated with severe harm to physical and mental health among both youth and adults, including: increased risk of self-mutilation and suicidal ideation, greater anxiety, depression, sleep disturbances, paranoia, and aggression, exacerbation of the onset of pre-existing mental illness and trauma symptoms, [and] increased risk of cardiovascular

[10] *Id.* at 98, 99, 106.

[11] *Id.* at 1, 2.

problems."[12] The American Psychiatric Association ("APhyschA") likewise has recognized the "potential psychiatric consequences of prolonged solitary confinement, including depression, anxiety, and self-harm."[13]

Even organizations representing those who administer and guard this country's prisons have joined the call in warning about the harms caused by solitary confinement. The Association of State Correctional Administrators ("ASCA") has noted that "[d]epriving individuals of virtually all normal sociability has long been understood as disabling. For individuals whose mental well-being is already impaired, restrictive housing has come to be seen as adding injury to insult."[14] The American Correctional Association ("ACA") has also hewn to the "general consensus among clinicians that the conditions and duration of confinement in administrative segregation are associated with potential psychological harm for

---

[12] American Psychological Association, *Solitary Confinement of Juvenile Offenders*, https://www.apa.org/advocacy/criminal-justice/solitary.pdf.

[13] American Psychiatric Association, *Position Statement on Solitary Confinement (Restricted Housing) of Juveniles* (July 2018), https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Solitary-Confinement-Restricted-Housing-of-Juveniles.pdf.

[14] Ass'n of State Correctional Administrators & Liman Center for Public Interest Law, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time in* Cell 85 (Oct. 2018), https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca_liman_2018_restrictive_housing_revised_sept_25_2018_-_embargoed_unt.pdf.

many inmates with a serious mental illness." (American Correctional Ass'n, *Delaware Department of Correction Restrictive Housing Assessment* 20 (March 17, 2016), Appx597.)[15] As the ACA warns, "[w]ithout access to necessary mental health care, some inmates may experience symptoms of depression, paranoia, perceptual distortions, delusional thinking, impaired problem-solving ability and problems with impulse control." (*Id.*) To state the obvious, "the harsher the conditions and the longer the duration of the confinement, the more likely deterioration may occur, or at least be resistant to improvement." (*Id.*)

But even more pertinent for purposes of the Court's evaluation of Mr. Clark's current appeal, at the local level, Delaware's Department of Corrections ("DOC") itself has relied on the empirical studies about dangers of solitary confinement (including the ACA's 2016 *Restrictive Housing Assessment*) and, in 2020, eliminated the practice as a disciplinary measure in its prisons: "[s]ometimes referred to as solitary confinement or segregation, restrictive housing has been shown to have a profound negative psychological impact on inmates."[16] Indeed, the DOC's commitment to mitigating the harms caused by solitary confinement goes

[15] "Appx-" refers to the page number in the appendices Mr. Clark filed on appeal at ECF Nos. 14-15.

[16] Press Release, Delaware Department of Corrections, *DOC Eliminates Restrictive Housing in Delaware Prisons* (Sept. 21, 2020), https://doc.delaware.gov/assets/documents/newsroom/2020/20press0921.pdf.

back to 2015, when it began developing a plan to phase out solitary confinement.[17] The DOC eventually entered into a formal set of reforms in 2016 in collaboration with the Community Legal Aid Society of Delaware and the American Civil Liberties Union of Delaware.[18] Those reforms were then memorialized in a stipulated agreement entered on September 1, 2016 by a court in the District Court for the District of Delaware, from where Mr. Clark's appeal originated. (Agreement & Order, *Cmty. Legal Aid Soc'y, Inc. v. Coupe*, No. 1:15-cv-00688 (D. Del. Sept. 1, 2016), ECF No. 40.)

To put matters bluntly in the DOC's own words, prisoners with serious mental illness have "conditions [that are] contrary to confinement" in isolation; they "require special accommodations" if they are removed from the general population. (Policy of State of Delaware Department of Corrections: Ch. 11 Bureau of Correctional Healthcare Systems 1 (rev. Apr. 12, 2011), Appx502.)

II. COURTS HAVE RECOGNIZED THE SIGNIFICANT HARMS THAT PROLONGED SOLITARY CONFINEMENT CAUSES FOR PRISONERS WITH SERIOUS MENTAL ILLNESS.

Appellate courts throughout the country have increasingly warned of the potential constitutional harm posed by solitary confinement. Going back over a

[17] *Id.*

[18] *Id.*

century, the United States Supreme Court recognized that solitary confinement imposes "a further terror and peculiar mark of infamy." *In re Medley*, 134 U.S. 160, 170 (1890). In *Medley*, prisoners held in solitary confinement were "complete[ly] isolate[ed] . . . from all human society, and . . . confine[d] in a cell of considerable size, so arranged that [they] had no direct intercourse with or sight of any human being, and no employment or instruction." *Id.* This exacted a terrible toll: "[a] considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide." *Id.* Even "those who stood the ordeal better" did not escape harm. *Id.* They "were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community." *Id.*

While *Medley* represents the dangers of solitary confinement in its most base form, various Supreme Court Justices have since called out the modern iteration of the practice for its barbarity. *See Apodaca*, 139 S. Ct. at 9 (Sotomayor, J., statement) ("we do know that solitary confinement imprints on those that it clutches a wide range of psychological scars"); *Ruiz v. Texas*, 137 S. Ct. 1246, 1247 (2017) (Breyer, J. dissenting) (recognizing that "severe anxiety and depression, suicidal thoughts, hallucinations, disorientation, memory loss, and sleep difficulty" are "symptoms long associated with solitary confinement"); *Glossip*, 576 U.S. at 926 (Breyer, J.,

dissenting) (commenting that "it is well documented that . . . prolonged solitary confinement produces numerous deleterious harms"); *Davis*, 576 U.S. at 289 (Kennedy, J., concurring) ("research still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price").

And most recently, in *Brown*, the Supreme Court observed that California prisoners "with serious mental illness d[id] not receive minimal, adequate care" in violation of the Eighth Amendment when they were forced to spend "months in administrative segregation" with "harsh and isolated conditions" and "limited mental health services." 563 U.S. at 503-04, 519.

This Circuit, too, has "acknowledge[d] the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement," *Palakovic*, 854 F.3d at 225–26, and concluded that "prolonged solitary confinement . . . poses a substantial risk of serious psychological and physical harm"—harms to which inmates with "preexisting serious mental health problems" are "particular[ly] vulnerab[le]," *Porter v. Pennsylvania Dep't of Corr.*, 974 F.3d 431, 441–43, 450 (3d Cir. 2020). *Accord Williams v. Sec'y Pennsylvania Dep't of Corr.*, 848 F.3d 549, 566 (3d Cir. 2017) (recognizing that "with the abundance of medical and psychological literature, the 'dehumanizing effect' of solitary confinement is firmly established" and that "the evidence shows that the psychological trauma associated with solitary

confinement is caused by the confinement itself" and that "[p]hysical harm can also result" from the deprivation).

Thus, in *Palakovic*, this Circuit held that a prisoner's estate had stated an Eighth Amendment claim against prison officials by alleging that conditions he faced in solitary confinement, where he was isolated for multiple 30-day stints, were inhumane for him in light of his mental illness. 854 F.3d at 225-26; *see also Cmty. Legal Aid Soc'y, Inc. v. Coupe*, No. CV 15-688, 2016 WL 1055741, at *4 (D. Del. Mar. 16, 2016) (advocacy group stated Eighth Amendment claim because it was "plausible that Coupe was aware that placing mentally ill patients in solitary confinement could deprive inmates in a manner that is objectively, sufficiently serious that Coupe would draw the inference that a substantial risk of serious harm exists" (internal quotation marks and citation omitted)).[19]

[19] Other circuit courts have recognized that the harms of solitary confinement are magnified when the prisoner in question suffers from mental illness. *See Wallace v. Baldwin*, 895 F.3d 481, 485 (7th Cir. 2018) (placement of a mentally ill detainee in solitary confinement "raises a genuine concern that the negative psychological effects of his segregation will drive him to self-harm"); *J.H. v. Williamson Cty., Tennessee*, 951 F.3d 709, 719 (6th Cir. 2020) (observing that an inmate's "documented mental health issues made him particularly vulnerable to the effects of solitary confinement"); *Disability Rts. Montana, Inc. v. Batista*, 930 F.3d 1090, 1099 (9th Cir. 2019) (finding that complaint plausibly alleged that prison policies and practices for placing prisoners in solitary confinement "pose[d] a substantial risk of serious harm to prisoners who are seriously mentally ill"); *cf. Incumaa v. Stirling*, 791 F.3d 517, 534 (4th Cir. 2015) (holding that "[p]rolonged solitary confinement exacts a heavy psychological toll that often continues to plague an inmate's mind even after he is resocialized").

III. PRISON OFFICIALS RESPONSIBLE FOR PLACING AN INMATE WITH SERIOUS MENTAL ILLNESS IN SOLITARY CONFINEMENT FOR LONG PERIODS OF TIME ARE NOT ENTITLED TO QUALIFIED IMMUNITY BECAUSE OF THE OBVIOUS HARM CAUSED.

The courts' thorough examination of the Eighth Amendment harms that protracted solitary confinement causes to inmates with serious mental illness, as well as the common-sense understanding that isolating someone with such an illness can "amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture,"[20] precludes prison officials from pleading *mea culpa* on a motion to dismiss while at the same time avoiding liability for the confinement based on qualified immunity.

"Qualified immunity shields an officer from suit when she makes a decision that, even if constitutionally deficient, reasonably misapprehends the law governing the circumstances she confronted." *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). This immunity, however, must give way if "a general constitutional rule already identified in the decisional law . . . appl[ies] with obvious clarity to the specific conduct in question, even though the very action in question has [not] previously been held unlawful." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (quoting *United*

[20] United Nations, *Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* 18 (July 28, 2008), https://www.un.org/disabilities/images/A.63.175.doc.

States v. Lanier, 520 U.S. 259, 271 (1997)). Thus, "'[o]fficials can still be on notice that their conduct violates established law even in novel factual circumstances' as long as the law gives the officials 'fair warning' that their treatment of the inmate is unconstitutional." *Porter*, 974 F.3d at 449 (quoting *Hope*, 536 U.S. at 741).

The Third Circuit in *Palakovic*, as confirmed in *Porter*, has all but concluded that an inmate with known mental health issues who is isolated long-term in solitary confinement and asserts an Eighth Amendment claim based on the deficient conditions of that confinement will defeat a qualified immunity defense on a motion to dismiss. 854 F.3d at 225-26; 974 F.3d at 450. But even absent these authorities, the obviousness of the harms prisoners with mental illness face—spelled out in the literature and the DOC's policies—precludes the prison officials who confined Mr. Clark from claiming, on a motion to dismiss, that they could have reasonably determined that it was constitutionally permissible to house him long-term in solitary confinement under the conditions alleged in the First Amended Complaint.

As Mr. Clark pleaded, in 2006, the DOC diagnosed him with schizophrenia and bipolar disorder and began providing him with treatment for the same. (Appx59 ¶ 5.) Subsequent to his diagnoses, the DOC confined Mr. Clark in isolation for a six month period in 2012; 15 days in 2015; and then for an additional seven months from January to August 2016. (Appx60 ¶ 11.) During this confinement, Mr. Clark was isolated alone in a small 11' by 8' cell for 24 hours a day, except for one hour

three times a week. (Appx64 ¶¶ 38-39.) The lights in the cell remained on from 6:00 a.m. to 11:30 p.m. every day. (*Id.* ¶ 39.) While in the cell, Mr. Clark "had no access to therapy sessions or counselling, and he only saw a mental health provider who evaluated his medications once every few months," and was also denied "the opportunity to engage in normal human interaction, such as talking with or seeing others, working, participating in educational or rehabilitative programs, or attending religious services." (Appx59 ¶ 7, Appx65 ¶ 41.) Nor was Mr. Clark provided with group therapy sessions or structured out-of-cell activities. (Appx65 ¶ 42.) Instead, he was medicated. DOC staff prescribed Mr. Clark Zyprexa, which caused him "to experience pronounced hallucinations and adverse and allergic side effects, such as paralysis and intense pain in his legs." (Appx68 ¶ 64.)

When Mr. Clark questioned why he was being held in isolation for lengthy periods of time or demanded to receive appropriate mental health treatment, he was placed in the "naked room"—an even more restrictive form of isolation "that contains only a commode and single mattress on the floor" and where prisoners are provided with "only an open smock for clothing." (Appx67 ¶¶ 56-57.) If Mr. Clark yelled or otherwise banged on the door of his cell to get his prison guards' attention or advocated too strongly for mental health services, he was punished with further time in solitary confinement for supposed disciplinary infractions. (Appx68 ¶ 59, Appx69 ¶ 70.) In all, Mr. Clark's stays in solitary confinement, without appropriate

monitoring or evaluations, "resulted in further deterioration of [his] mental health, including an increase in depression, hallucinations, and self-mutilation" and "impaired his ability to reintegrate into society." (Appx68 ¶ 66, Appx70 ¶ 75.)

These allegations, taken as a whole, arise to the precise Eighth Amendment violations discussed in *Palakovic* and *Porter*, and also defeat any claim of qualified immunity. It should have been obvious to Defendants that confining Mr. Clark for long periods of time and depriving him of adequate mental health treatment would cause him significant harm, given his known diagnoses of manic depression and paranoid schizophrenia. *See Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020) (no qualified immunity defense to Eighth Amendment claim where prisoner was shackled in an unsanitary cell for six days because the harm should have been obvious). The District Court erred when it held otherwise.

CONCLUSION

For the foregoing reasons, and the reasons cited in Mr. Clark's merits brief, this Court should reverse the District Court's orders dismissing his Eighth Amendment claims against Defendants-Appellees.

Respectfully submitted,

Dated: September 27, 2021

s/ Peter Slocum
Peter Slocum
Craig Dashiell
LOWENSTEIN SANDLER LLP
One Lowenstein Drive

Roseland, New Jersey 07068
973.597.2500
pslocum@lowenstein.com
cdashiell@lowenstein.com
Attorneys for Amicus Curiae National Disability Rights Network

CERTIFICATE OF COMPLIANCE

I, Peter Slocum, certify that pursuant to Federal Rules of Appellate Procedure 29(a)(4)(G), 29(a)(5), 32(a)(7)(B), and 32(g)(1), the forgoing Brief of *Amicus Curiae* National Disability Rights Network in Support of Plaintiff-Appellant is 4,231 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(f), if applicable.

I further certify that the brief's type size and typeface comply with Federal Rule of Appellate Procedure 32(a)(5) and (6) in that it is proportionately spaced and has a typeface of 14 points.

I further certify, pursuant to Local Appellate Rule 31.1(c), that the text of the electronic form of this brief is identical to the text in the paper copies, and that the electronic form of this brief has been scanned for viruses using Carbon Black, version 3.6.0.1979, and that no virus was detected.

Dated: September 27, 2021

s/ Peter Slocum
Peter Slocum

CERTIFICATE OF SERVICE & CM/ECF FILING

I hereby certify that on September 27, 2021, I electronically filed the within Brief of *Amicus Curiae* National Disability Rights Network in Support of Plaintiff-Appellant with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system.

I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system

Dated: September 27, 2021

s/ Peter Slocum
Peter Slocum

CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Local Appellate Rule 46.1(e), the undersigned hereby certifies that Peter Slocum, counsel for *Amicus Curiae* National Disability Rights Network, is a member of the bar of the United States Court of Appeals for the Third Circuit.

Dated: September 27, 2021

s/ Peter Slocum
Peter Slocum