

No. 23-7521

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Jason Goode,

Plaintiff–Appellant,

v.

Rollin Cook, et al.,

Defendants–Appellees.

On Appeal from a Final Judgment of the
United States District Court for the District of Connecticut
No. 3:20-cv-00210-VAB, Hon. Victor A. Bolden

**BRIEF FOR PLAINTIFF-APPELLANT
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INTRODUCTION

Officials at the Connecticut Department of Corrections have known for years that Jason Goode suffers from serious and unrelenting mental illness. They know he has been diagnosed with intermittent explosive disorder and antisocial personality disorder, and has reported depression and severe anxiety exacerbated by the conditions of solitary confinement. Yet at both prisons where Goode was placed in solitary, the wardens—Defendants Giuliana Mudano and Kristine Barone—have repeatedly, over many years, recommended Goode’s continued confinement in these conditions. This prolonged solitary confinement poses a substantial risk to Goode’s mental health and offends contemporary standards of decency in violation of the Eighth Amendment. And Defendants acted with deliberate indifference to this risk, so they may be held liable.

Defendants also violated the Eighth Amendment by depriving Goode of adequate care for his serious medical needs. Mudano and Barone acted with deliberate indifference by failing to recommend Goode’s transfer from solitary to facilities where he could receive appropriate mental-health care. Likewise, Andrea Reischerl, a Department of Corrections psychiatric nurse who treated Goode on multiple occasions and prepared his health records, did not alert anyone to the substantial risk of harm that solitary confinement posed to Goode’s mental health even though she knew of his illnesses.

Despite all this, the district court granted Defendants' motion for summary judgment, concluding that Goode's years-long solitary confinement did not pose a substantial risk of serious harm to his health under contemporary standards of decency and that Defendants were not aware of the risks Goode faced. Because those conclusions cannot be squared with the law and the summary-judgment record, this Court should reverse.

STATEMENT OF JURISDICTION

The district court had subject-matter jurisdiction under 28 U.S.C. § 1331. JA 19. On May 19, 2023, the district court granted Defendants' motion for summary judgment, disposing of all of Goode's claims. JA 46. Goode filed a timely notice of appeal on June 12, 2023. JA 47. This Court has jurisdiction under 28 U.S.C. § 1291.

ISSUES PRESENTED

1. Whether Defendants violated the Eighth Amendment by knowingly keeping an inmate with an extensive, documented history of mental illness in solitary confinement for almost five years.

2. Whether Defendants violated the Eighth Amendment by knowingly denying adequate mental-health care to an inmate with an extensive, documented history of mental illness.

STATEMENT OF THE CASE

Defendants Giuliana Mudano and Kristine Barone are the prison wardens who participated in decisions to keep Jason Goode in solitary confinement.

Defendant Andrea Reischerl is a psychiatric nurse who provided Goode with mental-health treatment while he was in solitary confinement. On February 13, 2020, Goode filed an Eighth Amendment claim under 42 U.S.C. § 1983 against Defendants in the District of Connecticut. On November 15, 2021, counsel for Goode filed a motion to withdraw, which the court granted on November 16, 2021. Goode then proceeded *pro se* for the remainder of the district-court proceedings. On May 19, 2023, the Honorable Victor A. Bolden granted summary judgment to all Defendants on all claims. *Goode v. Cooke et al.*, No. 3:20-cv-0210, 2023 WL 3570632 (D. Conn. May 19, 2023).

In the pages that follow, we first describe the facts giving rise to Goode’s claims. We then detail the proceedings and decision below.

I. Factual background

A. Goode’s mental illness

Jason Goode has suffered from severe psychiatric illness since his childhood. JA 316-17 (Saathoff Eval.).¹ Growing up, he had a “chaotic homelife,” JA 316, marked by his mother’s “repeated psychiatric hospitalizations [which] required [Goode’s] placements in alternative settings including foster homes, group homes and residential care settings,” JA 314. A neuropsychologist noted that Goode’s “variously unstable and

¹ A glossary of abbreviations used in this brief to describe documents in the Joint Appendix are set forth in the Addendum to this brief. That table also lists each document and its page range in the Joint Appendix.

impoverished developmental/attachment environment” growing up could “have consequences on the developing brain.” JA 451 (Edwards Eval.).

When he was thirteen, Goode was diagnosed with an adjustment disorder with mixed disturbance of emotions and conduct, a condition marked by symptoms of distress disproportionate to the severity of the precipitating events.² JA 438-39 (Edwards Eval.). At fifteen, he was diagnosed with conduct disorder and impulse control disorder, both linked to difficulties in controlling aggressive behaviors, self-control, and impulses,³ and he exhibited avoidant and antisocial traits. JA 439. Goode’s problems with “social interaction and behavioral disruption” are “consistent with hereditary, psychological, and behaviorally-acquired components,” suggesting a “genetic vulnerability.” JA 451.

Goode was first incarcerated in 1994, at age eighteen. JA 433 (Hillbrand Eval.). In 2003, Goode was diagnosed with intermittent explosive disorder, which is characterized by failure to resist aggressive impulses, JA 471 (DSM-IV), and antisocial personality disorder. JA 317 (Saathoff Eval.).

² U.S. Nat’l Libr. of Med., *DSM-IV to DSM-5 Adjustment Disorders Comparison*, <https://www.ncbi.nlm.nih.gov/books/NBK519704/table/ch3.t19/> (last visited Dec. 14, 2023).

³ Am. Psychiatric Ass’n, *What are Disruptive, Impulse Control and Conduct Disorders?*, <https://www.psychiatry.org/patients-families/disruptive-impulse-control-and-conduct-disorders/what-are-disruptive-impulse-control-and-conduct> (last visited Dec. 14, 2023).

B. Goode's solitary confinement at Northern

1. In November 2016, the Connecticut Department of Corrections (DOC) first placed Goode in "administrative segregation" (AS), which, from 2019 to 2021, took place at Northern Correctional Institution (Northern). JA 31-32 (Op.).⁴

Administrative segregation is a type of solitary confinement with three levels, each with different restrictions. *See* JA 510-16 (Conn. Restrictive Housing Standards). Goode has spent nearly all of his solitary confinement in the most restrictive level of administrative segregation, known as AS Phase I, JA 81-82 (Goode Dep.). AS Phase I imposes severe limitations, including full restraints any time Goode is moved out of his cell, JA 157 (DOC AD 9.4), no work assignments, JA 159, no out-of-cell program opportunities, *id.*, and only one fifteen-minute phone call per week, JA 160.⁵

Phase I is supposed to last for 120 days, "unless [the prisoner] has received a disciplinary report." JA 82 (Goode Dep.). After Phase I, a prisoner progresses to Phase II. JA 143 (DOC AD 9.4). For the first thirty days of Phase II, conditions are largely identical to Phase I. *See* JA 159. The only time Goode

⁴ Although Goode has been in solitary confinement since 2016, JA 31-32 (Op.), this lawsuit concerns only the nearly five years he has spent in solitary since January 8, 2019, the effective date of a settlement Goode reached with the State of Connecticut in prior litigation.

⁵ Though Defendants characterize Goode's administrative segregation as something other than solitary confinement, for the reasons detailed in this brief (at 29-31), his highly restrictive conditions are widely understood as solitary confinement.

progressed through the first thirty days of Phase II, he was immediately sent back to Phase I because he “told custody he did not feel safe being unrestrained and fearful he might be aggressive.” JA 239 (Reischerl Decl.); JA 230 (Northern AS Records). Goode otherwise has not been able to remain discipline-free, *see, e.g.*, JA 172 (Goode Disciplinary History), which he maintains is because of his mental illness, JA 97 (Goode Dep.). His illness, in turn, is worsened by his solitary confinement. JA 112. Because Goode’s mental illness leads him to act impulsively, *see supra* at 4, Goode has not progressed out of Phase I, *see* JA 476 (Goode Informal Resolution).

DOC’s policy concerning transfer of inmates to Northern for solitary confinement states that “[c]ontraindications to placement in Administrative Segregation housing may include serious mental illness” including “[p]sychological disorders,” “[b]ehavioral disorders,” “[c]ognitive impairments,” and “any diagnosed mental disorder.” JA 469 (UConn Health Policy). This policy requires that any inmate considered for solitary confinement be evaluated by either “a psychologist, psychiatrist, or psychiatric [Advanced Practicing Registered Nurse] ... to inform the DOC Director of Psychological Services, who will notify population management.” *Id.*

2. While at Northern, Goode spent between twenty-three and twenty-four hours per day in his cell. JA 513 (Conn. Restrictive Housing Standards). His cell had a locked metal door with a slot for him to receive food and medications. JA 17 (Compl.). He could communicate with other inmates only

by “yell[ing] at the door to the best of [his] ability” or by attempting to communicate through the vents or the toilet. JA 87-88 (Goode Dep.). In-cell restraints were “used regularly as a punishment” for solitary confinement prisoners at Northern, JA 402 (Inmate Request Form), including on Goode, JA 326 (Saathoff Eval.).

When Goode was removed from his cell, either for recreation or to shower, he was “all chained up like a stage magician,” JA 406 ¶ 4a (Goode Decl.), as prison protocol authorized, *see* JA 516 (Conn. Restrictive Housing Standards) (permitting removing the inmate while “handcuffed behind the back (leg irons and tether chain ...)”). Until late 2019, Goode and other prisoners at Northern were even required to shower in shackles, risking “potentially dangerous falls” in the shower stalls. JA 412 ¶ 4 (Goode Decl. re Northern).

Goode was allowed to spend one hour per day, five days per week, alone in an outdoor recreation cage. JA 412 ¶ 5 (Goode Decl. re Northern). If it was raining or snowing, he could either forgo this recreation, thus never leaving his cell that day, or endure the bad weather. *Id.* ¶ 6. If he chose to go outside in the snow, he received “no hat or gloves” and only a “filthy winter coat.” JA 412-13 ¶ 6. That coat was shared among prisoners—when Goode wanted to go outside during the winter, an officer would pick the communal coat “off the snowy ground, left by another inmate ... from the previous recreation period.” *Id.* When prisoners chose to endure the frigid weather,

they faced “dagger icicles” that grew from the “kennels’ grated rooftops.” JA 412 ¶ 6.

During recreation, Goode had “no control over anyone else[’s] choice to ‘interact with’ him.” JA 339 ¶ 55 (Pl. L.R. 56(a) Statement). Goode generally went to great lengths to have the most basic social interactions with other prisoners. *See* JA 326 (Saathoff Eval.). For instance, to try to communicate with prisoners from his cell, Goode would use a cardboard toilet-paper tube to blow water out of his cell’s sink drain in an effort to talk with other prisoners through the plumbing. *Id.* He would use the toilet plumbing for communication, but that would work only “if someone wasn’t constantly flushing.” JA 87-88 (Goode Dep.). Eventually, the sinks at Northern became so filled with the stench of septic waste that Goode could no longer use this means of communication. JA 413 ¶ 9 (Goode Decl. re Northern).

Goode also would try to speak to others through the “corroded vents” in his cell by “precariously standing” on the ledge of his sink. JA 415 ¶ 10 (Goode Decl. re Northern). But getting close enough to the vents to communicate was risky. Because most vents were interconnected, if a prisoner in another cell had been pepper sprayed, Goode would be hit with “second-hand pepper spray vapors.” JA 413 ¶ 7. Goode’s cell had an intercom he could use to request medical attention, but the mental-health team often would not pick up the intercom when he used it to ask for help. JA 322 (Saathoff Eval.).

3. Defendant Mudano was the warden at Northern. JA 220 ¶ 3 (Mudano Decl.). She also served on Northern’s classification committee, which met monthly to discuss inmates in solitary and consider whether the prisoners should be removed to a less-restrictive placement. JA 222-23 ¶¶ 16-21. The committee would “review and determine whether an inmate’s classification and confinement on AS, including a particular phase of AS, continued to be warranted.” JA 223 ¶ 19. At every meeting, a mental-health professional would provide input concerning the inmate’s mental-health status, and members of the committee would review the inmate’s recent institutional records. *Id.*; JA 62-63 ¶¶ 72-77 (Defs.’ Statement of Material Facts).

In this role, Mudano was familiar with Goode and the conditions of his confinement at Northern. JA 223-25 ¶¶ 22-33 (Mudano Decl.). At one point, after Goode had been removed from the most restrictive phase of solitary, Goode was supposed to be transferred to Garner—a DOC facility that provides a progressive mental-health-treatment approach with individualized treatment plans for offenders with serious mental illness⁶—but he was never transferred because Garner didn’t have enough beds. JA 225 ¶ 34. Goode later communicated that he might become aggressive if transferred to Garner, JA 225-26 ¶ 35, a common feature of intermittent explosive disorder, JA 472 (DSM-IV). Instead of determining how to safely

⁶ Conn. State Dep’t of Corr., *Garner Corr. Institution*, <https://portal.ct.gov/DOC/Facility/Garner-CI> (last visited Dec. 14, 2023).

transfer Goode to Garner, the committee put Goode back in AS I, the most restrictive phase of solitary confinement. JA 225-26 ¶ 35 (Mudano Decl.).

Goode filed an inmate request form with Mudano about his conditions of confinement in June 2019, asking that he be removed from solitary confinement. JA 402 (Inmate Request Form). His complaint described “months under harsh conditions,” including “near-constant banging, yelling, the application of out-of-cell restraints, restricted phone calls, restricted family visits, limited commissary ... [and] in-cell restraints used regularly as a punishment.” *Id.* Mudano’s handwritten response did not address any of the concerns Goode raised, noting only that “[a]t this time I will not recommend your removal from A/S. Please remain disciplinary free and complete the phases of the program.” *Id.*

C. Goode’s mental-health struggles in solitary

In the same month that Mudano declined to act on Goode’s complaint, Goode’s expert witness diagnosed him with Post-Traumatic Stress Disorder (PTSD). JA 317 (Saathoff Eval.). As will be explained, Goode’s mental illness was also observed by Defendants and their experts.

Defendant Reischerl was a Psychiatric Advanced Practicing Registered Nurse (APRN) employed by DOC. JA 232 ¶ 2 (Reischerl Decl.). She examined Goode several times while he was in solitary at Northern. JA 232-34 ¶¶ 2-13. In November 2019, Reischerl affirmed Goode’s antisocial personality disorder diagnosis and added an intermittent explosive disorder

diagnosis to his list of “active problems.” JA 243 (Reischerl Eval.). She noted that Goode reported “extreme anxiety” and depression symptoms. JA 239. At Northern, Goode endured “near constant banging and screaming of inmates,” JA 535 ¶ 27 (Goode Aff.), and Reischerl noted that Goode’s anxiety was “triggered by sensitivity to noises” and that he “acts impulsively” when triggered, JA 239 (Reischerl Eval.).

Reischerl listed Goode’s mental-health classification as Mental Health Status 3 (MH3). JA 239 (Reischerl Eval.). Prisoners with a “severe mental disorder” could be classified as MH3 if their provider viewed the disorder as “under good control.” JA 417 (UConn Health Policy). Prisoners assigned an MH3 score “are only seen once per month by a mental health professional.” JA 322 (Saathoff Eval.). In contrast, prisoners assigned an MH4 score should receive “specialized housing or ongoing intensive mental health treatment.” JA 417 (UConn Health Policy).

After Goode filed the current suit, Defendants hired Kimberly Edwards, a neuropsychologist, and Gregory Saathoff, a psychiatrist. JA 436 (Edwards Eval.); JA 268 ¶ 2 (Saathoff Decl.). To help Saathoff prepare his testimony, Edwards conducted a neuropsychological evaluation of Goode in 2021, while Goode was still at Northern. JA 437 (Edwards Eval.). Since childhood Goode had been diagnosed with paranoid traits, JA 438-39, and Edwards also noted in her 2021 evaluation that Goode’s responses suggested paranoid ideation, JA 449. Edwards also asked Goode about suicidal thoughts. JA 444. He responded: “I definitely had thoughts about it, killing myself. Thoughts

popping up here or there maybe 6 months ago.” *Id.* Edwards noted that Goode faced his “experience of current situational stress and emotional distress” with “few internal resources and little to no social support.” JA 451. In response to Edwards’ question about changes in his symptoms, Goode said: “I feel like I’ve gotten worse, gradually over the years. I guess it’s been present since I was young, but it’s worse here [at Northern] now.” JA 443. Edwards concluded that Goode showed signs of “[s]uicide potential.” JA 449.

D. Goode’s current solitary confinement at MWCI

Northern closed in 2021, and Goode was transferred to MacDougall-Walker Correctional Institution (MWCI). Defendant Barone was MWCI’s warden. JA 127 ¶ 3 (Barone Decl.). Like Mudano at Northern, Barone served on MWCI’s review committee for inmates in solitary, which “met approximately once per month to review and discuss inmates [in administrative segregation].” JA 130 ¶ 19. The discussion included “whether there were any mental health concerns regarding an inmate’s classification or conditions of confinement.” *Id.* ¶ 20. Barone would tour the solitary confinement units regularly, and she once spoke to Goode. JA 109 (Goode Dep.).

The conditions Goode experiences today at MWCI are largely the same as those he experienced at Northern. Like the cells at Northern, each cell at MWCI has a steel door, which includes a “trap door” that is opened and

closed for meal delivery. JA 408 ¶ 8 (Goode Decl.). Goode “speak[s] to other inmates through crevices alongside the cell door and through vents in cell walls.” *Id.* ¶ 9. Any conversations are “much muffled.” *Id.* Goode’s toilet may be flushed only by a timer that Goode cannot control. JA 409 ¶ 16. Unlike in his cell at Northern, Goode has no way to immediately communicate with prison staff because “the cell intercom button is disabled.” JA 408 ¶ 7. And, unlike the prisoners in general population, Goode eats every meal alone in his cell, as he has since 2019. JA 407 ¶ 4.

As at Northern, Goode’s “recreation” at MWCI occurs in an outdoor, individual cage. JA 409 ¶ 15 (Goode Decl.). In June 2021, Connecticut Governor Ned Lamont issued Executive Order No. 21-1, mandating that prisoners in solitary confinement get four hours out-of-cell time per day instead of one hour. JA 60 ¶ 53 (Defs.’ Statement of Material Facts). Despite this order, Goode was “frequently denied the four [] hours of out-of-cell time,” which he attributed to “ongoing placement on Covid-19 status on account of my political and religious beliefs.” JA 530 ¶ 8 (Goode Aff.). When Goode does receive out-of-cell time, prison officials do not give him recreation equipment. JA 339 ¶ 55 (Pl. L.R. 56(a) Statement). Goode describes this time as “four hours [] of meaningless recreation.” JA 406 ¶ 4e (Goode Decl.).

Goode’s mental illness still afflicts him today at MWCI. In February 2022, in this suit, Goode filed an emergency motion for equitable relief, requesting to be transferred to the Mental Health Treatment Unit of the Whiting

Forensic Center. JA 7 (Doc. 86). The district court denied the motion, holding that Goode had provided insufficient evidence to support his request. JA 8-9 (Doc. 98).

II. Procedural background

In 2020, Goode sued Mudano, Barone, and Reischerl (as well as six other DOC employees) under 28 U.S.C. § 1983 in the District of Connecticut. JA 14, 19 (Compl.). He alleged that Defendants violated his Eighth Amendment rights by keeping him in prolonged solitary confinement with deliberate indifference to the substantial risk of harm to his mental health. JA 26.⁷

The district court entered summary judgment in favor of Defendants. JA 29 (Op.). The court found that Barone and Mudano were personally involved with Goode's conditions of confinement because they were members of their institutions' classification-review committees, which had power to recommend an inmate's removal from solitary. JA 38-39. But the court found that Goode had not been deprived of basic human needs such as medical care because he had received sporadic visits by mental-health staff and could contact medical practitioners through the inmate-request system. JA 43. The court therefore concluded that Goode's conditions of confinement did not violate the Eighth Amendment. *Id.* The court did not, however, discuss the

⁷ Goode later withdrew his claims against three defendants. JA 34 (Op.). The district court ultimately ruled in favor of the other defendants. JA 39-40. This appeal only seeks reversal of the grant of summary judgment to Mudano, Barone, and Reischerl.

substantial risk posed to Goode's mental health by years of solitary confinement. *Id.*

The court further held that Goode could not establish that Barone and Mudano were aware of an excessive risk to his health and safety sufficient to establish their liability under the Eighth Amendment. JA 44 (Op.) Though the court acknowledged that both wardens regularly reviewed Goode's length of time in solitary confinement and mental-health records, it noted that medical staff had not raised concerns to either Mudano or Barone that Goode's conditions of confinement posed a substantial risk of serious harm. JA 44-45. Finally, the court granted summary judgment to Reischerl because she was not a member of any classification-review committee and did not have control over custody decisions. JA 39.

SUMMARY OF ARGUMENT

To prevail on an Eighth Amendment claim based on conditions of confinement or inadequate medical care, a prisoner must satisfy objective and subjective inquiries. On the objective side, the prisoner's conditions of confinement or medical care must pose an unreasonable risk of serious harm. The subjective inquiry requires a showing that prison officials were aware of and disregarded that unreasonable risk. Goode meets these requirements on both his conditions-of-confinement and medical-needs claims.

I.A. Goode's conditions of confinement pose an unreasonable risk of serious harm under the Eighth Amendment. The district court erred in concluding that nearly five years of solitary confinement does not pose an objective risk to Goode's current or future health. Since 2019, Goode has been completely alone nearly every moment of every day. This degree of isolation causes and exacerbates his severe mental illness, risking Goode's health in violation of contemporary standards of decency.

B. Wardens Mudano and Barone were deliberately indifferent to the risk posed by Goode's conditions of confinement. Each was aware of the psychological risk posed by solitary confinement, especially given Goode's life-long mental illness and his prolonged confinement in solitary without progressing through the phases of administrative segregation. Despite this knowledge, both wardens chose not to change Goode's conditions of confinement, making summary judgment inappropriate.

II.A. Defendants' insufficient care for Goode's medical needs violated the Eighth Amendment. Goode has serious medical needs. He has, for example, been diagnosed with intermittent explosive disorder, antisocial personality disorder, and PTSD. Placing an inmate with documented mental illness in solitary confinement and then offering him only infrequent, inadequate mental-health care objectively deprives him of basic human needs. The district court erred in concluding that periodic access to mental-health providers was sufficient care for Goode's illnesses.

B. Defendants were deliberately indifferent to Goode's serious medical needs. The summary-judgment evidence, viewed in Goode's favor as it must be, shows that Wardens Mudano and Barone knew of Goode's mental illness and the risk of severe and exacerbating suffering that prolonged solitary confinement imposes on mentally ill prisoners.

Defendant Reischerl knew about Goode's diagnoses and that Goode received inadequate care in solitary confinement. The district court erred in finding that Reischerl was not personally involved in violating Goode's Eighth Amendment rights. Reischerl knew about Goode's mental illness and the risk that long-term solitary confinement poses to Goode's mental health. She can be held liable because, after being personally involved in Goode's care and diagnoses, she failed to inform anyone of the medical need to move Goode into conditions where he could receive adequate care.

STANDARD OF REVIEW

The district court's grant of summary judgment is reviewed de novo, with all reasonable inferences drawn in favor of Goode, the non-moving party. *See Tardif v. City of New York*, 991 F.3d 394, 403 (2d Cir. 2021).

ARGUMENT

Defendants violated the Eighth Amendment through their deliberate indifference toward (1) the risk of serious harm to Goode's health posed by his conditions of solitary confinement and (2) Goode's serious medical needs. The Eighth Amendment sets minimum standards for a prisoner's

conditions of confinement. *Hutto v. Finney*, 437 U.S. 678, 685 (1978). To establish an Eighth Amendment violation for both conditions-of-confinement and medical-needs claims, an inmate must satisfy objective and subjective requirements. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

Prisoners meet the objective requirement by demonstrating a “sufficiently serious” deprivation, which either denies the prisoner the “minimal civilized measure[s] of life’s necessities” or imposes “a substantial risk of serious harm” to the prisoner’s health. *Farmer*, 511 U.S. at 834 (citation omitted). To satisfy the subjective requirement, a prisoner must show that a prison official acted with deliberate indifference to the inmate’s health or safety. *Id.* The summary-judgment record contains sufficient evidence to find Defendants liable for Eighth Amendment violations based on both the years of isolation imposed on Goode and the inadequate care for his serious mental-health needs. This Court should reverse.

I. Goode’s prolonged solitary confinement violated the Eighth Amendment.

Defendants violated the Eighth Amendment by keeping Goode in solitary confinement for years on end with deliberate indifference to the risk to Goode’s mental health posed by that confinement.

A. Defendants risked Goode’s current and future health under contemporary standards of decency.

Prisoners fulfill the objective prong of a conditions-of-confinement claim when they demonstrate that their conditions “pose an unreasonable risk of

serious damage to [their] future health.” *Helling v. McKinney*, 509 U.S. 25, 35 (1993). Conditions of confinement risk a prisoner’s health when they risk damage to the prisoner’s “physical and mental soundness.” See *LaReau v. MacDougall*, 473 F.2d 974, 978 (2d Cir. 1972). A prisoner need not wait to suffer the effects of his environment to prove an objective Eighth Amendment violation. *Helling*, 509 U.S. at 34. A “substantial risk of psychological and emotional harm” is “sufficient to satisfy the objective prong.” *Porter v. Clarke*, 923 F.3d 348, 361 (4th Cir. 2019) (emphasis in original).

The Eighth Amendment draws its meaning from the “evolving standards of decency that mark the progress of a maturing society,” *Trop v. Dulles*, 356 U.S. 86, 101 (1958), and these standards “must embrace and express respect for the dignity of the person,” *Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008). When assessing the risk prison conditions pose to a prisoner’s current or future health, courts must consider the severity and duration of the conditions. Conditions that may be constitutionally acceptable for short periods may violate the Eighth Amendment when imposed for longer periods. For example, “[a] filthy, overcrowded cell and a diet of ‘grue’ might be tolerable for a few days and intolerably cruel for weeks or months.” *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978); see also *Taylor v. Riojas*, 592 U.S. 7, 9 (2020) (reversing grant of summary judgment where there was no evidence the “conditions of [the inmate]’s confinement could not have been mitigated, either in degree or duration”).

Here, the district court erroneously focused on only “whether an individual inmate was deprived [of] basic human needs,” JA 42 (Op.), without considering whether the conditions “pose[d] an unreasonable risk of serious damage to [his] future health” or “violate[d] contemporary standards of decency,” *Phelps v. Kapnolas*, 308 F.3d 180, 185 (2d Cir. 2002) (citation omitted). In fact, Goode’s years-long solitary confinement unreasonably risks his current and future health and is inconsistent with contemporary standards of decency.

1. Goode’s conditions of confinement violate contemporary standards of decency.

a. Confining a prisoner with severe mental illness to solitary confinement for years on end does not comport with evolving standards of decency. Courts have recognized that “[t]he conditions in which prisoners are housed, like the poverty line, is a function of a society’s standard of living. As that standard rises, the standard of minimum decency of prison conditions, like the poverty line, rises too.” *Davenport v. DeRobertis*, 844 F.2d 1310, 1315 (7th Cir. 1988).

Despite contemporary standards being a crucial element of the objective inquiry, the district court did not consider whether prolonged solitary confinement of a mentally ill prisoner violates contemporary standards of decency. To evaluate contemporary standards of decency, “courts [should] begin by reviewing ‘objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question.’”

Crawford v. Cuomo, 796 F.3d 252, 259 (2d Cir. 2015) (quoting *Roper v. Simmons*, 543 U.S. 551, 564 (2005)). In *Crawford*, this Court held that sexual abuse of prisoners by corrections officers, “once overlooked as a distasteful blight on the prison system,” was inconsistent with contemporary standards of decency. *Id.* at 260. Contemporary society was no longer willing to accept sexual abuse in prisons, as evidenced by the “number of state laws” passed that criminalized sexual abuse as well as “the consistency of the direction of change in the law.” *Id.* (citations omitted). Had the district court applied this approach to Goode’s case, it would have considered the growing consensus against the use of solitary confinement in general, and especially for vulnerable prisoners, such as prisoners who suffer from mental illness. *See, e.g.*, JA 261-62 (Liman Report).

b. Indeed, modest improvements in Goode’s prison conditions are a direct result of changing standards of decency and their impact on elected officials. In June 2021, Connecticut’s governor issued an executive order limiting the use of solitary confinement. State of Conn., Exec. Order No. 21-1.⁸ That order recognized the growing consensus that “isolated confinement may be used only in exceptional cases and only as a last resort” and that “reducing the use of isolated confinement and eliminating prolonged isolated confinement can produce better outcomes for incarcerated people

⁸ <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-21-1.pdf> (last visited Dec. 14, 2023).

and the staff responsible for their supervision.” *Id.* It therefore mandated that “the Department of Correction shall make policy changes to limit the use of isolated confinement on members of vulnerable populations to the greatest extent possible” by Oct. 1, 2021. *Id.*

Connecticut is far from the only state enacting these reforms. Since 2009, legislators in forty-five states introduced 860 bills to restrict or end solitary confinement. See *Unlock the Box, Data Tracker*, *Unlock the Box Campaign.org* (2023).⁹ Some bills would regulate the use of isolation for all prisoners, while other legislation seeks to limit restrictive housing for subpopulations including individuals with serious mental illness. Judith Resnik et al., *Legislative Regulation of Isolation in Prison: 2018-2021*, U. Ala. Legal Stud. Rsch. Paper No. 3914942, at 10 (Aug. 20, 2021). Forty states have enacted at least one of these bills limiting the use of solitary confinement. *Unlock the Box, supra*. For example, Colorado forbids placing “an individual in restrictive housing, including for disciplinary reasons,” if the individual has been “diagnosed with a serious mental illness or is exhibiting grossly abnormal or irrational behaviors or breaks with reality” or has “self-reported a serious mental illness, suicidality, or is exhibiting self-harm.” Resnik et al., *supra*, at 19 (citing Colo. H.B. 21-1211 § 17-26-303(1) (June 24, 2021)).

And the rate of new legislation has increased. So far this year, thirteen states have enacted seventeen bills limiting solitary confinement. *Unlock the*

⁹ <https://unlocktheboxcampaign.org/data-tracker/> (last visited Dec. 14, 2023).

Box, *supra*. Just as the legislative trends on officer-inmate sexual conduct reflect the “deep moral indignation that has replaced what had been society’s passive acceptance of the problem of sexual abuse in prison,” *Crawford*, 796 F.3d at 260, the growing list of states limiting solitary confinement’s use and duration and the extensive literature on its dangers demonstrate that society has moved from passive acceptance to moral indignation, especially for prisoners with mental illness, *see, e.g.*, JA 261-62 (Liman Report).

c. This growing trend against solitary confinement has been recognized by a number of circuit courts, which have concluded that conditions of solitary confinement nearly identical to Goode’s at Northern and MWCI are incompatible with contemporary standards of decency. *See, e.g., Clark v. Coupe*, 55 F.4th 167, 180 (3d Cir. 2022) (holding that prisoner sufficiently alleged an Eighth Amendment conditions-of-confinement violation for being held in solitary confinement for seven months); *Porter v. Pa. Dep’t of Corr.*, 974 F.3d 431, 444 (3d Cir. 2020) (reversing grant of summary judgment and holding that prolonged solitary confinement violated contemporary standards of decency).

Indeed, the serious health consequences of solitary are recognized even when prisoners are subjected to solitary for only months, not years as Goode has been. The Seventh Circuit, for example, has noted the “serious psychological consequences of [administrative segregation’s] quasi-solitary imprisonment,” even for a period of less than six months. *Kervin v. Barnes*,

787 F.3d 833, 837 (7th Cir. 2015). In rejecting a six-month presumptive minimum before a due-process liberty interest arises, Judge Posner warned that “[j]udges who lean towards such a presumption may be unfamiliar with the nature of modern prison segregation and the psychological damage it can inflict.” *Id.*

The growing consensus described above flows from a recognition that solitary confinement poses severe mental-health risks for prisoners, especially when solitary confinement is imposed for years on end. Take the Fourth Circuit’s decision in *Porter v. Clarke*, 923 F.3d 348 (4th Cir. 2019). There, a prisoner was isolated “for years, [spending] between 23 and 24 hours a day alone, in a small cell with no access to congregate religious, educational, or social programing.” *Id.* at 357 (quotations omitted). The Fourth Circuit stressed that these conditions of social isolation posed “a substantial risk of serious psychological and emotional harm.” *Id.* at 364. In doing so, it referenced “the leading survey of the literature” regarding solitary confinement, which found that participants in every single published study of involuntary solitary confinement for longer than ten days displayed “negative psychological effects.” *Id.* at 356 (quoting Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinquency* 124, 132 (2003)).

The conditions described in *Porter*—years of social isolation, with “between 23 and 24 hours a day” spent alone in a small cell, and without access to congregate programming—is an exact description of Goode’s

conditions for many years. Yet, the district court here concluded that Goode “fail[ed] to point to any evidence to show a sufficiently serious deprivation of a life necessity ... that posed a substantial risk of serious harm to Goode’s health or safety.” JA 44 (Op.).

d. Others have recognized what the district court overlooked here. The risk of psychological damage, and the growing consensus that our society is no longer willing to tolerate that risk, has been detailed by multiple Supreme Court justices. Justice Kennedy has emphasized the “growing awareness in the broader public of the subject of corrections and of solitary confinement in particular.” *Davis v. Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring). He acknowledged that “in some instances *temporary*, solitary confinement” may be necessary, but concluded “research still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price.” *Id.* (emphasis added) (citing Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U.J.L. & Pol’y 325 (2006)).

Justice Breyer wrote of the “dehumanizing effect of solitary confinement,” noting that studies find “prolonged solitary confinement produces numerous deleterious harms,” including “anxiety, panic, rage, loss of control, paranoia, hallucinations, and self-mutilations.” *Glossip v. Gross*, 576 U.S. 863, 926 (2015) (Breyer, J., dissenting) (quoting Haney, *supra*, at 130). Justices Sotomayor, Jackson, and Kagan, too, have warned of the “clear constitutional problems raised by keeping prisoners ... in near-total isolation from the living world ... in what comes perilously close to a penal tomb.”

Apodaca v. Raemisch, 139 S. Ct. 5, 10 (2018) (Sotomayor, J., dissenting from denial of certiorari) (citation omitted); *see also Johnson v. Prentice*, 601 U.S. ___, 2023 WL 7475168 (2023) (Jackson, J., joined by Sotomayor & Kagan, JJ., dissenting from denial of certiorari).

e. For further input on contemporary standards of decency, courts also look to international law. The Supreme Court has “referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment’s prohibition of ‘cruel and unusual punishments.’” *Roper v. Simmons*, 543 U.S. 551, 575 (2005). Thus, in concluding that the Eighth Amendment prohibited capital punishment for juveniles, the Court cited Article 37 of the United Nations Convention on the Rights of the Child, which prohibits capital punishment for juveniles under eighteen. *Id.* at 576.

International law is similarly instructive here. The United Nations’ Mandela Rules describe solitary confinement as suitable for use “only in exceptional cases as a last resort, for as short a time as possible.” The United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 45 (Dec. 17, 2015). Those Rules prohibit “prolonged solitary confinement,” defined as “22 hours or more a day without meaningful human contact” for longer than “15 consecutive days.” United Nations Economic and Social Council Res. 2015/20, at 17 (July 21, 2015). “[A]nd the United Nations’ Special Rapporteur on Torture has called for a global ban on solitary

confinement longer than [fifteen] days.” *Glossip*, 576 U.S. at 926 (Breyer, J., dissenting).

* * *

In sum, the overwhelming evidence of the negative health effects of solitary confinement, along with the growing legislative, judicial, and international condemnation of the practice, demonstrate that our society considers prolonged solitary confinement, especially for prisoners with mental-health needs, inconsistent with contemporary standards of human decency. And as we next show in more detail, Goode’s years-long placement in solitary confinement violates the Eighth Amendment.

2. The conditions of Goode’s solitary confinement pose an objectively unreasonable risk to Goode’s current and future mental health.

a. The physical conditions of solitary confinement at Northern and MWCI, compounded by the duration of Goode’s confinement and his existing mental illness, pose an objectively unreasonable risk of lasting health problems.

As the Supreme Court has recognized for more than a century, social isolation imposes grave mental-harm risks, even for inmates *without* pre-existing mental-health conditions. *See In re Medley*, 134 U.S. 160, 168 (1890). In 1890, when assessing a prisoner in solitary confinement, the Court observed that even after a “short confinement,” some inmates “became violently insane; others still, committed suicide; while those who stood the

ordeal better were not generally reformed.” *Id.* And, if solitary confinement can induce mental illness in prisoners with no psychiatric history, those same conditions create a more dire, unreasonable risk for inmates like Goode who have extensive, pre-existing mental illness. That is, placing mentally ill prisoners in solitary confinement is the “plainly unreasonable” equivalent of “putting an asthmatic in a place with little air to breathe.” *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995) (citation omitted).

Goode has reported just the kind of psychological damage that concerned the Supreme Court in *In re Medley*. As Defendants’ neuropsychological expert acknowledged, since prison officials placed Goode in solitary confinement, Goode has exhibited symptoms of “suicide potential.” JA 449 (Edwards Eval.). Over two-and-a-half years ago, Goode explained that he “definitely had thoughts about it, killing myself. Thoughts popping up here or there.” *Id.* He has also displayed symptoms of paranoia. JA 449. When asked about changes in his symptoms, Goode responded that his pre-existing conditions have gotten worse during his solitary confinement. *See* JA 443.

And there is little that Goode can do from his cell to address his mental deterioration. Though he had an intercom button in his cell at Northern, when Goode “use[d] the intercom to ask for help” from the mental-health team, “they [didn’t] even pick up.” JA 322 (Saathoff Eval.). At MWCI, his cell intercom button doesn’t work. JA 407-08 ¶ 7 (Goode Decl.).

b. The district court erred in concluding that “Mr. Goode fail[ed] to point to any evidence to show a sufficiently serious deprivation of a life necessity or a human need or that posed a significant risk of serious harm to his health or safety.” JA 44 (Op.) (citations omitted). In discussing Goode’s prolonged solitary confinement, the district court never considered how solitary confinement exacerbated Goode’s mental illness and instead concluded that Goode could not “establish an Eight[h] Amendment violation based solely on the duration of his confinement in administrative segregation or solitary confinement.” JA 44 n.5.

The report by Defendants’ expert witness, Dr. Saathoff, does not change the brutal reality of the conditions of confinement in the DOC’s “administrative segregation.” Saathoff maintained that Goode “readily communicates with other inmates,” but he reached this conclusion after watching Goode use a toilet-paper tube to blow water from his sink drain, JA 326 (Saathoff Eval.), in an attempt to converse with other solitary-confinement prisoners, JA 87-88 (Goode Dep.). As was true in *Porter v. Clarke*, where defendants also argued that the “[p]laintiffs were not, as a matter of fact, held in ‘solitary’ confinement,” 923 F.3d at 358, and presented Saathoff’s evaluation that plaintiffs were not harmed by the challenged conditions, *id.* at 360, “scholarly articles regarding the consequences of prolonged solitary confinement ... bear directly on the risks attributable to the challenged conditions of confinement” at Northern and MWCI, *see id.* at 359.

Other courts, too, have recognized “the increasingly obvious reality that extended stays in solitary confinement can cause serious damage to mental health.” See *Palakovic v. Wetzel*, 854 F.3d 209, 226 (3d Cir. 2017). For these reasons, Pennsylvania prison officials violated the Eighth Amendment by repeatedly placing Palakovic, a mentally ill prisoner, in solitary confinement for thirty-day periods during his thirteen-month imprisonment. *Id.* at 216-17, 226. Palakovic spent between twenty-three and twenty-four hours per day in a small cell with minimal outside visibility and was permitted “just one hour of exercise five days out of each week, which took place in an outdoor cage only slightly larger than his cell.” *Id.* at 217. The court concluded that the “potentially dire consequences of lengthy exposure to the conditions of solitary confinement” posed a serious risk to Palakovic’s health given his mental illness. *Id.* at 226. It recognized “a growing consensus” that solitary confinement can cause severe damage, in part because of “the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation.” *Id.* at 225.

Similar to the restrictive, socially isolating conditions in *Palakovic*, from 2019 to 2021, Goode was confined to his cell alone for twenty-three hours on most days at Northern, was required to shower in shackles, was allowed only one hour of recreation per day for five days (weather permitting) and no recreation for two days each week, and could attempt to communicate with other inmates only through drains that were filled with septic waste. JA 412-13 ¶¶ 4-6, 9 (Goode Decl. re Northern). And, even more harrowing

than the conditions faced by the inmate in *Palakovic*, Goode has been in solitary for almost *five continuous years*, not for thirty-day periods over thirteen months.

The district court held that Goode's years of solitary confinement did not risk his current or future health without even mentioning Goode's mental illness, let alone how the inherent risks of Goode's conditions of confinement may be amplified by his mental illness. JA 42. But, as explained, Goode suffers from mental illness that solitary confinement is known to exacerbate. *See supra* at 11-12. Taking together Goode's pre-existing mental illness and the extreme physical and social restrictions of solitary confinement, the conditions of Goode's confinement directly threaten his current and future mental health.

For all these reasons, Defendants Mudano and Barone exposed Goode to an objectively unreasonable risk of serious harm in violation of the Eighth Amendment.

B. Defendants Mudano and Barone violated the Eighth Amendment because they were deliberately indifferent to the risks imposed on Goode by keeping him in solitary confinement.

A prisoner prevails on the subjective element of an Eighth Amendment claim by establishing that prison officials were deliberately indifferent to—that is, they were aware of and disregarded—a risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). “Whether a prison official had the

requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, ... and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.” *Id.* at 842. Prison officials disregard harmful conditions of confinement through “[a] conscious decision not to address a known risk.” *Vega v. Semple*, 963 F.3d 259, 277 (2d Cir. 2020). This conduct, like recklessness, is “more than negligence, but less than conduct undertaken for the very purpose of causing harm.” *Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir. 1994).

As we now explain, the evidence shows that Mudano and Barone knew of and disregarded the risk that the conditions of confinement posed to Goode’s current and future health.

1. Mudano was deliberately indifferent to Goode’s conditions of confinement.

As warden, Mudano toured the solitary-confinement units twice a week, JA 61 ¶ 67 (Defs.’ Statement of Material Facts), and she spoke with Goode on these tours, *see* JA 222 ¶ 13 (Mudano Decl.). Goode wrote to Mudano complaining about the “harsh” conditions: “near-constant banging, yelling, the application of out-of-cell restraints, restricted phone calls, restricted family visits, limited commissary ... in-cell restraints used regularly as a punishment, etc.” JA 402 (Inmate Request Form). Mudano hand-wrote in response that she would “not recommend your removal” from these conditions. *Id.* A reasonable jury could therefore conclude that she was

aware of his conditions of confinement. *See Walker v. Schult*, 717 F.3d 119, 129-30 (2d Cir. 2013) (finding that prison wardens knew of the risks of unconstitutional conditions of confinement when the prisoner communicated with the wardens about the conditions on four occasions); *see also Brock v. Wright*, 315 F.3d 158, 165-67 (2d Cir. 2003) (finding a prison doctor could be held liable where he signed the latest version of a prison policy that resulted in the unlawful actions underlying the inmate's Eighth Amendment claim).

The district court noted that "Defendants' own evidence show[s] that Wardens Barone and Mudano were familiar with Mr. Goode," and that they were also members of classification committees that met monthly to discuss the conditions of his confinement, including "whether any adjustments would be made, including to privileges and restrictions, based on the inmate's recent conduct, behavior, or needs." JA 38-39 (Op.). The court thus reasoned that Mudano "had knowledge" of the alleged unlawful conduct. *Id.*

Further, "the extensive scholarly literature describing and quantifying the adverse mental-health effects of prolonged solitary confinement that has emerged in recent years provides circumstantial evidence that the risk of such harm was so obvious that it had to have been known." *Porter v. Clarke*, 923 F.3d 348, 361 (4th Cir. 2019) (citation omitted). "Given [D]efendants' status as corrections professionals, it would defy logic to suggest that they were unaware of the potential harm" of prolonged solitary given the rise of

state legislation and international law limiting its use and the number of federal judges condemning solitary confinement. *See id.; supra* at 21-26.

Against this backdrop, Mudano demonstrated deliberate indifference by repeatedly failing to recommend Goode's removal from solitary. *See* JA 402 (Inmate Request Form). Even if Mudano believed Goode's conditions of confinement "might be tolerable for a few days," she must have realized over the course of months of reviews that the conditions had become "intolerably cruel for weeks or months." *See Hutto v. Finney*, 437 U.S. 678, 687 (1978). As one federal court has observed, "that prolonged isolation from social and environmental stimulation increases the risk of developing mental illness [is not] rocket science." *McClary v. Kelly*, 4 F. Supp. 2d 195, 208 (W.D.N.Y. 1998). Mudano served on the classification committee where the "conditions of confinement on AS were regularly reviewed and discussed" and which provided her access to Goode's "institutional records." *See* JA 62-63 ¶¶ 76, 80 (Defs.' Statement of Material Facts); JA 223-24 ¶¶ 21-22 (Mudano Decl.) (explaining that the committee could adjust an inmate's conditions of confinement). These facts indicate Mudano knew Goode had spent years in solitary confinement in harsh, inhumane conditions. *See supra* at 9-10.

In sum, "[b]ecause the record does not reveal any protective measures" taken by Mudano, "summary judgment was improper." *See Hayes v. New York City Dep't of Corr.*, 84 F.3d 614, 621 (2d Cir. 1996).

2. Barone was deliberately indifferent to Goode's conditions of confinement.

As warden at MWCI, Barone oversaw the conditions at a prison where Goode was held in solitary confinement. Her knowing disregard of these conditions and their effects on Goode violated the Eighth Amendment.

To begin, as with Mudano, the district court found Barone ““had knowledge of the facts that rendered the conduct’ complained of allegedly unlawful.” JA 38-49 (Op.) Like Mudano, Barone toured the solitary-confinement facility and spoke with Goode. JA 61 ¶ 67 (Defs.’ Statement of Material Facts); JA 109 (Goode Dep.) (noting that Goode and Barone “first met” and later “talked more”). As warden, Barone was aware (of course) of the challenged conditions of confinement at MWCI. *See supra* at 12-13. Goode wrote to Barone explaining the severity of the conditions and their effect on his health, yet she never responded. JA 110 (Goode Dep.). As with Mudano, Barone’s knowledge of these risks can be inferred from the recent state legislation and judicial acknowledgement of the dangers of solitary confinement. *See supra* at 21-26. Barone sat on MWCI’s review committee, and yet, month after month, JA 130 (Barone Decl.), she refused to recommend Goode’s removal from these conditions, JA 110 (Goode Dep.).

Further, while Barone was warden, Connecticut Governor Ned Lamont issued an executive order that prohibited keeping inmates in solitary confinement for more than fifteen consecutive days absent exceptional circumstances, recognizing the inherent risk associated with prolonged solitary confinement. *See supra* at 13. Despite this awareness of the risk posed

by Goode's solitary confinement, Barone failed to take reasonable measures to abate that risk, thus exhibiting deliberate indifference.

II. Defendants' deliberate indifference to Goode's medical needs violated the Eighth Amendment.

Barone, Mudano, and Reischerl all violated the Eighth Amendment by showing deliberate indifference to Goode's serious medical needs. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976). The medical care that prison officials must provide to prisoners under the Eighth Amendment includes mental-health care. *See Langley v. Coughlin*, 888 F.2d 252, 254 (2d Cir. 1989). As already explained, Goode suffers from grave mental illness, which was worsened by his solitary confinement. Each Defendant knew Goode was not receiving adequate mental-health care, yet each refused to recommend changes so Goode could get the psychiatric treatment he required. They instead allowed him to languish in solitary confinement.

The district court erred by concluding that Goode's access to the inmate-request system and occasional interactions with mental-health staff precluded a finding that Defendants were deliberately indifferent to his serious medical needs. *See* JA 43 (Op.). Instead, their failure to recommend appropriate care for Goode's mental health violated the Eighth Amendment.

A. Defendants deprived Goode of basic human needs by failing to provide adequate medical care.

An Eighth Amendment medical-needs claim requires two objective showings. *Salahuddin v. Goord*, 467 F.3d 263, 279 (2d Cir. 2006). First, the

prisoner must suffer from a serious medical condition. *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998). To determine whether a condition is sufficiently serious, courts consider “the existence of an injury that a reasonable doctor or patient would find important and worthy of comment or treatment; the presence of a medical condition that significantly affects an individual’s daily activities;” and “the existence of chronic and substantial pain.” *Id.* (citation omitted). The inquiry is “necessarily contextual and fact-specific,” so the medical condition must be considered in light of “the particular risk of harm faced by a prisoner due to the challenged deprivation of care.” *Smith v. Carpenter*, 316 F.3d 178, 185-86 (2d Cir. 2003) (citations omitted).

Second, a prisoner with a serious medical condition must show that he was deprived of adequate care. *Salahuddin*, 467 F.3d at 279. A deprivation of adequate care takes place when prison officials “fail[] to take reasonable measures” to protect prisoners, subjecting them to a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). This Court has thus reversed a grant of summary judgment “where there is an underlying dispute as to whether legitimate medical claims were deliberately disregarded” for invalid reasons. *Harrison v. Barkley*, 219 F.3d 132, 138 (2d Cir. 2000) (citation omitted); *see also Palakovic v. Wetzel*, 854 F.3d 209, 228 (3d Cir. 2017) (holding that prison officials may not “deny reasonable requests for medical treatment” when doing so “exposes the inmate to undue suffering or the threat of tangible residual injury”) (citation omitted).

1. Goode's serious medical needs. Goode has been diagnosed with several serious mental-health problems, including intermittent explosive disorder, antisocial personality disorder, and hypersensitivity to noise. *See* JA 239, 243 (Reischerl Eval.). Reischerl also documented Goode's severe anxiety and depression. JA 239. These findings were confirmed by Dr. Kimberly Edwards, one of the experts Defendants retained "for an independent evaluation as part of [Goode's] legal suit." *See* JA 437, 439, 449 (Edwards Eval.). Dr. Edwards' evaluation found that Goode's psychological profile suggested "traumatic stress, anxiety, depressive symptoms, and affective instability," as well as a "strong risk of violence" and "suicide potential." JA 449.

A condition is sufficiently serious if a reasonable doctor would find it worthy of comment. *See Chance*, 143 F.3d at 702. Here, Reischerl commented on Goode's mental-health conditions, as did Defendants' own expert. Moreover, these disorders cause Goode significant emotional pain and impede his daily life. Goode has a hypersensitivity to noise that is triggered by the "banging and screaming of inmates." JA 535 ¶ 27 (Goode Aff.). His conditions have caused feelings of hopelessness and suicidal ideation, JA 444 (Edwards Eval.), as well as depression, loss of appetite, and aggressive fantasies, JA 239 (Reischerl Eval.).

Courts have found that the mental-health conditions Goode suffers from are serious. In *Tuttle v. Semple*, 2018 WL 2088010, at *2 (D. Conn. 2018), the court found intermittent explosive disorder and antisocial personality

disorder serious enough to state a claim for deliberate indifference to medical needs. *See also Young v. Choinski*, 15 F. Supp. 3d 172, 184 (D. Conn. 2014) (same with respect to antisocial personality disorder). Goode's depression and anxiety are (of course) also serious medical conditions. *See Zimmerman v. Burge*, 2009 WL 3111429, at *8 (N.D.N.Y. 2009) (collecting cases).

2. Deprivation of medical care. Mudano, Barone, and Reischerl deprived Goode of adequate medical care because they failed to take reasonable measures in response to his mental-health needs. Defendants allowed Goode to suffer in solitary—and, in fact, repeatedly refused to recommend his removal from solitary—without providing him adequate treatment. Predictably, the result has been unremitting psychological damage, a vicious cycle that further solitary confinement reinforces and exacerbates.

In solitary, Goode does not receive regular review by mental-health professionals. JA 457 ¶ 43 (Pl.'s Statement of Material Facts); *see also* JA 322 (Saathoff Eval.) (“The mental health team blows me off ... If I use the intercom to ask for help, they don't even pick up the intercom.”). Dr. Edwards described Goode's situation as “situational stress and emotional distress” with “few internal resources and little to no social support.” JA 451 (Edwards Eval.). Goode's anxiety and hypersensitivity make him especially susceptible to these stressful conditions, which trigger aggressive and impulsive responses beyond his control. *See* JA 239 (Reischerl Eval.). “Failing to take reasonable measures in response to a medical condition can lead to

liability.” *Salahuddin*, 467 F.3d at 280 (citation omitted). Here, Defendants failed to take reasonable measures in response to Goode’s mental-health conditions by leaving him in solitary for years.

The dangers of solitary confinement to mental health are well-established. *See supra* at 20-27. Connecticut state law, which provides that mentally ill prisoners may be transferred to psychiatric hospitals upon a physician’s recommendation, “strongly suggests a legislative expectation that inmates with psychiatric disabilities would be better served in a hospital for psychiatric disabilities, rather than a correctional institution.” *Wiseman v. Armstrong*, 269 Conn. 802, 821 (Conn. 2004).

Certainly, correctional institutions have not served Goode well. As he struggled in solitary confinement, he felt his psychological condition worsening and told Defendants as much to no avail. *See* JA 111-14 (Goode Dep.). Unable to withstand his stressful environment, he has responded by acting impulsively (consistent with his diagnosed conditions) and is in turn punished by Defendants with more solitary confinement. *See* JA 457 ¶¶ 47-48 (Pl.’s Statement of Material Facts). As Goode said at the hearing concerning his initial placement in solitary confinement, “AS isn’t going to do anything for me. It’s only going to make me more aggressive. I’ve been on AS before and the same thing happened. I just get worse.” JA 216 (Goode Status Report).

What Goode poignantly describes is the very feedback loop of mental illness and punishment meant to be addressed by a settlement the DOC

entered in 2004 regarding the conditions of confinement for mentally ill prisoners, which “was designed to ensure that Connecticut inmates received needed mental health treatment rather than punishment for exhibiting symptoms of mental health impairments.” *Charles v. Saundry*, 2008 WL 11411166, at *12 (D. Conn. June 11, 2008). For Goode, the problem persists.

The district court held that Goode’s medical needs had been adequately treated by periodic interactions with mental-health staff and access to the inmate-request system, concluding that Goode’s mere “access” and “opportunity” to speak with mental-health staff supported summary judgment. JA 43 (Op.). In reaching this conclusion, the court acknowledged that “Goode disputes the frequency of mental health and medical staff visits to his unit,” *id.*, but it did not discuss Goode’s complaints that his inability to progress out of solitary came from “me not getting my mental health treatment” as “I keep asking for mental health treatment and none of these prisons are helping me,” JA 216 (Goode Status Report). In allowing Defendants to escape liability based on the minimal mental-health care available to Goode, the district court understates Defendants’ Eighth Amendment obligations.

The minimal care Goode has received is insufficient given the threat that solitary confinement poses to someone who is mentally ill. *See Tuttle*, 2018 WL 2088010 at *7 (holding that a prisoner stated a claim for deliberate indifference to mental-health needs despite receiving sporadic access to mental-health care in solitary confinement). Courts confronting the solitary

confinement of mentally ill inmates have concluded that prisoners have stated an Eighth Amendment claim even though they had access to mental-health practitioners, reasoning that solitary confinement poses a substantial risk of psychological harm despite “visits from or access to corrections officials and health professionals.” *Porter v. Clarke*, 923 F.3d 348, 360 (4th Cir. 2019); *see also Palakovic v. Wetzel*, 854 F.3d 209, 227 (3d Cir. 2017) (“The acknowledgement that [the plaintiff] received some mental healthcare during his incarceration” does not “preclude[] this claim.”).

B. Defendants were deliberately indifferent to Goode’s serious medical needs.

Defendants have “actual knowledge of the [substantial] risk” of serious harm when evidence 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.” *Farmer v. Brennan*, 511 U.S. 825, 842-43 (1994) (citation omitted). Mudano, Barone, and Reischerl were deliberately indifferent to Goode’s serious medical needs because they were aware of the risks to Goode’s health and disregarded them by failing to provide Goode with appropriate medical care. *See Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976).

1. Mudano was deliberately indifferent to Goode’s serious medical needs.

Warden Mudano was deliberately indifferent to Goode’s medical needs. She knew that solitary confinement posed a substantial risk of serious harm

to Goode's health and disregarded that risk by failing to recommend appropriate care.

The record provides ample evidence that Mudano was aware that solitary confinement provided inadequate medical care for a mentally ill inmate. This evidence includes prison policies, JA 469 (UConn Health Policy), the records viewed by Mudano as a member of Northern's classification committee, JA 62-63 ¶¶ 72-80 (Defs.' Statement of Material Facts), and Goode's written communication to Mudano, JA 402 (Inmate Request Form).

Courts have recognized that prison policies can constitute evidence of the awareness of prison wardens. For example, in *Porter v. Clarke*, 923 F.3d 348 (4th Cir. 2019), the Fourth Circuit recognized that internal prison procedures cabining solitary confinement to thirty consecutive days "constitute[d] un rebutted evidence" that the prison warden and director were aware "that extended stays in segregation can have harmful emotional and psychological effects." *Id.* at 361 (citation omitted). Similarly, here, a reasonable jury could conclude that Mudano was aware of the risk that solitary posed to Goode's health based on DOC's policy discouraging placing a mentally ill inmate in solitary confinement. *See* JA 469 (UConn Health Policy); *see also Reynolds v. Arnone*, 402 F. Supp. 3d 3, 21 (D. Conn. 2019) ("The Defendants' knowledge of the health risks of solitary confinement is apparent through DOC's own policies [limiting solitary confinement for prisoners with mental health needs].").

Yet, despite this awareness, Mudano failed to recommend Goode's removal from solitary to circumstances where he would receive the medical attention Mudano knew he needed. JA 112-13 (Goode Dep.). The record reflects that Mudano was aware of other facilities where Goode could receive better treatment for his mental illness. It appears that at one point she considered recommending his transfer to Garner, a DOC facility with mental-health treatment services, *see supra* at 9-10, but there was no bed space at the time. JA 225 ¶ 34 (Mudano Decl.). Goode later communicated that he might become aggressive if transferred to Garner, JA 225-26 ¶ 35, which is a common feature of intermittent explosive disorder, JA 472 (DSM-IV). Mudano claims that she deferred to the expertise of mental-health experts, JA 226 ¶¶ 36-37 (Mudano Decl.). But rather than asking these experts how Goode might receive medical care to address those needs or recommending that he be transferred to Garner when space opened up, she sent him back to phase one of solitary, where she knew he had no chance of receiving adequate care. JA 225-26 ¶ 35.

In sum, the evidence of Mudano's deliberate indifference to Goode's serious medical needs survives summary judgment.

2. Barone was deliberately indifferent to Goode's serious medical needs.

Despite her knowledge of the risks posed by Goode's serious medical needs, Warden Barone acted with deliberate indifference by failing to recommend appropriate care for Goode.

As with Mudano, a jury could reasonably infer that Barone was aware of Goode's mental-health needs due to her position on the review committee coupled with the policy indicating that solitary confinement poses substantial risks to mentally ill inmates. *See* JA 130-31 ¶¶ 19-24 (Barone Decl.); JA 469 (UConn Health Policy).

Moreover, Barone has acknowledged that inmates in phase three of the solitary program would be housed at Garner, JA 128 ¶ 11 (Barone Decl.), so she was in fact aware that progressing Goode to phase three would enable him to get more intensive treatment for his mental illness. Though Barone maintains that no mental-health staff raised concerns that Goode was at substantial risk of harm, JA 134 ¶ 35, a jury could find that Barone was herself aware of this risk given the DOC policy on the risk of solitary confinement to mentally ill inmates, JA 469 (UConn Health Policy), her position on the review committee, JA 130 ¶ 139 (Barone Decl.), and her access to Goode's institutional records, JA 131 ¶ 23, which would have contained documentation of Goode's ongoing mental illness. Despite being aware of these risks, Barone disregarded them and allowed Goode to remain in solitary confinement in violation of the Eighth Amendment.

3. Reischerl was deliberately indifferent to Goode's serious medical needs.

a. Reischerl was personally involved. The district court erred in finding that Reischerl was not personally involved in violating Goode's Eighth Amendment rights. A prison official can be personally involved, and thus

liable, under 42 U.S.C. § 1983 when an inmate alleges that the official participated in the denial of the inmate's medical treatment. *See McKenna v. Wright*, 386 F.3d 432, 437 (2d Cir. 2004). Personal involvement can be direct—"personal participation by one who has knowledge of the facts that rendered the conduct illegal"—or indirect—"ordering or helping others to do the unlawful acts." *Provost v. City of Newburgh*, 262 F.3d 146, 155 (2d Cir. 2001). Here, the district court erred in failing to consider how Reischerl indirectly contributed to the prison's inadequate treatment of Goode's serious mental-health needs. In the district court's view, the evidence did not show that Reischerl had the "ability to communicate" with the classification committee to have Goode's conditions of confinement adjusted. JA 39 (Op.).

In fact, however, the record shows that Reischerl was able to communicate to the appropriate prison officials about Goode's medical needs, even if she could not directly adjust his conditions herself. Reischerl treated Goode and provided documentation to that effect to the prison review committees, *see* JA 238-57 (Reischerl Eval.), and DOC's policy specifically provided that a psychiatric Advanced Practicing Registered Nurse (APRN) like Reischerl had the authority to "determine any clinical contraindications" for placement in solitary confinement, JA 469 (UConn Health Policy). Reischerl listed Goode's mental-health classification as MH3, JA 239 (Reischerl Eval.), instead of a higher classification that would have entitled Goode to additional treatment, JA 417 (UConn Health Policy). MH3

was only appropriate for “severe mental disorder[s]” if the disorder was “under good control.” *Id.*

Further, Reischerl acknowledged that if she had observed psychotic symptoms, she “would have, at a minimum, notified the facility psychologist and/or psychiatrist, as well as the appropriate custody staff.” JA 236 ¶ 19 (Reischerl Decl.). In sum, Reischerl treated Goode on several occasions for his documented mental illness and provided his mental-health score; she was aware of the DOC policy vesting psychiatric APRNs like herself with the authority to communicate with prison officials about inmate conditions of confinement; and she admitted she *would* communicate to prison officials if certain circumstances arose. *See* JA 231-37. She was thus in a position to communicate with the appropriate prison staff about the risk Goode’s conditions of confinement posed to his health, and she chose not to.

Clark v. Quiros, 2023 WL 6050160, at *23 (D. Conn. Sept. 15, 2023), is instructive on the liability of prison nurses such as Reischerl. The court held there that an APRN and a licensed clinical social worker failed to adequately treat an inmate suffering from gender dysphoria when they documented the plaintiff’s condition on several occasions but did not refer her to a medical professional capable of treating her. *Id.* The court rejected the defendants’ position that “they did not have the ability to affect [the inmate]’s treatment,” observing that although they were “not qualified to treat someone” with the inmate’s condition, “they failed to refer her to someone capable of providing her care.” *Id.* Like the medical professionals in *Clark*

who “knew of the extent of Ms. Clark’s care, ... knew the treatment she was receiving was ineffective, [yet] declined to do anything more to attempt to improve her situation,” *id.*, Reischerl was aware of Goode’s medical needs yet did not communicate those risks to the appropriate prison officials capable of adjusting his confinement, *see* JA 232-36 (Reischerl Decl.).

For these reasons, Reischerl was personally involved and can be held liable on Goode’s Eighth Amendment medical-needs claim.

b. Reischerl was deliberately indifferent. Reischerl’s own records and the prison’s policy regarding solitary confinement of inmates with mental illness indicate that Reischerl knew of and disregarded the risk that the conditions of confinement posed to Goode’s serious medical conditions. *See Brock v. Wright*, 315 F.3d 158, 165-66 (2d Cir. 2003) (holding that a prison doctor could be liable “where unconstitutional acts are the *result*” of a policy defendant promulgated). Reischerl documented Goode’s mental-health conditions and saw firsthand how these conditions were exacerbated by solitary confinement. *See* JA 238-57 (Reischerl Eval.). During these evaluations, Reischerl noted that Goode suffered from extreme anxiety, hypersensitivity to noise, intermittent explosive disorder, and antisocial personality disorder, among other physical and mental conditions. *See* JA 239, 248.

DOC policy recognizes the inherent risk solitary confinement poses to inmates like Goode who suffer from mental illness. When Goode sought mental-health treatment from Reischerl, she was the DOC’s regional mental-

health administrator. JA 232 ¶ 3 (Reischerl Decl.). In this role she should have been familiar with the DOC's own policies, including its policy on transferring and caring for inmates in solitary confinement. *See* JA 469 (UConn Health Policy).

To sum up: Reischerl acted with deliberate indifference to Goode's serious medical needs by evaluating him on multiple occasions yet failing to recommend appropriate treatment. *See Hathaway v. Coughlin*, 37 F.3d 63, 68 (2d Cir. 1994) ("A jury could infer deliberate indifference from the fact that [the doctor] knew the extent of [inmate's] pain, knew that the course of treatment was largely ineffective, and declined to do anything more."). Put another way, Reischerl did nothing to prevent further risk to Goode's health, disregarding Goode's well-being in violation of the Eighth Amendment.

CONCLUSION

This Court should reverse the district court's grant of summary judgment and remand for trial on each of Goode's Eighth Amendment claims.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with Federal Rule of Appellate Procedure 32(g)'s type-volume limitations. In compliance with Rule 32(a)(7)(B) and Local Rule 32.1(a)(4), it contains 11,408 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f).

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I certify that, on December 15, 2023, this brief was filed via CM/ECF. All participants in the case are registered CM/ECF users and will be served electronically via that system with the public copy of this brief. Six paper copies of this brief will also be filed with the Clerk of this Court.

/s/ Regina Wang

Regina Wang

ADDENDUM

| Document | Joint Appendix Pages | Abbreviation in Brief |
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| Plaintiff's Local Rule 56(a) Statement | JA333 to JA350 | Pl. L.R. 56(a) Statement |

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| Jason Goode Inmate Request Form to Warden Mudano | JA402 | Inmate Request Form |
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