

No. 20-40379

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DENNIS WAYNE HOPE,

Plaintiff-Appellant,

v.

TODD HARRIS, CHAD REHSE, LEONARD ESCHESSA, JONI WHITE,
KELLY ENLOE, MELISSA BENET, B. FIVEASH,

Defendants-Appellees.

On Appeal from the United States District Court for the
Eastern District of Texas, Lufkin Division
Case No. 9:18-cv-27

**BRIEF OF AMICI CURIAE CURRENT AND FORMER PROSECUTORS
AND DEPARTMENT OF JUSTICE OFFICIALS IN SUPPORT OF
PLAINTIFF-APPELLANT**

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The following listed persons and entities as described in the fourth sentence of Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

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INTERESTS OF AMICI CURIAE

Amici are 68 current and former federal, state, and local prosecutors, state attorneys general, and Department of Justice officials with experience prosecuting and establishing policies for prosecuting serious crimes. Amici recognize that humane conditions of incarceration are important to the community’s trust in the fairness of the criminal justice system and, in turn, to individuals’ willingness to report crimes, act as witnesses, and serve as fair and impartial jurors. As stewards of public safety, amici also have an interest in ensuring that inmates—the vast majority of whom eventually are released from incarceration—are given the opportunity to rejoin society successfully and refrain from committing new offenses. Finally, amici have an interest in promoting international law enforcement cooperation, which depends upon the administration of humane punishment in the United States.¹

SUMMARY OF ARGUMENT

Amici have a special interest in “preserving public confidence in the fairness of the criminal justice system.” *Lockhart v. McCree*, 476 U.S. 162, 174–75 (1986) (internal quotations omitted). Without the public’s trust and cooperation, prosecutors and law enforcement officials cannot effectively protect public safety. That trust is undermined when community members perceive that aspects of the criminal justice system offend

¹ Counsel for amici certify that no party’s counsel authored this brief in whole or in part and that no person other than amici and their counsel funded the preparation or submission of this brief. All parties have consented to the filing of this brief.

principles of fundamental fairness and human dignity. Amici believe that, although the use of solitary confinement may be appropriate in certain circumstances, its overuse impedes the ability of prosecutors and law enforcement officials to protect public safety, undermines the rehabilitative goals of the criminal justice system, and impedes amici's ability to work with foreign nations. Amici therefore urge the Court to reverse the district court's grant of the defendants' motion to dismiss and provide much needed guidance as to the constitutional limits on the use of prolonged periods of solitary confinement.

There is increasing scientific consensus and growing public awareness about the long-term detrimental psychological effects of prolonged solitary confinement. Especially in light of this expanding recognition, excessive use of solitary confinement harms communities' perceptions that the criminal justice system is fair and just, ultimately undermining prosecutorial efforts and the effective enforcement of the law. Moreover, the use of solitary confinement as a method of protective custody for cooperating witnesses has the effect of unfairly punishing those who assist prosecutorial efforts and can reduce defendants' willingness to cooperate with law enforcement.

Most of the prison population eventually will be released, and those who have served their sentences must be prepared to reenter society successfully and avoid recidivism. Forcing inmates to remain in solitary confinement for prolonged periods of time—sometimes extending up to the time of release from incarceration—reduces

opportunities for inmates to access and engage in educational and vocational programming that can help to prepare them for reentry. It also makes it more difficult for inmates to maintain close family relationships that can provide critical support upon reintegration to the community. Moreover, releasing inmates, especially those suffering from mental health issues, directly from solitary confinement into the community without further supervision or support makes it difficult for these individuals to adjust to life outside prison. In the experience of amici, inmates who have been denied the opportunity to engage with programming, who have been estranged from important relationships, and who are left without continuing support are those most likely to reoffend—an experience borne out by the heightened recidivism rates among inmates held in solitary confinement. A practice that contributes to increased recidivism is inconsistent with amici’s mission to protect the public.

Finally, the continued reliance on prolonged periods of solitary confinement in both the federal and state criminal justice systems runs contrary to a growing international consensus against the practice. Prosecutors often work with foreign partners to prosecute crimes that cross international boundaries and to seek extradition of defendants who have caused harm in the United States and to U.S. interests. Foreign judges have refused to extradite some defendants because of the possibility that the accused may be held in solitary confinement in U.S. jails and prisons.

ARGUMENT

I. Prolonged solitary confinement damages public trust in law enforcement.

Amici know that fostering public confidence is critical to the effective functioning of the criminal justice system. Community members must trust the system before they are willing to take part in it—whether they are reporting a crime, testifying as witnesses, or serving as jurors. That trust is undermined when the public believes that conditions of incarceration are unfair, cruel, or inhumane. As the nation faces widespread protests and unrest evincing mistrust of law enforcement in many communities, it is more critical than ever to foster the perception that our justice system can be fair.

Subjecting inmates to prolonged periods of solitary confinement is not aligned with public understanding of fair and humane punishment. Inmates are typically restricted to a “windowless cell no larger than a typical parking spot” for up to 23 hours a day, with “little or no opportunity for conversation or interaction with anyone.” *Davis v. Ayala*, 576 U.S. 257, 287 (2015) (Kennedy, J., concurring). The limited time outside of one’s spartan cell is usually spent pacing in a metal cage or restricted to a small space for “recreation,” still alone. *See, e.g., Apodaca v. Raemisch*, 139 S. Ct. 5, 6 (2018) (Sotomayor, J., statement respecting the denial of certiorari); Jason M. Breslow, *What Does Solitary Confinement Do to Your Mind?*, Frontline (Apr. 22, 2014), <https://perma.cc/A5HT-8WVD>.

This kind of prolonged, extreme isolation “exact[s] a terrible price.” *Davis*, 576 U.S. at 289 (Kennedy, J., concurring). Many in solitary confinement find themselves tortured by obsessive thoughts, panic attacks, hallucinations, and paranoia. Physicians for Human Rights, *Buried Alive: Solitary Confinement in the US Detention System* (2013), <https://perma.cc/WBY9-PD4H>. Periods as short as three months—a small fraction of the 26 years that Mr. Hope has spent in solitary confinement—can have long-lasting psychological and emotional consequences, including increasing the risk of self-harm and suicide, especially for inmates who suffer from mental illness, like Mr. Hope. *See, e.g.*, Terry A. Kupers, *What to Do with the Survivors? Coping with the Long-Term Effects of Isolated Confinement*, 35 *Crim. Just. & Behav.*, 1005, 1005–06, 1009 (2008), <https://perma.cc/7LS9-WFX9> (“For just about all prisoners, being held in isolated confinement for longer than 3 months causes lasting emotional damage if not full-blown psychosis and functional disability.”); Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 *Am. J. Pub. Health* 442, 447 (2014), <https://perma.cc/SQ4F-3JGW> (solitary confinement is an “important and independent predictor[] of self-harm in jail”).

This “terrible price” is borne widely, but not evenly. According to estimates from 2019, nationwide, at least 55,000 “prisoners were held in-cell for twenty-two hours or more per day on average for fifteen days or more,” including “[m]ore than 3,000 people with serious mental illness.” *Corr. Leaders Ass’n & Arthur Liman Ctr. for Pub. Interest at Yale Law Sch., Time-in-Cell 2019: A Snapshot of Restrictive Housing* 5 (2020),

<https://perma.cc/55WX-S374>. Texas holds more prisoners for longer times in solitary confinement than any other state prison system: 4,400 prisoners are kept in solitary confinement, of which 1,300 have been in solitary confinement for more than six years. Michael Barajas, *The Prison Inside Prison*, Texas Observer (Jan. 21, 2020), <https://perma.cc/UD8P-YEEB>. Among the jurisdictions that provided data on their prison populations, the average percentage of prisoners in solitary confinement “who were Black, Native American, or Alaskan Native was higher than in the total custodial population, as was the percentage of male Hispanic prisoners.” Corr. Leaders Ass’n & Arthur Liman Ctr. for Pub. Interest at Yale Law Sch., *supra*, at 5. In Texas, Hispanic males made up 34.1 percent of the general prison population, but 49.9 percent of the restrictive housing population. *Id.* at 31 tbl.12. And, according to a 2016 investigation, black and Latino inmates in New York prisons were “sent to solitary confinement more frequently and for longer durations” than white prisoners. Michael Schwirtz et al., *The Scourge of Racial Bias in New York State’s Prisons*, N.Y. Times, Dec. 3, 2016, <https://perma.cc/L3LQ-C8TN>. In one prison, “black inmates were nearly four times as likely to be sent to isolation as whites, and they were held there for an average of 125 days, compared with 90 days for whites.” *Id.*

State and federal prisons use solitary confinement as a means of maintaining prison security. See U.S. Dep’t of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing* 4 (2016) (“DOJ Report”), <https://perma.cc/WXU4-MRXU>. Although separating inmates from the general population may be appropriate in limited

circumstances, *see id.* at 1, there is no reliable evidence that prolonged segregation has meaningfully improved prison safety for correctional officers or other inmates. A 2016 meta-review conducted by the National Institute of Justice concluded that, across various studies, “placement in any type of segregation d[id] not affect offenders’ likelihood of institutional misconduct” and that “using segregation at a higher rate or opening a supermax facility ha[d] little effect on rates of misconduct and violence across facilities or state prison systems.” Benjamin Steiner & Calli M. Cain, *The Relationship Between Inmate Misconduct, Institutional Violence, and Administrative Segregation: A Systematic Review of the Evidence, in Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions* 165, 181 (2016), <https://perma.cc/D7MR-HN5C>.² Moreover, states that have undertaken reforms to reduce their use of solitary confinement have reported no increase in inmate violence. *See* DOJ Report, *supra*, at 74–78 (citing data from Colorado, Washington, Virginia, and Hampden County, Massachusetts). Quite the opposite—in some states, reducing the number of inmates in solitary confinement has reduced inmate violence. *See* Maurice Chammah, *Stepping Down from Solitary Confinement*, *The Atlantic* (Jan. 7, 2016), <https://perma.cc/T44Q-3JR2> (noting significant drop in

² *See also* Chad S. Briggs, Jody L. Sundt & Thomas C. Catellano, *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41 *Criminology* 1341, 1371 (2003) (“[T]he effectiveness of supermax prisons as a mechanism to enhance prison safety remains largely speculative.”); Beth M. Huebner, *Administrative Determinants of Inmate Violence: A Multilevel Analysis*, 31 *J. Crim. Just.* 107, 114 (2003) (“[T]his research did not support the use of coercive controls[,]” including solitary confinement, “as an effective management tool.”).

disciplinary incidents in a Michigan prison that introduced a program to reduce its population held in solitary confinement).

The use of prolonged solitary confinement has faced increasing public and judicial scrutiny in the last decade. Multiple justices on the U.S. Supreme Court have called attention to the trauma inflicted by prolonged solitary confinement. *See, e.g., Apodaca*, 139 S. Ct. at 6 (Sotomayor, J.); *Ruiz v. Texas*, 137 S. Ct. 1246, 1247 (2017) (Breyer, J., dissenting from denial of stay of execution); *Davis*, 576 U.S. at 287–90 (Kennedy, J., concurring). The Courts of Appeals likewise have cited the mounting scientific consensus regarding the profound harms inflicted by long periods of solitary confinement. *See, e.g., Porter v. Pa. Dep’t of Corr.*, No. 18-3505, 2020 WL 5200680, at *7 (3d Cir. Sept. 1, 2020) (“It is well established in both case law and scientific and medical research that prolonged solitary confinement . . . poses a substantial risk of serious psychological and physical harm.”); *Incumaa v. Stirling*, 791 F.3d 517, 534 (4th Cir. 2015) (“Prolonged solitary confinement exacts a heavy psychological toll that often continues to plague an inmate’s mind even after he is resocialized.”); *see also Hamner v. Burls*, 937 F.3d 1171, 1181 (8th Cir. 2019) (Erickson, J., concurring) (recognizing “the developing science of mental health and what is now known—that is, the profound detrimental and devastating impact solitary confinement has on an inmate’s psyche, particularly an inmate with pre-existing mental illnesses”).

In the public sphere, commentators across the political spectrum have called for a reduction in the use of solitary confinement. *See, e.g.,* N.Y. Times Editorial Bd., *Solitary*

Confinement Is Cruel and All Too Common, N.Y. Times, Sept. 2, 2015, <https://perma.cc/8RAR-M2ZX>; George F. Will, Opinion, *The Torture of Solitary Confinement*, Wash. Post, Feb. 20, 2013, <https://perma.cc/A9L7-TFQ2>.

Recent tragedies also have provoked public outrage. The death of Kalief Browder—who took his own life after being kept, while still a teenager, in solitary confinement at Riker’s Island in New York City for two years—inspired widespread public outcry and local and federal reforms. See Peter Holley, *Kalief Browder Hanged Himself After Jail Destroyed Him. Then ‘A Broken Heart’ Killed His Mother.*, Wash. Post, Oct. 18, 2016, <https://perma.cc/9E83-6TRU>. In California, a hunger strike involving over 30,000 prisoners brought national attention to the issue of solitary confinement, inspiring reforms in multiple states. See Benjamin Wallace-Wells, *The Plot from Solitary*, N.Y. Magazine, Feb. 21, 2014, <https://perma.cc/P4UF-2L98>. In Texas, the mandatory isolation of all death-row inmates after a few attempted to escape has been criticized by both activists and correctional officers. See Michael Barajas, *Texas Prisons Lead the Nation in Long-Term Solitary Confinement*, Texas Observer (Oct. 10, 2018), <https://perma.cc/49ZH-GAPR>. And the current national movement for criminal justice reform includes a renewed push to end the use of prolonged solitary confinement. See, e.g., Amy Fettig & David Fathi, Opinion, *As Debates Over Police Reform Rage, It’s Time to End Solitary Confinement*, Phila. Inquirer, July 1, 2020, <https://perma.cc/6LW3-PH9U>.

As prosecutors and judges, amici recognize that the criminal justice system must respond to such deeply felt concerns if it is to maintain public confidence. Although some states have restricted their use of solitary confinement,³ prolonged solitary confinement remains widespread. When community members do not trust the state to administer humane punishment, they are less inclined to participate in the criminal justice system, directly impeding the work of prosecutors and law enforcement officials.

II. Protective solitary confinement disincentivizes witness cooperation.

In addition to eroding public faith in the criminal justice system, solitary confinement, when used as a method of protective custody for detained cooperating witnesses, unfairly punishes those who assist prosecutorial efforts and disincentivizes cooperation with law enforcement. Prosecutors often rely on the cooperation of defendants facing criminal charges to obtain evidence and secure convictions, especially in complex cases involving drug-trafficking conspiracies, organized crime, and terrorism. *See* Ellen Yaroshefsky, *Cooperation with Federal Prosecutors*, 68 Fordham L. Rev. 917, 921, 932, 934 (1999). Prosecutors also rely on inmates to provide information regarding crimes occurring within prison walls.

³ *See, e.g.*, N.J. Stat. 30:4-82.8 (imposing limits on the use of solitary confinement, including a time limit of 20 consecutive days and no more than 30 days in a 60-day period); Erin Durkin, *New York City Plans to End Solitary Confinement in Jails*, Politico (June 29, 2020), <https://perma.cc/UBN9-MLYZ>; Associated Press, *Colorado Bans Solitary Confinement for Longer Than 15 Days*, 9News.com (Oct. 13, 2017), <https://perma.cc/KHW8-8BYR>.

To protect cooperating witnesses from other inmates, some jails and prisons place cooperators in solitary confinement because the facilities lack “the operational capacity to offer opportunities for protective custody inmates to congregate.” Michael P. Harrington, *Methodological Challenges to the Study and Understanding of Solitary Confinement*, 79 Fed. Prob. 45, 46 (2015). Placing cooperating witnesses in solitary confinement—even for their own protection—punishes those witnesses and subjects them to long-term adverse health consequences *because* of their valuable assistance. Such treatment disincentivizes others from cooperating with prosecutors and discourages inmates from cooperating in investigations of crime occurring in prisons. Although Mr. Hope was not placed in solitary confinement as a cooperating witness, such witnesses face the same harms as those, like Mr. Hope, who were placed in solitary confinement as punishment or for other reasons. Constitutional limitations on the use of solitary confinement guide prison administrators’ decisions for all inmates.

III. Solitary confinement interferes with inmate reentry.

One of the criminal justice system’s primary goals must be to rehabilitate individuals serving their sentences so that when they are released—as over 95 percent eventually are—they may successfully reintegrate into society. *See* Timothy Hughes & Doris James Wilson, Bureau of Justice Statistics, *Reentry Trends in the United States* (last revised Sept. 10, 2020), <https://perma.cc/TN76-ZCB8>. As prosecutors, amici appreciate that preparing inmates while in prison and supporting them upon release can reduce recidivism and promote public safety.

As the Department of Justice has identified, the correctional system can support successful reentry by: (a) offering inmates education, employment training, and other evidence-based programs “that target [inmates] criminogenic needs and maximize their likelihood of success upon release”; (b) providing inmates with “the resources and opportunity to build and maintain family relationships, strengthening the support system available to them upon release”; and (c) ensuring that individuals transitioning back to the community receive “continuity of care” to support their successful reentry. U.S. Dep’t of Justice, *Roadmap to Reentry: Reducing Recidivism Through Reentry Reforms at the Federal Bureau of Prisons* 3–4 (2016), <https://perma.cc/SGJ9-8MMF>. Solitary confinement frustrates each of these objectives.

First, many prisoners in solitary confinement have no access to job training or educational programs, even though such programs are among “the most effective ways to reduce recidivism.” *Id.* at 4; *see also* Lois M. Davis, et. al., Rand Corp., *Evaluating the Effectiveness of Correction Education* 29 (2013), <https://perma.cc/546A-GTCB> (finding that participating in correctional education programs substantially reduced the risk of recidivating and increased the odds of obtaining post-release employment). Texas prisons, for example, have “exclude[d] people in solitary confinement from all rehabilitative programs,” including educational programs, job training, substance abuse treatment, and anger management counseling, which help inmates prepare for life after release. ACLU of Tex. & Tex. Civil Rights Project—Houston, *A Solitary Failure: The*

Waste, Cost and Harm of Solitary Confinement in Texas 36 (2015), <https://perma.cc/ETK6-GRP6>.

Compounding this lack of programming, the debilitating mental health effects of solitary confinement can make it much more difficult for the formerly incarcerated to maintain employment. Some states have introduced “step-down” programs to improve prisoners’ ability to interact with others and to reintroduce inmates in solitary confinement to the general population before their ultimate release from prison. *See* Christie Thompson, *From Solitary to the Street*, The Marshall Project (June 11, 2015), <https://perma.cc/KWA5-HPS3>. But such programs are not available in many states, and thousands of individuals are released into the community directly from solitary confinement each year. *See id.* Returning from prison to the community is difficult under any circumstances. Attempting to reenter society immediately after a prolonged period of near-total isolation—without reintegration support or programming to promote positive rehabilitation—poses nearly insurmountable challenges.

Second, restrictive visitation rules in solitary confinement can undermine the positive effect that strong familial bonds have for reintegration. “Research shows that close and positive family relationships reduce recidivism, improve an individual’s likelihood of finding and keeping a job after leaving prison, and ease the harm to family members separated from their loved ones.” *Roadmap to Reentry, supra*, at 4. Despite these benefits, many inmates held in solitary confinement are allowed only no-contact visits, during which they are physically separated from family members, and their

allotted number of visits and phone calls may be limited. *See A Solitary Failure, supra*, at 7. These restrictions—along with the severe mental health consequences of prolonged solitary confinement—make it difficult for inmates in solitary confinement to maintain the close family ties that can support their reentry.

Finally, in many instances, inmates in solitary confinement “max out” of their sentences and therefore are less likely to be placed on post-release supervision than other prisoners. *See id.* This can be particularly problematic for mentally ill inmates, who do not receive the same referrals to treatment providers upon release as those who are released under supervision. Thompson, *supra*. Releasing inmates directly from solitary confinement into the community without further support makes it extraordinarily difficult for these individuals to adjust to life outside of prison.

The result has been that those who have served time in solitary confinement, and especially those released directly from solitary confinement into the community, have higher rates of recidivism than those held in the general prison population. In Texas, for example, inmates released directly from solitary confinement were rearrested within three years of release at a rate 25 percent higher than those released from the overall prison population. *A Solitary Failure, supra*, at 8; *see also, e.g.*, David Lovell et al., *Recidivism of Supermax Prisoners in Washington State*, 53 *Crime & Delinq.* 633, 644 (2007) (inmates released directly from solitary confinement in Washington were significantly more likely to commit new felonies than those released from the general population); Daniel P. Mears & William D. Bales, *Supermax Incarceration and Recidivism*, 47 *Criminology* 1131,

1150 (2009) (Florida inmates who served at least three months in solitary confinement at any point had “substantially higher rates of any recidivism,” and particularly of violent recidivism, than those who did not spend time in solitary confinement). While the data do not prove causation, they nonetheless suggest that holding inmates in solitary confinement for prolonged periods of time does not improve public safety after their release.

As current and former prosecutors, amici have had the good fortune to learn, sometimes years after a prosecution, that someone they prosecuted has reentered the community, gone on to college or other higher education, obtained meaningful work, and become a responsible family member and contributor to society. Achieving this success—capitalizing on second chances—is a goal that those subjected to prolonged solitary confinement rarely can be expected to achieve.

IV. Solitary confinement undercuts the United States’ ability to secure extradition.

Prosecutors rely on the cooperation of foreign partners to prosecute crimes that cross international boundaries and to seek extradition of defendants located abroad who have been charged with crimes in the United States. Extradition is critical to ensuring that those who violate U.S. laws and jeopardize the safety and security of U.S. persons and U.S. national security are brought to justice, wherever they might be located. The continuing use of prolonged solitary confinement in U.S. prisons has

interfered with prosecutors' ability to secure this important form of international cooperation.

Holding prisoners in prolonged periods of solitary confinement runs contrary to a growing international consensus against the practice. In 2015, the United Nations passed a resolution adopting the "Nelson Mandela Rules," which, inter alia, prohibit indefinite and prolonged solitary confinement as a form of "cruel, inhuman or degrading treatment or punishment." G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 43(a) & (b) (Dec. 17, 2015), <https://undocs.org/A/RES/70/175>. And America's close allies have limited the use of solitary confinement within their own borders. *See, e.g.*, Paola Loriggio, *Court of Appeal for Ontario sets 15-day Cap on Solitary Confinement*, Global News (Mar. 28, 2019), <https://perma.cc/J6X5-HFFV> (noting that the Court of Appeal for Ontario concluded that isolation over 15 days amounts to cruel and unusual punishment); Nicholas Turner & Jeremy Travis, Opinion, *What We Learned From German Prisons*, N.Y. Times (Aug. 6, 2015), <https://perma.cc/U57P-NS9X> (noting that solitary confinement in Germany is rare and limited to a maximum of four weeks).

Considering solitary confinement to be cruel and inhumane, European courts have denied extradition to the United States in some cases, even in the face of serious crimes. In refusing to extradite jihadist recruiter Ali Damache, the Irish High Court wrote: "being denied the opportunity for meaningful contact with others, the prisoner in solitary confinement is prevented from being fully human. To prevent another from

being fully human is by definition inhuman and degrading treatment.” *Att’y Gen. v. Damache* [2015] IEHC 339 (Ir.). And in 2015, a British court denied the extradition of hacker Lauri Love, who was accused of felony hacking and theft for his alleged participation in computer crimes targeting, inter alia, the U.S. Federal Reserve, the U.S. military, NASA, and the FBI. See *Lauri Love Case: Hacking Suspect Wins Extradition Appeal*, BBC News, Feb. 5, 2018, <https://perma.cc/VA2W-W6R5>. In denying the United States’ extradition request, the court emphasized testimony that “mentally ill inmates [in the United States are] often put in solitary confinement where they cannot access mental health service.” *Lauri Love v. Gov’t of the United States of America* [2018] EWHC 172 (Admin) CO/5994/2016, [79] (Eng.); see also Alan Travis & Owen Bowcott, *Gary McKinnon Will Not Be Extradited to US, Theresa May Announces*, *The Guardian* (Oct. 16, 2012), <https://perma.cc/3JXA-3HGS> (noting denial of extradition of hacker Gary McKinnon, who had engaged in the “biggest military computer hack of all time,” on similar grounds).

Even where extradition has not been denied, the foreign press has levied harsh criticism against the United States, presenting a challenge for American prosecutors’ ability to collaborate with foreign partners. See, e.g. Ian Patel, *The Impossible Injustice of Talba Absan’s Extradition and Detention*, *New Statesman* (Feb. 21, 2013), <https://perma.cc/9PT8-TFLK> (decrying as unjust the extradition to the United States of a defendant on material support to terrorism charges because of the mental health risks posed by solitary confinement). As foreign governments ban or limit the practice

of solitary confinement in their own countries, the United States is likely to continue to face such criticism and be denied extraditions, thereby harming public safety and security within our borders.

CONCLUSION

For the reasons stated herein, amici urge the Court to reverse the district court's judgment granting defendants' motion to dismiss.

Respectfully submitted,

Dated: September 28, 2020

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CERTIFICATE OF SERVICE

I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit on September 28, 2020, by using the appellate CM/ECF system, and service was accomplished on all counsel of record by the appellate CM/ECF system.

/s/ Mary B. McCord
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CERTIFICATE OF COMPLIANCE

1. This brief complies with: (1) the type-volume limitation of Federal Rules of Appellate Procedure 29(a)(5), 32(a)(7)(B)(i) because it contains 4,179 words, excluding the parts of the brief exempted by Rule 32(f).
2. This brief complies with the typeface requirements of Fed. R. App. P. Rule 32(a)(5) and the type style requirements of Fed. R. Appl. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word (14-point Garamond).

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