IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

EDWARDS BRAGGS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	2:14-CV-00601-MHT-TFM
JEFFERSON DUNN, in his official capacity as Commissioner of the Alabama Department of Corrections, et al.,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' BRIEF IN SUPPORT OF LIABILITY FINDING RELATED TO FAILURE TO ADEQUATELY MONITOR AND TREAT PRISONERS IN SEGREGATION WHO HAVE NOT PREVIOUSLY BEEN IDENTIFIED AS NEEDING MENTAL HEALTH SERVICES

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INTRODUCTION

Following the two month trial on Plaintiffs' Phase 2A mental health liability claims, the Court determined that "the evidence is overwhelming that the [Alabama Department of Corrections'] ("ADOC's") current segregation practices pose an unacceptably high risk of serious harm to prisoners with serious mental-health needs." Doc. 1285 at 192. However, the Court reserved judgment on Eighth Amendment liability with regard to prisoners not previously identified as needing mental health care who are placed in segregation. Doc. 1285 at 237-239.

The evidence already in the record demonstrates that prisoners who have not previously been identified as needing mental health services – whether because they actually did not need care or because ADOC's system had failed to identify them – risk developing very serious mental health needs that all too frequently result in serious harm.

Defendants are aware of this risk, but fail to address it through even the most obvious means: monitoring prisoners in segregation for signs of decompensation and responding to such signs. Other than eliminating or limiting isolation, mental health rounds and assessments of prisoners are the most basic methods of reducing the risks in segregation. But Defendants recognize that rounds and assessments in segregation are rare, not confidential, and generally do not appear to inform the mental health staff of the status of the prisoners. When the risk manifests in a

person taking his own life in segregation, mental health staff can only "imagine" why. Yet, this imagination has failed when it comes to actually addressing the risk. Even after ADOC's suicide rate shot up to become one of the highest in the country, and ADOC recognized that the primary commonality among the suicides was segregation, ADOC did nothing to address the risks of segregation.

The evidence proves that ADOC's failure to assess or monitor prisoners in segregation system is deliberate indifference to the serious mental health needs of prisoners, including those without previously identified mental health needs.

ARGUMENT

I. Many Persons Previously Unidentified as Needing Mental Health Services Develop Serious Mental Health Needs as a Result of Placement in Segregation

A. The Courts Recognize that Segregation Creates Serious Mental Health Needs

As early as the 19th century, the Supreme Court observed that even after a short period of such confinement, a significant number of prisoners fell into a "semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better … in most cases did not recover sufficient mental activity." *In re Medley*, 134 U.S. 160, 168 (1890).

Scientific and correctional authorities agree that these harms affect both the

mentally ill and the mentally stable. Plaintiffs' expert Dr. Craig Haney summarized the research in his report, noting that "virtually every [study] . . . documented the pain and suffering that isolated prisoners endure and the significant risk of serious psychological harm to which they are exposed." Haney Report, Jt. Ex. 459 at 103-104.[1] Dr. Haney explained that "'long-term' exposure to precisely the kinds of conditions and practices that… currently exist in the ADOC, creates significant risk of serious psychological harm. The risk of harm is brought about whether or not the prisoners subjected to these conditions suffer from a pre-existing mental illness." Haney Rep., Jt. Ex. 459 at 105. Similarly, Plaintiffs' psychiatric expert Dr. Kathryn Burns testified that "even people without mental illness can suffer psychological harm from being in segregation." Burns Trial Tr., Vol. I, 208:25-09:2.

Federal courts have adopted the reasoning of the scientific authorities, and frequently acknowledge the depth of the harm of isolation. In 2015, Justice Kennedy catalogued recent periodical and scientific articles before finding that "research still confirms what th[e] Court suggested over a century ago: Years on end of near-total isolation exact a terrible price." *Davis v. Ayala*, 135 S.Ct. 2187 at 2210 (2015) (Kennedy, J. concurring). "District courts have found that conditions of extreme social isolation likely would cause some degree of psychological trauma

[1] All page numbers to the Haney Report are to the page of the pdf, as the internal pagination restarts for each appendix.

for most inmates and likely would cause serious mental illness or a massive exacerbation of existing mental illness for inmates with active mental illness or a history of mental illness." *Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1336 (D. Ariz. 2014)(citing *Madrid v. Gomez*, 889 F.Supp. 1146, 1155, 1235-36, 1265-66 (N.D.Cal.1995)); *see also United States v. D.W.*, 198 F. Supp. 3d 18, 91 (E.D.N.Y. 2016) ("Research has demonstrated that time served in solitary confinement can lead to serious mental illness in healthy individuals."); *Ind. Prot. & Advocacy Servs. Comm'n v. Comm'r, Ind. Dep't of Corr.*, 2012 WL 6738517 at *23 (S.D.Ind. Dec. 31, 2012)).

Earlier this year, the Third Circuit found that research shows that "the psychological trauma associated with solitary confinement is caused by the confinement itself. The relationship cannot be dismissed as merely a simple correlation between pre-existing mental health issues and placement in solitary confinement." *Williams v. Sec'y Pennsylvania Dep't of Corr.*, 848 F.3d 549, 567 (3d Cir. 2017), *petition for cert. filed* (U.S. Jul. 12, 2017) (No. 17-5116). The *Williams* court surveyed studies on the impact of isolation, quoting one of the researchers: "There is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects." *Id*. at 566 (quoting 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, 500 (1997) (hereinafter "Haney I")). Another study relied on by the court evaluated "the psychiatric effects of solitary confinement in over two hundred inmates" and found that "disturbances were often observed in individuals who had no prior history of any mental illness." *Id*. at 567 (citing Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH U. J.L. & POL'Y 325, 333 (2006) (hereinafter "Grassian"); *see also Hutchinson v. Florida*, Barkett, J. *concurring*, 677 F.3d 1097, 1106 (11th Cir. 2012) (noting that "the psychological effects of spending extended periods in solitary confinement—commonly known as SHU syndrome—may impair an inmate's mental capabilities to the extent that his active participation in litigation becomes impossible.").

The global community has also come to recognize the threat that solitary confinement poses to the health of prisoners. The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment found that "[t]he weight of accumulated evidence to date points to the serious and adverse health effects of the use of solitary confinement: from insomnia and confusion to hallucinations and mental illness." Manfred Nowak (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Interim Rep. on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/63/175 at 20 (July 28, 2008), (available at

https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/440/75/PDF/N0844075.pdf?OpenElement, last visited on October 13, 2017). Specifically, the Special Rapporteur concluded that

> a significant number of individuals will experience health problems regardless of the specific conditions, regardless of time and place, and regardless of pre-existing personal factors. The central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and well-being.

Id. at 23. The Special Rapporteur on Torture went on to explain that "[s]olitary confinement harms prisoners who were not previously mentally ill and tends to worsen the mental health of those who are." *Id*. at 24.

In 2015, the United Nations unanimously approved a United States-sponsored resolution that revised the *Standard Minimum Rules for the Treatment of Prisoners* for the first time since it was written in 1955. These "Mandela Rules" include revisions to the rules for solitary confinement, specifically prohibiting "prolonged solitary confinement," which is defined as "the confinement of prisoners for 22 hours or more a day without meaningful human contact … for a time period in excess of 15 consecutive days." Resolution 70/175 adopted by U.N. General Assembly on December 17, 2015, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, U.N. Doc A/RES/70/175, Jan. 8, 2016, Rules 43-44 (available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf?OpenElement, last

visited on October 13, 2017). The Standard Minimum Rules also provide that "[h]ealth-care personnel shall … pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis." *Id*. at Rule 46.

As the psychological harm of isolation became widely recognized, federal courts have increasingly found that specific conditions of isolation similar to those in Alabama put mentally-stable inmates at psychological risk. In Louisiana, the court found that allowing prisoners to leave their segregation cells for only one hour per day for exercise and showers "take[s] a detrimental toll on the health and well-being of the average inmate." *Wilkerson v. Stalder*, 2013 WL 6665452, at *8 (M.D. La. Dec. 17, 2013), *aff'd sub nom. Wilkerson v. Goodwin*, 774 F.3d 845 (5th Cir. 2014) (citing Grassian at 333). Administrative segregation units in Texas were found to be "virtual incubators of psychoses – seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities." *Ruiz v. Johnson*, 154 F. Supp. 2d 975, 984 (S.D. Tex. 2001). In Illinois, a Court found that "[i]solation in solitary confinement can cause compensable emotional damages even where there is no evidence that it caused mental or physical deterioration." *Davenport v. DeRobertis*, 653 F. Supp. 649, 657 (N.D. Ill. 1987), aff'd and modified, 844 F.2d 1310 (7th Cir. 1988) (citing *Chapman v. Pickett,* 801 F.2d 912, 916 (7th Cir. 1986)).

B. The Record Is Filled with Evidence of Mental Health Needs of Persons in Segregation, Including Those Previously Unidentified as Needing Mental Health Care

The evidence presented in this case leaves no question: many persons in segregation in the ADOC who have not previously been identified as having mental health needs develop serious mental health needs in segregation.[2]

In the most extreme examples, many of the individuals who have taken their own lives in the ADOC in recent years were people who were in segregation at the time and were not considered to be in need of mental health services. The evidence of these suicides is found in the following exhibits:

- Suicide Chart, September 2015 through December 2016, Pls. Ex. 1267: Of the eleven suicides that took place in ADOC physical custody between September 2015 and December 2016, seven occurred in segregation.[3] Of those seven individuals who killed themselves in segregation, only one had been identified as needing mental health services.

- Psychological Autopsies, Pls. Ex. 1110:
  - T.H. committed suicide in a Ventress segregation cell on April 7, 2014. He was not on the mental health caseload, and his suicide was described as "not anticipated by anyone". Pls. Ex. 1110 at MHM040806-807.

  - J.J. committed suicide in a Donaldson segregation cell on January 14, 2015. He was not on the mental health caseload, and his suicide was described as "not anticipated by anyone". Pls. Ex. 1110 at MHM040814-815.

[2] Because ADOC has a constitutionally deficient system for identifying prisoners with mental health needs, Doc. 1285 at 300, it is impossible to determine which if any of the individuals discussed herein had mental health problems prior to placement in segregation.

[3] Five suicides are identified as occurring in "Seg." Pls. Ex. 1267 Another is identified as occurring in "C Block" at St. Clair, which is a segregation unit toured that was by the Court. *Id*. Another is identified as occurring in "Restrictive Housing" at Donaldson. *Id*. Restrictive Housing is the "new term" for segregation. Tytell Trial Tr., 15:22-16:2.

- J.H. committed suicide in a Holman death row cell on August 25, 2014. He was not on the mental health caseload, and his suicide was described as "not anticipated by anyone". Pls. Ex. 1110 at MHM040816-818.

- Psychological Autopsies, Pls. Ex. 1215:
  - C.P. committed suicide in a Holman segregation cell on February 18, 2016. He had been in previously been in segregation for a two-year period, during which he complained of "feeling anxious and feeling closed in, as well as of hearing voices.". He was not on the mental health caseload, and his suicide was described as "not anticipated." Pls. Ex. 1215 at MHM041802-804.

  - D.H. committed suicide in a Limestone segregation cell on August 24, 2015. He was not on the mental health caseload, and his suicide was described as "not anticipated by anyone". Pls. Ex. 1215 at MHM041808-810.

Many more individuals engage in some sort of self-harm while in segregation. They are discussed in MHM's Continuous Quality Improvement Meeting Minutes. The following exhibits describe instances where an individual who was not clearly identified as being on the mental health caseload engaged in self-harm in segregation[4]:

- Pls. Ex. 670, MHM's Continuous Quality Improvement Meeting Minutes, November 6, 2013
  - A man hanged himself in segregation at Ventress. He did not die, but had to be resuscitated. MHM031192

[4] For some instances described in the CQI Meeting Minutes, it is clear that the individual who has engaged in self-harm in segregation is on the mental health caseload. Those instances are not included here. The instances that are included are ones where it is either unclear or there is a specific notation that the person was not on the caseload. There are also many instances where it is not clear whether the self-harming individual was in segregation; those instances have not been included here.

- Pls. Ex. 670, MHM's Continuous Quality Improvement Meeting Minutes, April 30, 2014
    - A man hanged himself in segregation and died. MHM031197 (This is likely a discussion of T.H., discussed above).

- Pls. Ex. 670, MHM's Continuous Quality Improvement Meeting Minutes, July 23, 2014
    - A man at Kilby became suicidal once he was placed in segregation. MHM031205

- Pls. Ex. 670, MHM's Continuous Quality Improvement Meeting Minutes, Jan 28, 2015
    - A man in a two-person segregation cell at Bibb committed a suicidal gesture. He was not on the mental health caseload. MHM031219
    - There was an undescribed "critical incident" regarding a man in segregation at Holman. MHM031220
    - A man in segregation at Kilby set fire to his cell. MHM031220.

- Pls. Ex. 670, MHM's Continuous Quality Improvement Meeting Minutes, April 22, 2015
    - A man in segregation at Donaldson committed suicide. He was not on the mental health caseload. MHM031226-27
    - A man in segregation at Fountain committed three suicidal gestures "in order to get out of seg". MHM031227
    - A man in segregation at St. Clair cut himself. MHM031229

- Pls. Ex. 717, MHM's Continuous Quality Improvement Meeting Minutes, July 22, 2015
    - A woman in segregation at Tutwiler hung herself, but did not die. She also cut her wrist with a rock. She was not on the mental health caseload. MHM 029601

- Pls. Ex. 720, MHM's Continuous Quality Improvement Meeting Minutes, Feb. 5, 2014
    - A woman in segregation hanged herself. She did not die. MHM 029583.
    - A woman in segregation strangled herself. She did not die. MHM 029583.

The medical records and movement histories of several of the named current or former plaintiffs also demonstrate the mental health needs that arise in segregation, even among people who have not previously been identified as needing mental health services:

- J.D. was kept in segregation from June 2013 through March 2014. Jt. Ex. 175, ADOC038841-44. J.D. was not on the mental health caseload. Jt. Ex. 244, MR004759, MR004914, MR004918, MR004922, MR004927, MR004929, MR004933. During this period in segregation, he engaged in self-harm on five occasions, starting in September 2013. *Id*. at MR004812-13, MR004819, MR004824, MR004854. In January 2014, he requested placement in a mental health unit. *Id*. at MR004914. On the final occasion of self-harm, in March 2014, J.D. cut himself so badly he had to be sent to an outside emergency room. *Id*. at MR004887.

- L.P. was kept in segregation from July 2013 through August 2014. Jt. Ex. 177, ADOC039134-36. L.P. was not on the mental health caseload. Jt. Ex. 272, MR011840. He was placed on suicide watch five times between December 2013 and June 2014, two times for ten or more days. Jt. Ex. 177, ADOC039134-36, Jt. Ex. 272, MR012076-78. The first time L.P. had a crisis resulting in suicide watch, the only statement the psychological associate reported him making in the "subjective" portion of the progress note was: "I'm suppose to go to pop[ulation]." Jt. Ex. 272, MR012090.

- R.M.W. was kept in segregation from February 28, 2014 through April 5, 2014 Jt. Ex. 181, ADOC0392220-221. She was not on the mental health caseload. Jt. Ex. 404, MR016842, MR016932. During this period in segregation, she engaged in self-harm on several occasions, starting March 2, just three days after her placement in segregation. *Id*. at MR016897, MR016980-985, MR016988-989, MR017000-001

R.M.W. also testified about her experience in segregation. She testified that being in segregation makes her depressed. R.M.W. Trial Tr., 13: 11-14:5. She

further testified that, at one time, self-mutilation gave her relief from the depression in segregation. *Id*. at 16:2-11. R.M.W. testified that she has self-mutilated and attempted to hang herself in prison, but that she has taken these actions only when in segregation. *Id*. at 17:15-25.

Plaintiffs' mental health experts also provided evidence regarding the mental health harms to people in segregation, including those not previously identified as needing mental health care. Dr. Craig Haney opined that "'long-term' exposure to precisely the kinds of conditions and practices that […] currently exist in the ADOC, creates significant risk of serious psychological harm. The risk of harm is brought about whether or not the prisoners subjected to these conditions suffer from a pre-existing mental illness." Haney Rep., Jt. Ex. 459 at 105. Dr. Haney goes on to explain that the harms from isolation, enforced idleness, and oppressive surveillance "predictably can impair the psychological functioning of the prisoners who are subjected to them. For some prisoners, these impairments can be permanent and life-threatening." *Id*. at 110-11. Citing studies by, among others, Defendants' expert Dr. Raymond Patterson, Dr. Haney explained that rates of suicide are higher for persons in segregation, even when controlling for variables such as serious mental illness or age. *Id*. at 114-15. Further, Dr. Haney referenced the study of Defendants' newly identified consultant, Dr. Jeffrey Metzner, that concludes that "[i]solation can be harmful to any prisoner, and that the potentially

adverse effects of isolation include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis." *Id*. at 118.

Plaintiffs' psychiatric expert Dr. Kathryn Burns testified that "even people without mental illness can suffer psychological harm from being in segregation." Burns Trial Tr., Vol. I, 208:25-09:2. She references studies that find that "suicides occur proportionately more often in segregation than in other settings" in correctional systems. *Id*. at 206:3-7. She further testified that psychological harm often occurs "as a consequence of people being in segregation," and that "we don't know in advance" which prisoners might have the kinds of vulnerabilities that will result in psychological harm from segregation. *Id*. at 209:11-10:2. The psychological harm can lead to hallucinations, chest pain, palpitations, anxiety attacks, and self-harm, even among previously healthy people. *Id.* at 208:25-09:9.

Indeed, Dr. Hunter, MHM's Chief Psychiatrist, testified that "anyone, if they were in segregation long enough, would run the risk of deterioration in their mental health functioning." Hunter Trial Tr., Vol. III, 72:24-73:1.

II. Defendants Fail to Meet Their Obligation to Assess Persons in Segregation for Signs of Decompensation

A. Defendants Are Obligated to Assess Persons in Segregation

Prison systems have an affirmative obligation under the Eighth Amendment

to provide "medical treatment for illness and injuries, which encompasses a right to psychiatric and mental health care." *Osterback v. McDonough*, 549 F. Supp. 2d 1337, 1349 (M.D. Fla. 2008) (quoting *Cook ex rel. Estate of Tessier v. Sheriff of Monroe County, Fla.*, 402 F.3d 1092, 1115 (11th Cir.2005)). The right to adequate psychiatric and mental health care includes the "right to be protected from self-inflicted injuries, including suicide." *Id*. The right to protection from self-harm arises where, as here, there is "a strong likelihood rather than a mere possibility that the self-infliction of harm will occur." *Id*. (quoting *Cagle v. Sutherland*, 334 F.3d 980, 987 (11th Cir.2003)). In a systemic case such as this, there is no need for the defendant to know who will be harmed, only that there is a substantial risk of serious harm. *Marsh v Butler County, Ala.*, 268 F.3d 1014, 1028-30 (11th Cir. 2001)(en banc), *abrogated in other part by Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561–63, (2007); *Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986) ("systemic deficiencies can provide the basis for a finding of deliberate indifference."). As discussed in detail below, the systemic deficiencies and Defendants' knowledge of such deficiencies give rise to an affirmative obligation to protect prisoners in segregation from self-harm through basic monitoring and assessment practices that are nearly universally required throughout the correctional community. *See, e.g.*, Pls. Ex. 1097; Burns Trial Tr., Vol. I, 212:9-14.

Further, Defendants' own written policies require that prisoners in

segregation be monitored periodically to ensure early identification of mental health decompensation. ADOC's "Mental Health Segregation Rounds" regulation has the explicit purpose to "monitor the mental status of inmates, identify inmates who may be experiencing difficulty in this restrictive environment and to ensure their access to mental health services." Admin Reg. § 624 II. This policy requires mental health assessments for prisoners that have previous diagnoses of mental illness and prisoners that do not. ADOC staff is required to complete mental health rounds "in segregation to ensure … inmates exhibiting signs of serious mental illness treated [sic] in a timely manner." Admin. Reg. § 602 (Mental Health Rounds). Furthermore, "[m]ental health rounds are conducted for the purpose of identifying and referring inmates and are not a substitute for on-going treatment of inmates in this setting. *Id*. ADOC's regulations also provide

> ADOC psychologists and psychological associates will perform brief mental health assessments:
>
> A. Whenever an inmate is maintained in a segregation cell for longer than thirty days.
> B. Following each ninety-day period thereafter.
> C. To determine if segregation placement is contraindicated by:
>
> 1. The inmate's mental status.
> 2. The potential for significant deterioration in the inmate's functioning by continued placement in the restrictive environment.

Admin Reg. 625 § II. These policies are particularly important where, as in segregation units at ADOC facilities, prisoners have minimal time outside their cells. Culliver Rough Trial Tr., 36:23-24.

The ADOC mental health contract provides that the mental health program "must comply with the standards of the […]American Correctional Association ("ACA")." Pls. Ex. 644., at MHM026002. The ACA has a "long-standing requirement" that facilities do "updated mental health evaluations … at intervals of 30 days to be sure that [they're] catching signs of mental illness at its earliest point to be able to intervene." Burns Trial Tr., Vol. I, 212:9-14.

Finally, Defendants' regulations require correctional officers to observe every prisoner in segregation "at least every thirty (30) minutes" and to document such observation on the duty post log. A.R. 434, §V.J.4.b.

B. The Evidence that the Assessments Do Not Occur Regularly Is Overwhelming

There are multiple ways in which prisons assess the mental health and safety of prisoners in segregation. One important method of assessing the prisoners is through mental health rounds of segregation. As explained by Dr. Burns,

> Segregation rounds are intended to be brief cell-front contact with every inmate who is in a segregation setting to check on their well-being. They generally consist of looking at the officers' logs of who's coming out for recreation and eating their meals and taking their showers, as well as a brief contact with every inmate who resides in that unit. Some verbal contact, just making sure that things are okay, seeing if they need any mental health services. If they ask for services, you schedule a time to come back and do that in a more private way.

Burns Trial Tr., Vol. I, 208:13-21. Being able to see into the cell and make contact with the person in the cell is an important part of the rounding process. *Id*. at 213:5-25. Defendants' security expert, Robert Ayers, similarly opined that rounds are important so that the clinician can "get an early jump on if there's any decompensation starting to happen." Ayers Trial Tr., 97:16-26.

Another important method of assessing people's mental health status is by doing regular mental health evaluations. Such evaluations enable mental health staff to "catch[ ] signs of mental illness at its earliest point to be able to intervene." Burns Trial Tr., Vol. I, 212:9-14. Such an evaluation is "an individual face-to-face encounter out of cell with the person to be able to conduct a mental status examination and understand whether or not they're experiencing any symptoms." Burns Trial Tr., Vol. I, 212:25-213:4; *see also* Haney Trial Tr., Vol. I, 83:13-84:1 (explaining that in order to know whether someone has developed a serious mental illness in segregation, mental health staff must "take them out of their cell and evaluate them" in the way that "might be done at the very outset of a prison sentence, and they would do it periodically," meaning every month or two).

Finally, there are also rounds done by security staff. These should be done every half hour to check that people are not attempting suicide. Vail Trial Tr., Vol. I, 95:14-97:9.

The evidence demonstrates that none of these assessment and monitoring

processes are being conducted regularly or in a manner that has any likelihood of "catching signs of mental illness" among the prisoners in segregation. Burns Trial Tr., Vol. I, 212:9-14.

1. Infrequent and Inadequate Mental Health Rounds

Dr. Haney, in his report, recounted numerous interviews in which he was told that rounds were rare and ineffective. At Holman, he was told that "mental health staff[…] only come [to segregation] as part of the 'Seg Board.' Because this group includes custody staff, prisoners are unwilling to candidly discuss sensitive mental health issues." Jt. Ex. 459 at 244. In the main segregation unit at Bullock, Dr. Haney was told that mental health contact was "very sporadic" and that "even then the contact they had with prisoners was cursory: 'The officer says, "mental health,"' and the mental health [staff] just walk through, don't stop at your cell, just walk by, if you are breathing, you are OK.'" *Id*. at 250. In a segregation unit at Donaldson, Dr. Haney reports being told that "mental health comes back once in a while and they just walk through quickly, spend a few seconds with people." *Id*. at 273; *see also id*. at 282. Another prisoner told Dr. Haney that he had asked to be seen by mental health, but no one had come. *Id.* at 100. At St. Clair, a prisoner in segregation reported to Dr. Haney:

> Mental health staff, he said, "comes every blue moon," and only says, "how are you doing" and "then shoot by" your cell.… "I don't recall a mental

> health person coming to my cell window and asking me how I am, not since I've been there."

Id. at 290. Another prisoner at St. Clair told Dr. Haney that "mental health staff just walks through the Segregation Unit twice a month for what he described as 'a few seconds.'" *Id*. at 292. In sum, as Dr. Haney testified, "Prisoners describe the monitoring being pro forma; there being very little of it. Many of them talked about not being checked on very much at all; not seeing a mental health provider." Haney Trial Tr., Vol. II, 169:8-11. Two prisoners explained: "I have to scream, cut up to make them see me" [Ms. U.I.] and "to see our counselors we have to usually declare a 'crisis'" [Ms. T.L.Z.]. Jt. Ex. 459 at 239.

There are significant obstacles to mental health rounds being effective for catching signs of developing mental illness. It is difficult or sometimes impossible to see into some of the segregation cells. Both Dr. Burns and Dr. Haney testified that they saw segregation cells where "the small windows are covered up." Haney Trial Tr., Vol. II., 165:4-12; Burns Trial Tr., Vol. I, 213:8-214:4. At Bibb, the segregation unit cell doors "have a small window in them and that window is covered with a flap." Vail Trial Tr., Vol. I, 69:11-14.

Further, as explained by Dr. Burns, "people are reluctant to divulge thoughts and feelings when you have to shout them through a door where they might be overheard by other people." Burns Trial Tr., Vol. I, 158:19-25. Dr. Haney similarly testified that cell-front interviews involve "risking having a

correctional officer overhear what is being said, … [and] having other prisoners overhear what is being said. And this is of grave concern to most prisoners who are reluctant to have other prisoners know they're mentally ill." Haney Trial Tr., Vol. II, 84:5-11.

Nonetheless, rounds are done at cell-front and in front of officers and other prisoners, to the extent they are done. Three members of the mental health staff – one current, one former – testified about the cursory and sporadic nature of mental health rounds. Dr. David Tytell, the psychologist at the Office of Health Services, testified that when his role included segregation rounds at Donaldson, he saw 112 people, in six housing units, in one and a half to two hours – a minute or less per person, including walking time in and between segregation units. Tytell Trial Tr., 10:25-13:12. He testified that he did the round contacts at cell front. *Id*. at 13:15-18. Lesleigh Dodd testified that at Holman, mental health rounds of segregation and death row are not happening, and that there has difficulty conducting such rounds since 2008 or 2009. Dodd Trial Tr., 11:20-14:6. Former MHM Mental Health Professional Cassandra Lee testified that she spent 35 minutes doing segregation rounds, usually with a correctional officer standing right behind her, pressuring her to move to the next cell. Lee *Rough* Trial Tr., 201:1, 202:2-6. She also testified that there were times that she was unable to conduct segregation rounds due to weather and staff shortages. *Id*. at 202:9-10.

In his report, Defendants' security expert, Mr. Ayers, observed that "documentation was scant[,] [r]ounds in segregation units were recorded mostly by check marks." Ayers Rep., Jt. Ex. 464 at 26.[5] Ayers testified that, aside from "a couple of cells … that had check marks to indicate that somebody had been by," he did not see any documentation to demonstrate that regular mental health rounds were being conducted in segregation. Ayers Trial Tr., 85:1-9. Ayers further observed that there is no documentation of Segregation Review Boards by correctional, medical or mental health staff. Ayers Rep., Jt. Ex. 464 at 27. Additionally, Mr. Ayers testified that Segregation Review Board is done "in the fishbowl environment of segregation, essentially … having the inmate talk about all of his issues in front of the entire segregation unit," whereas it should be done "out of the cell [in] a private area." Ayers Trial Tr., 75:16-21, 77:5-7.

Multiple prisoners testified that mental health staff does not provide regular mental health rounds and that they are not confidential. K.N., who suffers from a severe mental illness, testified that during a five-day stretch of segregation in October, mental health staff did rounds "maybe one time." K.N. Trial Tr., 47:1-5. She testified that "[w]hen they do decide to come through [for segregation rounds], they just walk around with a clipboard and ask you are you alright. That's pretty much it. Even if you say no, they just kind of keep going." *Id*. at 47:6-17. M.P.

[5] Mr. Ayers's report page numbers refer to the Pacer-stamped number.

testified that during the six years he was in segregation at St. Clair "they would have [mental health rounds] – they would shut them down. Sometimes they would start them back up, then they would shut them back down again." M.P. Trial Tr., Vol. II, 65:21-23, 67:19-25, 68:1-7. A.S. testified that no mental health rounds were conducted during his time in segregation at St. Clair – September 2017 through the time he was brought to Kilby to testify in December 2017. A.S. Trial Tr. Vol. I, 33:18-34:12. Plaintiff C.J. testified that in the year prior to his testimony, there had been almost no mental health rounds in segregation at Donaldson. C.J. Trial Tr., Vol. I, 35:17-36:20. He testified that in 2015, for about a three-month period, mental health rounds at Donaldson took place between zero and two times a week, but then they stopped. *Id.* at 36:12-16.

The psychological reconstructions of the suicides of TH, JH, CP all state that there were segregation rounds by MHM and ADOC mental health staff, but there is little indication of any actual interaction, merely a statement that the individuals did not have complaints or did not request or require assistance. Pls. Ex. 1110 at MHM040806, MHM040816, Pls. Ex. 1215 at MHM041803. In each of the psychological reconstructions described above, the prisoner's suicide was "not anticipated." Pls. Ex. 1110, 1215. Emphasizing the lack of actual knowledge about prisoner's mental state, Dr. Hunter repeatedly states in the psychological reconstructions, "It is not hard to imagine…" or "It can be surmised that…" and

then goes on to speculate about the mental health distress of the prisoner. Pls. Ex. 1110 at MHM040807, MHM040817; Pls. Ex. 1215 at MHM041803.

2. Infrequent and Inadequate Periodic Assessments

The only medical records in the record for people who were not on the mental health caseload are the records of J.D., L.P., and R.M.W. Although these are only three medical records, they are strikingly uniform in showing that there are no meaningful periodic assessments of people who are in segregation and have not been identified as needing mental health care. The periodic assessments do not regularly occur. The few that do occur in the record are so uniform and devoid of content that they cannot be considered a meaningful tool for reducing the risk of harm to men and women in segregation.

J.D., as discussed above, engaged in significant self-harm during a 10-month stint in segregation at St. Clair. He was seen by mental health only when he engaged in or threatened self-harm. Jt. Ex. 244, at MR004908-4932. There is no record of any periodic assessment of his stability or the impact segregation was having on his mental health in his medical record. *Id*.

During the period when L.P. was going back and forth between segregation and the crisis cell at Holman, he was seen by mental health only when he was in the crisis cell. Jt. Ex. 272, MR012021-12091. After he was initially placed in segregation, but prior to the period during which L.P. was repeatedly in suicide

watch, he had a 30-day review and a 90-day review by an unlicensed psychological associate. Jt. Ex. 272, MR012092-093. The reviews have identical boxes checked, all identifying L.P. as being in good condition, and the only comment on the forms is "stable". *Id.* There are no progress notes or further documentation of these assessments. The second assessment took place ten days prior to the first placement on suicide watch. Jt. Ex. 272, MR012092, MR012091. There were no assessments for the following nine months, as L.P. suffered through multiple mental health crises. Jt. Ex. 272, MR012021-093.

R.M.W. spent time in segregation at Fountain in the Spring of 2014.[6] She was seen by mental health only while in the suicide watch cell, and for a 30-day review. Jt. Ex. 404, MR017066-081. At the review, the psychological associate wrote "Inmate appropriate for placement" and circled the statement "Segregation placement not impacting inmate's mental health." *Id.* at MR017081. All the same boxes are checked as in L.P.'s review, identifying R.M.W. as being in good condition. *Id.* There were no progress notes or other documentation associated with the 30-day review. *Id.* at MR017066-081. There was no mention of her repeated self-mutilations during the preceding month in segregation. *Id.*

These three records are consistent in their lack of any meaningful assessment of the prisoner's mental health. The failure to assess prisoners in segregation who

[66] R.M.W. spent time in segregation on other occasions, and engaged in self harm during those periods too. However, the events of March 2014 are the only period when she was in segregation, engaging in self-harm, and not on the mental health caseload. There are no other periodic assessment forms in her medical records.

are not on the mental health caseload is also consistent with the failure to assess those on the caseload. For example, Plaintiff C.J. was in segregation (or suicide watch) from March 2008 through September 2014, January 2015 through November 2016 with brief periods in general population in August 2015 and April 2016. Pls. Ex. 1258, ADOC0400233-245; Pls. Dem. Ex. 131. There is only one periodic assessment in his medical records, from July 19, 2013. Jt. Ex. 163, MR007796 (same assessment appears a second time in the exhibit at MR008179). The assessment has all the same boxes checked as on the assessments of L.P. and R.M.W., states C.J. was stable and that segregation was not impacting his mental health. *Id*. C.J. had been on suicide watch three times in the three months prior to that assessment. Pls. Ex. 1258, ADOC0400237-238; Pls. Dem. Ex. 131.

Former Plaintiff H.C. also spent years in segregation (and suicide watch), from 2011 to May 2014. Jt. Ex. 173, ADOC038881-885.[7] During this time, he had just 3 periodic assessments, none of which provided substantive comments:

1. 11/5/2013 – all boxes checked to indicate that he is in good condition, comment reads: "Inmate stable at this time. Segregation placement is not impacting inmate's mental health," and the box for "Segregation placement not impacting inmate's mental health" was checked. Jt. Ex. 222, at ADOC007816.

2. 11/5/2012 – several boxes indicating possible mental health problems are checked, the written comments read: "Continued segregation placement is warranted given MH and disciplinary history," and the box for

[7] Mr. Carter spent longer than this in segregation, but this is the most recent continual period for which his movement history is in the record. *See* Jt. Ex. 173.

"Segregation placement not impacting inmate's mental health" was checked. Jt. Ex. 222, at ADOC007971.

3. September 2013 (no specified date) – all boxes checked to indicate that he is in good condition, comment reads: "Inmate stable at this time. Segregation placement is not impacting inmate's mental health," and the box for "Segregation placement not impacting inmate's mental health" was checked. Jt. Ex. 222, at ADOC007973.

K.N. has also spent significant amounts of time in segregation, including from August 5, 2015 through November 11, 2015. Jt. Ex. 470, ADOC0400169-170.[8] There is one periodic assessment in the medical records produced for her, a "30-Day Review" that took place on October 19, 2015, 75 days after she was placed in segregation. Jt. 252, at ADOC0385201. That review has all boxes checked to indicate that she is in good condition, written comment reads: "none", and the box for "Segregation placement not impacting inmate's mental health" was checked. *Id*

The periodic assessments, on the rare occasions they occur, are uniformly void of facts. The uniformity of (1) the lack of assessments and (2) lack of information amply demonstrates that no one – whether or not recognized as mentally ill – is receiving adequate, regular mental health assessments in segregation.[9]

[8] Ms. Norris has been in segregation numerous times. Jt. Ex. 470. This is the only period when she was in segregation for more than 30 days at a time covered by the medical records that are in evidence.

[9] The lack of monitoring of even the people on the mental health caseload was corroborated by Dr.Tytell, who testified about the lack of assessments for anyone in segregation when he discussed the November 2015 audit at Donaldson: "[t]he mental health inmates in segregation were not being seen." Tytel Trial Tr., 153:10-13; *see also* Pls. Ex. 1245.

3. Infrequent Security Rounds

Plaintiffs' security expert Eldon Vail reported that "Mental Health has not been able to provide segregation rounds and groups because of officer shortage issues." Vail Rep., Jt. Ex. 463 at 69 (quoting St. Clair Quality Improvement Report at MHM032030) . Mr. Vail also noted that correctional officers are not following ADOC policy and checking segregation units every 30 minutes. Vail Rep., Jt. Ex. 463 at 56. Mr. Ayers also found that "[t]hirty minute checks by security staff were even more sparsely recorded." Ayers Rep., Jt. Ex. 464 at 24.

The lack of 30-minute checks was corroborated by the testimony of Defendant Ruth Naglich, Associate Commissioner for Health Services. Defendant Naglich testified about learning that an inmate in segregation was found "hanging from the light fixture by a sheet and was in rigor when found." Naglich Trial Tr., Vol. III, 272:6-273:16. Defendant Naglich, a nurse, acknowledged that rigor could be the result of the passage of time between the prisoner's death and the time he was found. *Id*. at 273:19-25.[10]

III. Defendants' Failure to Assess Persons in Segregation Places the Even Previously Mentally Healthy Segregated Prisoners at a Substantial Risk of Serious Harm

Dr. Burns testified that psychological harm often occurs "as a consequence of people being in segregation," and that "we don't know in advance" which prisoners

[10] Subsequently, Dr. Patterson testified that rigor sets in after "several hours." Patterson Trial Tr., Vol. II, 25:15-21.

might have the kinds of vulnerabilities that will result in psychological harm from segregation. Burns Trial Tr., Vol. I at 209:11-10:2. Similarly, Dr. Tytell testified that his belief is that segregation should only be used in a limited manner and only if the prisoner is a danger. Tytell Trial Tr., 188:15-189:8. He went on to explain:

> THE COURT: And why do you feel that way? What is it about segregation?
>
> THE WITNESS: Being placed in a small room for long periods of time could play tricks on someone's mind. It could help trigger psychosis possibly.
>
> THE COURT: For even a normal person?
>
> THE WITNESS: Yes. It could cause possible delusions. It could. That's definitely a possibility.
>
> THE COURT: What else? Is that the only reason?
>
> THE WITNESS: No. Feelings of isolation can cause depression, and depression, of course, we all know leads to possible suicide. Can also cause social alienation.

Id. at 189:9-20.

While monitoring and assessing individuals in segregation does not prevent the development of mental illness, they allow mental health and correctional staff to "catch[ ] signs of mental illness at its earliest point to be able to intervene." Burns Trial Tr., Vol. I, 212:9-14.

Dr. Tytell similarly testified that the purpose of segregation rounds is to find out if there are any issues, and bring prisoners who need mental health interventions out of their cells for treatment. Tytell Trial Tr., 13:15-18. The dearth

of segregation interventions demonstrates that ADOC is not identifying people needing mental health interventions. From January 2012 to May 2016, there was an average of 1178 people in segregation at all times, and just 69 segregation interventions per month, on average.[11] Jt. Exs. 318 at ADOC0319078, 319 at ADOC0319100, 320 at ADOC0319014, 321 at ADOC0319116, 322 at ADOC0319131, 323 at ADOC0319153, 324 at ADOC0319177, 325 at ADOC0319197, 326 at ADOC0319222, 327 at ADOC0319037, 328 at ADOC0319242, 329 at ADOC0319262, 330 at ADOC0319056, 331 at ADOC0319283, 332 at ADOC0319297, 333 at ADOC0319316, 335 at ADOC043540, ADOC043618, ADOC043662, ADOC043696, ADOC043731, ADOC043763, ADOC043807, ADOC043840, ADOC043869, ADOC043906, ADOC043933, ADOC043974, 336 at ADOC043999, ADOC044034, ADOC044062, ADOC044089, ADOC044112, ADOC044142, ADOC044172, ADOC044194, ADOC044219, ADOC044242, ADOC044264, ADOC044286, 337 at ADOC044308, ADOC044331, ADOC044350, ADOC044371, ADOC044393, ADOC044417, ADOC044441, ADOC044466, ADOC044491, ADOC044519, 339 at ADOC0392820, 342 at ADOC0392589, and 343 at ADOC0393067.[12]

ADOC fails to identify the persons who need mental health treatment. The risk created by the placement of prisoners in segregation without the necessary

[11] The evidence provides the number of persons in segregation in on the last day of every month.
[12] A summary chart of this data is attached hereto as Exhibit 1.

monitoring and assessment tragically and predictably results in the harms described above: suicides (Pls. Exs. 1267,1110, 1215), self-harm and mental health crises (Pls. Exs. 670, 717, 720; Jt. Exs. 244, 272, 404), delusions, psychosis and depression (Tytell Trial Tr., 189:9-20).

IV. Defendants' Awareness of the Risk and Continued Failure to Assess the Mental Health of Segregated Prisoners Is Deliberate Indifference

A. To Prove Deliberate Indifference to the Risk to Previously Healthy Segregated Prisoners, Plaintiffs Must Show Knowledge of the Risk and a Failure to Reasonably Address the Risk

To establish deliberate indifference, plaintiffs must prove (1) subjective knowledge of a risk of serious harm; and (2) disregard of that risk by conduct that is more than mere negligence. *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999). Disregard of the risk includes failure to act reasonably to alleviate it. *Thomas v. Bryant*, 614 F.3d 1288, 1312 (citing *LaMarca*, 995 F.2d at 1537).

Subjective knowledge of the risk requires that defendants be "aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [they] must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Caldwell v. Warden, FCI Talladega*, 748 F.3d 1090, 1099–1100 (11th Cir. 2014). In circumstances such as those before the court in the instant case, where the risk is "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past, and the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk

and thus 'must have known' about it," the Court as the trier of fact is within its authority to conclude that the defendants had actual knowledge of the risk. *Farmer*, 511 U.S. at 842-43. A prison official cannot "escape liability for deliberate indifference by showing that, while he was aware of an obvious, substantial risk to inmate safety, he did not know that the complainant was especially likely" to suffer the harm from the known risk. *Farmer*, 511 U.S. at 843.

The Eighth Amendment is violated by conditions that "result in a denial of the minimal civilized measure of life's necessities" and pose a "substantial risk of serious harm." *Farmer*, 511 U.S. at 834. Minimal civilized measures of life's necessities are determined by "evolving standards of decency that mark the progress of a maturing society." *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). The Eighth Amendment clearly prohibits "denial of medical care [that] may result in pain and suffering which no one suggests would serve any penological purpose." *Estelle*, 429 U.S. at 103. Defendants' disregard of the risk of harm can be proven showing that they are "[f]ailing to provide care, delaying care, or providing grossly inadequate care." *McElligot*, 182 F.3d at 1257. In other words, "the knowledge of the need for medical care and intentional refusal to provide that care" suffices to constitute deliberate indifference. *Ancata v. Prison Health Servs., Inc.*, 769 F.2d 700, 704 (11th Cir. 1985). As the Court explained in its June 27, 2017 liability

opinion, "[i]n the context of mental-health care, the quality of psychiatric care can be so substantial a deviation from accepted standards as to evidence deliberate indifference to those serious psychiatric needs." Doc. 1285 at 246 (quoting *Steele v. Shah*, 87 F.3d 1266, 1269 (11th Cir. 1996) (internal quotations and citations omitted)).

Whether or not the harm is realized, deliberate indifference to conditions that create an unreasonable risk of harm violates the Eighth Amendment. *Helling v. McKinney*, 509 U.S. 25, 35 (1993) (holding that an Eighth Amendment claim is stated when a prisoner alleges compelled exposure to second-hand cigarette smoke as it may result in an "unreasonable risk" of suffering). In *Powell v. Lennon*, a Florida prisoner was exposed to asbestos in his cell and requested "preventive treatment" in the form of being moved to an asbestos-free environment. 914 F.2d 1459, 1464 n.10 (11th Cir. 1990). While proximity to asbestos does not guarantee future illness, the Eleventh Circuit nevertheless held that because of the risk asbestos poses, the plaintiff's complaint "allege[d] a violation of the Eighth Amendment through the defendants' deliberate indifference to the plaintiff's serious medical needs." *Id*. at 1463. Similarly, in *Garrett v. Thaler*, the Fifth Circuit held that a prison's schedule providing four hours of "lights out" time per night created a potential for harm to which they failed to "respond reasonably." 560 F. App'x 375, 379-380 (5th Cir. 2014).

Where particular circumstances of confinement create an increased and ongoing risk of medical problems, defendants' failure to adequately monitor that risk in order to prevent and treat the attendant harm can satisfy the "disregard" prong. *DeGidio v. Pung*, 920 F.2d 525, 527 (8th Cir. 1990)(holding that "[p]risons are high risk environments for tuberculosis infection. Thus, screening and control measures are necessary to prevent outbreaks."). At the District Court level in *DeGidio*, a bench trial was held that "lasted thirty-one days, [with] voluminous exhibits and extensive testimony." *Id*. at 527. The District Court concluded that the Minnesota Commissioner of Corrections, the Minnesota Commissioner of Public Health, and the warden of the Minnesota State Prison at Stillwater had violated the plaintiff-class' rights under the Eighth Amendment because, *inter alia*, "there were no periodic skin tests after the initial test on entry. Nor were any other surveillance measures adopted." *DeGidio v. Pung*, 704 F. Supp. 922, 934 (D. Minn. 1989), aff'd, 920 F.2d 525 (8th Cir. 1990).

Being subjected to conditions with "common side-effects of … anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors," without any meaningful monitoring and assessment of their mental state, is simply "not 'part of the penalty that criminal offenders pay for their offenses against society.'" *Davis v. Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J. concurring); *Farmer*, 511 U.S. at 834 (citing *Rhodes v. Chapman*,

452 U.S. 337, 347 (1981)). The particular circumstances of segregation in ADOC facilities create a heightened and ongoing risk that prisoners subjected to it will develop serious mental health needs – even if they had not previously been identified as needing mental health care. Defendants' failure to provide adequate periodic mental health assessments of all prisoners in segregation leaves these needs unidentified and untreated. The result is "an unreasonable risk of serious damage" to plaintiffs' "future health or safety." *Chandler v. Crosby*, 379 F.3d 1278, 1289 (11th Cir. 2004). The same amounts to a denial of medical care which "may result in pain and suffering which no one suggests would serve any penological purpose." *Estelle*, 429 U.S. at 103. Common knowledge in penological circles of the effects of segregation, combined with the voluminous evidence presented to the Court at trial, provides ample evidence of defendants' awareness of the potential for harm from unassessed isolation. In the words of the Court, "[t]his case is likely sui generis in the extent to which the top ADOC officials had personal knowledge of the substantial risks of serious harm." Docket No. 1285 at 249.

B. Defendants Are Aware of the Risk Segregation Poses to All Prisoners, and Have Chosen Not to Take Steps to Ameliorate the Risk

Defendants are and have long been fully aware of the risks caused by their placement of persons – with or without mental illness – in segregation without adequate monitoring.

ADOC's sole psychologist, Dr. Tytell, testified about the risks: psychosis, delusions, depression, possible suicide. Tytell Trial Tr., 189:9-20.

In May 2014, MHM's Chief Psychiatrist, Dr. Hunter, wrote in a psychological reconstruction of a then-recent suicide "His recent segregation placement is a definite stressor and risk factor for suicide." Pls. Ex. 1110 at MHM040806-07. The psychological reconstruction was available to ADOC.

ADOC can and often does attend MHM's CQI Meetings at which the self-harm and suicides of persons in segregation and not on the mental health caseload are routinely discussed. Pls. Exs. 670, 717, 720. As far back as July 2013, Dr. Hunter explained in a CQI Meeting that "any Inmate held in segregation for a long period of time is at risk for mental deterioration." Pls. Ex. 716, July 24, 2013, MHM029562.

In 2013, ADOC "charged Mr. McCoy, former Psych Associate at Bibb, with doing a study on the long-term effects of segregation/Isolation on inmates, focusing on the segregation unit at St. Clair." Pls. Ex. 716, July 24, 2013, MHM029563. At the CQI Meeting where this planned study was discussed, it was recognized that the American Psychiatric Association "says there are long-term adverse consequences" to segregation. *Id*.

And, of course, there were the suicides. Starting in 2014, ADOC experienced a dramatic increase in suicides. Naglich Trial Tr., Vol. III, 104:4-

105:2. By 2016, ADOC had a suicide rate of 37.86 suicides per 100,000 prisoners. Patterson Trial Tr., Vol. II, 26:5-27:8; Pls. Ex. 1267. The average rate throughout the country was 16 per 100,000, less than half Alabama's rate. Patterson Trial Tr., Vol. II, 27:9-19. Most of the individuals who committed suicide had not been identified as needing any mental health care. Pls. Ex. 1267.

In the October 2015, ADOC and MHM held a meeting to discuss the rising number of suicides. Houser Trial Tr., Vol. II, 202:18-203:3; Tytell Trial Tr., 18:18-185:7; Hunter Trial Tr., Vol. II, 106:4-108:11; Naglich Trial Tr., Vol. IV, 141-156. ADOC, at that meeting, recognized that a significant commonality of the suicides was that nearly all of them occurred in segregation. Hunter Trial Tr., Vol. II, 105:2-11; Tytell Trial Tr., 184:22-185:1, 186:19-187:5.

Unfortunately, ADOC did not take reasonable steps to address the extraordinary risk that its practices regarding segregation created for the men and women in its custody.

During the six months after the meeting in October 2015 in which segregation was identified as the primary commonality of the suicides that had recently occurred, ADOC made no changes to its segregation practices. Hunter Trial Tr., Vol. II, 111:23-112:13. The only change Dr. Hunter identified from the period between the spring of 2016 and his testimony in December 2016 was "some movement to address that issue, again, in the context of changing or amending our

coding system." *Id*. at 112:2-8. To the extent Dr. Hunter was referring to amendments to the coding system to prevent persons identified as having a serious mental illness from being housed in segregation, these amendments would not have had any effect at all for the large majority of persons in segregation who commit suicide – as they had not been identified as having any mental health needs. *See* Pls. Ex. 1267. Moreover, the amendments had not been implemented at the time of trial. Culliver Rough Trial Tr., 40-42; Tytell Trial Tr., 156:19-159:25, 161:12-22; C.J. Trial Tr., Vol. I, 4:4-10, 21:21-22:2.

ADOC did not make other changes either. ADOC did not reduce the number of placements in segregation. Compare Jt. Exs. 319, 322, 324, 326-329 (January - September 2015) with Jt. Exs. 321, 323, 325, 331, 332, 339, 339, 342, 343 (October 2015 - May 2016); *see also* Exhibit 1 hereto. To the contrary, in the first five months of 2016, there were more than 100 more people in segregation on average than in 2015. *See* Exhibit 1.

Nor ADOC did increase the mental health monitoring of people in segregation. As described by Plaintiff C.J., monitoring has actually decreased at Donaldson – one of the facilities with the highest numbers of persons in segregation – since 2015. C.J. Trial Tr., Vol. I, 35:17-36:20; *see also* Jt. Ex. 343 at ADOC0393067 (showing numbers of persons in segregation at each prison).

Notably, there were, on average, fewer segregation interventions in the first five months of 2016 than in 2015. *See* Exhibit 1.

ADOC also did not increase the security rounds in segregation, or even ensure that they were being done as already required. *See* Vail Rep., Jt. Ex. 463 at 56; Ayers Rep., Jt. Ex. 464 at 26.

Although ADOC has long been aware of the risk of placing people in segregation without adequate monitoring and assessments, it has done nothing to address the risk – even as the suicide rate, driven by the suicides of men in segregation who had not previously been identified as needing mental health care, spiraled up to more than double the national average. This is the very essence of deliberate indifference.

CONCLUSION

This Court has already found that the Alabama Department of Corrections is violating the Eighth Amendment by placing prisoners in segregation who are seriously mentally ill or have serious mental health needs prior to going into segregation and failing to provide adequate treatment and monitoring. Doc. 1285 at 301. There is compelling evidence in the record that even those prisoners who have not previously been identified as needing any mental health care are developing serious mental illnesses and serious mental health needs in segregation.

Tragically, the evidence proves that, due to the near complete lack of treatment and monitoring, no one is recognizing the signs of the harm to these men and women; instead these prisoners are left to suffer and, in some cases, die. The Court should find that the ADOC's failure to monitor and treat people in segregation violates the Eighth Amendment, regardless of whether these men and women have been identified as having serious mental health needs prior to their placement in segregation.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

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