No. 23-7521

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

Jason Goode,

Plaintiff–Appellant,

v.

Rollin Cook, Scott Semple, William Murphy, Ellen Durko, Kristine Barone, Giuliana Mudano, Angel Quiros, David Maiga, Andrea Reischerl,

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

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INTRODUCTION

Jason Goode, a mentally ill prisoner, suffered for five continuous years in solitary confinement. Because he received grossly inadequate mental-health care in solitary, Goode was charged with numerous disciplinary infractions, which, in turn, prolonged his stay there. The resulting discipline also stripped Goode of over seven years of good-time credits, among other punishments. Defendants Giuliano Mudano and Kristine Barone—the wardens who served on the committees that recommended Goode's continued solitary confinement—were personally aware of and disregarded the risks posed by the conditions of Goode's confinement. And despite treating Goode on numerous occasions, Defendant Andrea Reischerl, a psychiatric nurse, did not alert anyone to the risk solitary confinement posed to his mental health.

Defendants contest these facts, and many others, by pointing to various disputed facts in the record that they maintain tell a different story. Their side of the story is wrong, but more importantly, it can only be salient if this Court were to resolve genuine factual disputes in their favor. That's not permissible at summary judgment, where Goode must show only that these disputes exist. Defendants' view of things highlights only that a jury has work to do.

ARGUMENT

I. Defendants are not entitled to summary judgment because a jury could find that they were deliberately indifferent to Goode's conditions of confinement in violation of the Eighth Amendment.

An Eighth Amendment challenge to conditions of confinement involves proving both objective harm and the defendant's subjective knowledge. *See* Opening Br. 17-18. The objective-harm analysis is conducted through the lens of contemporary standards of decency. *Crawford v. Cuomo*, 796 F.3d 252, 256 (2d Cir. 2015); *see* Opening Br. 18. Then, after proving objective harm, a prisoner must show the defendant's subjective awareness of a substantial risk of harm. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Goode has shown a genuine dispute of material fact on both prongs.

A. Defendants harmed Goode's current health and risked his future health, violating contemporary standards of decency.

The evidence shows that Goode's conditions of confinement harmed his health *and* risked his future health. *See* Opening Br. 28, 30-31. Proving either satisfies the objective prong. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993).

1. A reasonable jury could conclude that Goode's conditions of confinement harmed his health.

The record is brimming with facts establishing that Goode's conditions of confinement harmed his health. Opening Br. 28; JA 443-44, 449-50. Defendants dispute these facts, Resp. Br. 27-30, but at summary judgment, that's not enough, *see Proctor v. LeClaire*, 846 F.3d 597, 607-08 (2d Cir. 2017). The evidence includes Goode's "extreme anxiety," JA 239; his

unacknowledged complaints about the impact of solitary on his mental health, JA 531; his fears that his untreated mental illness would lead him to act on his violent impulses, JA 239; *see also* 97, 102; his actual uncontrollable impulsive actions, JA 239, triggered by the "near constant banging and screaming of inmates," JA 535 ¶ 27; and the duration of his years-long confinement, JA 31-32.[1]

Goode also accrued many disciplinary actions, JA 172-207, which "suggests a deterioration" in his mental health, *Paykina ex rel. E.L. v. Lewin*, 387 F. Supp. 3d 225, 241 (N.D.N.Y. 2019). Moreover, Goode's placement in these conditions was discouraged by the prison's own policy, JA 469; Opening Br. 6, presumably in recognition of the harmful effects of solitary confinement on mentally ill prisoners. Defendants dispute causation and the severity of Goode's mental-health issues, Resp. Br. 29-30, but these factual disagreements must be resolved by a jury, *see Proctor*, 846 F.3d at 607-08.

Though these factual disputes alone are enough to defeat summary judgment, Goode also engaged an expert witness: Dr. Hillbrand, a clinical psychologist who links Goode's conditions of confinement to his violent outbursts and recommends his removal to an environment better suited to

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[1] As noted in our opening brief (at 5 n.4), Goode has actually been in solitary confinement since 2016, but this lawsuit concerns only the five years he spent in solitary since January 8, 2019.

treating his conditions. ECF 46 at 2; ECF 46-2 at 1, 8.[2] Our opening brief (at 4) cited Hillbrand's evaluation, and we now more prominently highlight his role as an expert in response to Defendants' accusation that Goode failed to provide "expert" evidence, *e.g.*, Resp. Br. 18.

Defendants argued below that Hillbrand's report was inadmissible at summary judgment because he was never disclosed as an expert witness. ECF 153 at 7. But Hillbrand was disclosed. ECF 46 at 2; ECF 47. Hillbrand was not required to produce an expert report under Rule 26(a)(2)(B) because he is a "treating physician," relying on only his own observations to come to his conclusions. *Barack v. Am. Honda Motor Co.*, 293 F.R.D. 106, 109 (D. Conn. 2013); ECF 46-2 at 8-9 (providing a recommended treatment plan for Goode without reliance on external reports). And even if he was required to file an expert report, he did so with only a few harmless omissions. ECF 46-1; *see David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7th Cir. 2003). Though Hillbrand's report did not contain a complete list of his written works or compensation, there was minimal if any surprise to Defendants because they had already seen his written report, which was attached to Goode's complaint. ECF 1-3; *see David*, 324 F.3d at 857. The Rule 26(a) omissions are also harmless given that Defendants can cross-examine Hillbrand at trial, there is no likelihood of disruption at trial, and the information was not willfully omitted from the report. *See David*, 324 F.3d at 857.

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[2] Unless otherwise noted, all ECF citations refer to filings in the district court, No. 20-00210 (D. Conn.).

2. A reasonable jury could conclude that Goode's conditions of confinement risked his future health.

a. Because "a remedy for unsafe conditions need not await a tragic event," *Helling*, 509 U.S. at 34, Goode also prevails under the objective prong because his conditions put him at *substantial risk* of harm, *see id.* at 36; Opening Br. 5-8, 23-25. At least until Connecticut Governor Lamont's 2021 executive order, Goode spent between twenty-three and twenty-four hours a day alone in a small cell, JA 412, 513, without access to congregate programming, *see* JA 339 ¶ 55. He endured these conditions for years. JA 31-32. These are the same conditions other courts have found sufficient to defeat summary judgment. *See* Opening Br. 24-25; *Porter v. Clarke*, 923 F.3d 348, 357, 364 (4th Cir. 2019); *see also Reynolds v. Quiros*, 990 F.3d 286, 294 (2d Cir. 2021).

Defendants broadly assert that we cannot rely on the underlying facts of cases that "examine conditions of confinement in other jurisdictions and their impact on different prisoners not before this Court." Resp. Br. 31. That's wrong. Courts routinely analogize between the facts of the case before them and the facts of other conditions-of-confinement cases without an expert witness directly linking the two. *See, e.g.*, *Willey v. Kirkpatrick*, 801 F.3d 51, 66-69 (2d Cir. 2015); *Reynolds v. Arnone* (*Reynolds I*), 402 F. Supp. 3d 3, 18-19 (D. Conn. 2019), *rev'd on other grounds sub nom. Reynolds v. Quiros*, 990 F.3d at 302. Reliance on factually similar cases is not "inadmissible hearsay," Resp. Br. 31; it is analogical reasoning, legal analysis's basic building block.

"[A] scientific and statistical inquiry into the seriousness of the potential harm" is also important to the Eighth Amendment analysis. *Helling*, 509 U.S. at 36; *see Porter v. Clarke*, 923 F.3d at 361. Goode cited studies on the brutal effects of conditions like his. JA 467, 496-98; Opening Br. 24-25. Defendants reply that studies have no place in the risk-of-harm inquiry. Resp. Br. 31-33. That's also wrong. Courts often refer to studies in their risk-of-harm analyses. *See, e.g.*, *Porter v. Clarke*, 923 F.3d at 361; *Porter v. Pa. Dep't of Corr.*, 974 F.3d 431, 441-42, 446 (3d Cir. 2020); *A.T. ex rel. Tillman v. Harder*, 298 F. Supp. 3d 391, 414-15 (N.D.N.Y. 2018).

Defendants also mischaracterize our reliance on *Porter v. Clarke* and *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), mistaking the sufficient for the necessary. *See* Resp. Br. 31-33. That the plaintiffs in *Porter* and *Madrid* made particularly strong evidentiary showings does not elevate the burden of proof at summary judgment for all future plaintiffs. True, *Porter* distinguished *Mickle v. Moore*, 174 F.3d 464 (4th Cir. 1999), as a case where plaintiffs failed to introduce any "expert reports or analyses." *Porter v. Clarke*, 923 F.3d at 358-59; *see* Resp. Br. 33-34. But the summary-judgment record here includes that analysis through a compilation of research on solitary confinement. JA 496-98. And, again, though Dr. Hillbrand's report is not necessary for Goode to prevail at summary judgment, its existence further distinguishes this case from *Mickle* because an expert has linked Goode's mental-health conditions to his disciplinary record and related solitary confinement. ECF 46-2 at 8.

b. Defendants' reliance on Dr. Saathoff—to argue both no harm and no risk of harm—is misplaced. *See* Resp. Br. 28-29. Many of the purported facts relied on by Saathoff are disputed. Saathoff found that Goode "readily communicates" with other prisoners. JA 271 ¶ 17. The record disputes, if not outright refutes, that conclusion, Opening Br. 6-7, because Saathoff based it on Goode's occasional ability to "communicate" by yelling through cell drains and vents, JA 326. *Reynolds I* already rejected Saathoff's claim that prisoners can communicate effectively via vents at Northern. 402 F. Supp. 3d at 18-20. Other disputed facts include the availability of outdoor recreation, *compare* Resp. Br. 29, *with* Opening Br. 7-8; the premeditated nature of Goode's assault on a corrections officer, JA 311; his supposedly antisocial nature, *compare* JA 307, *and* JA 313, *with* JA 415 ¶ 10, *and* ECF 1-3 at 7; and his ability to interact with prison officials, *compare* JA 413 ¶ 8, *and* ECF 132 at 33, *with* JA 328, *and* 129 ¶¶ 12-14.

Saathoff's assertions about Goode's conditions are also misleading because they gloss over the punishments Goode faced given his mental-health conditions. From January 2019 to June 2022, Goode received at least 555 days of punitive solitary confinement, and he lost 135 days of social correspondence, 855 days of social visits, 615 days of phone privileges, 630 days of communal privileges, and 2,685 days of good-time credits. JA 172-207. This vicious cycle of discipline—and not, as Saathoff claimed, his "strong financial incentive" to remain in solitary confinement, JA 331—has

kept Goode in solitary, ECF 46-2 at 8. Or, at least, a reasonable jury could so find.

Note, too, that when Saathoff previously sought to testify that the conditions at Northern—the same conditions Goode experienced—did not qualify as solitary confinement, the court in *Reynolds v. Arnone* (*Reynolds II*), 645 F. Supp. 3d 17, 22 (D. Conn. 2022), excluded it. That's the same testimony he offers here, and it remains "insufficiently reliable and irrelevant" because what qualifies as solitary confinement is "not a medical question." *Id*. (citation omitted). Another court found that Saathoff's similar testimony failed to "preclude a determination that the undisputed evidence established that Plaintiffs faced a 'substantial risk' of serious harm from their conditions of confinement." *Porter v. Clarke*, 923 F.3d at 360. In that case, Saathoff asserted that the prisoners' current health had not been harmed, but he failed to consider the research provided by the prisoners on the risks of future harm. *Id.* at 360-61. So too here. JA 304-07.

Defendants similarly assert that Goode's lay opinions cannot overcome Saathoff's medical opinion, Resp. Br. 13 n.5, but Goode does not rely on only his own opinions. Instead, he points to many record facts, some uncontested, detailing his experiences in solitary. *E.g.*, *supra* at 2-3; Opening Br. 28. And, besides, whether to believe an expert's testimony is within the factfinder's discretion. *Woodling v. Garrett Corp*., 813 F.2d 543, 558-59 (2d Cir. 1987). Therefore, a party seeking summary judgment by "relying upon expert testimony," as Defendants do here, "generally will be unable to obtain

summary judgment even in the absence of an opposing expert." *Brown v. County of Nassau*, 736 F. Supp. 2d 602, 620 (E.D.N.Y. 2010).

Expert witness testimony, unopposed by the other party's expert witness, is dispositive only when "the only issue is one of the kind on which expert testimony *must* be presented." *Brown*, 736 F. Supp. 2d at 621 n.7 (emphasis added) (quoting 10B Charles Alan Wright et al., *Federal Practice & Procedure* § 2738 (3d ed.)). None of the issues here demand expert testimony. An expert is required "only when a necessary element of the claim would not be obvious to the lay juror," and those situations are "rare." *Ojeda v. Metro. Transp. Auth.*, 41 F.4th 56, 70 (2d Cir. 2022) (citations omitted). Here, the negative impact of solitary on prisoners who are mentally ill is "increasingly obvious," *Palakovic v. Wetzel*, 854 F.3d 209, 226 (3d Cir. 2017), so a jury is capable of weighing Saathoff's opinions against Goode's facts.

Regardless, as indicated, Goode has an expert: Dr. Hillbrand. Hillbrand's report—while not necessary for Goode to overcome summary judgment—contradicts Defendants' assertion that Goode is relying on only his own lay opinion, Resp. Br. 13 n.5. Hillbrand's report details Goode's mental-health conditions and links his recurrent disciplinary violations to those illnesses. ECF 46-2 at 8. And to the extent Defendants seek to penalize Goode for failure to properly disclose Hillbrand, *see supra* at 4, Dr. Saathoff's disclosure is also flawed. Saathoff failed to disclose multiple cases in which he testified during the past four years, in violation of Rule 26(a)(2)(B)(v). *Compare* Declaration of Gregory B. Saathoff at 5, *Reynolds v. Arnone*, No. 13-1465, ECF

117-10 (disclosing multiple cases in which Saathoff testified), *and* ECF 42-4, *with* 126-17 (failing to disclose these cases). The Court should not view Hillbrand's report as inadmissible and Saathoff's report as admissible when neither strictly meets Rule 26's requirements.

3. These past harms and risks of future harms violate contemporary standards of decency.

Solitary confinement of a mentally ill prisoner for five years offends contemporary standards of decency. Relevant factors for assessing contemporary standards include the direction of domestic legislative change and consensus in the world community. *See Atkins v. Virginia*, 536 U.S. 304, 315, 316 & n.21 (2002). Both favor Goode, as does recent caselaw.

As to legislative change, true, the contemporary-standards inquiry "is not a popularity contest." Resp. Br. 26. It is "not so much the number of [] States that is significant, but the consistency of the direction of change." *Atkins*, 536 U.S. at 315. Applying this principle, *Atkins* found consensus when all eighteen states to enact relevant legislation on the death penalty had banned it. *Id.* at 315-16, 321-22. Here, since 2009, fifteen states have enacted legislation limiting the use of solitary against prisoners who are mentally ill or otherwise capping the duration of their solitary confinement.[3] *None* have

[3] Colo. Rev. Stat. § 17-26-303 (effective July 1, 2023); 2022 Conn. Legis. Serv. P.A. 22-18 (S.B. 459) (amending Conn. Gen Stat. § 18-96b); Mass. Gen. Laws Ch. 69, Sec. 39A (effective Apr. 13, 2018); 2019 Mich. Pub. Acts 64 (effective Sept. 30, 2019); Minn. Stat. § 243.521 (effective Aug. 1, 2019); Mont. Code Ann. § 53-30-701 (effective Jan. 1, 2020); Neb. Rev. Stat. § 83-173.03

expanded it.[4]

Defendants suggest that the introduction of legislation without passage indicates lack of consensus. Resp. Br. 37. But legislation need not be signed into law to show consensus. *See Atkins*, 536 U.S. at 316 (citing two bills that passed only one house of a state legislature as evidence of consensus). Here, two states passed legislation limiting solitary confinement for those suffering from mental illness through one chamber, providing further evidence of consensus.[5]

Next, our opening brief (at 26-27) establishes international law disfavors solitary confinement. Defendants do not respond. *See* Resp. Br. 34-39.

On top of international law and domestic legislation, recent caselaw has trended toward categorical rejection of prolonged solitary confinement. In

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(effective March 1, 2020); Nev. Rev. Stat. §§ 209.368, .3683, .3685 (effective Jan. 1, 2024); N.J. Stat. Ann. §§ 30:4-82.5 to .11 (effective Aug. 1, 2020); N.M. Stat. Ann. § 33-16-4 (effective July 1, 2020); 2021 Sess. Law News of N.Y. Ch. 93 (A. 2277-A) (amending N.Y. Correct. Law § 137); Tex. Gov't Code Ann. § 501.068 (Tex., effective Sept. 1, 2015); 2009 Vermont Laws No. 26 (S. 2) (amending Vt. Stat. Ann. tit. 28, § 701a); Va. Code Ann. § 53.1-39.2 (effective July 1, 2023); Wash. Rev. Code Ann. § 70.395.060 (effective May 11, 2023).

[4] *Unlock the Box* mistakenly identifies two bills as "Expands Solitary": H.B. 2041, 56 Leg. 1 Reg. Sess. (Ariz. May 1, 2023) and S.B. 12, 2023 Leg. 1 Spec. Sess. (Okla. June 2, 2023). https://public.tableau.com/shared/XPP9ZDZKC?:display_count=y&:origin=viz_share_link&:embed=y (last visited Apr. 25, 2024). H.B. 2041 relates to voluntary mental-health evaluations outside the prison context, and S.B. 12 establishes a fund to support transportation of people who may suffer from mental illness.

[5] H.R. 781, 2019 Gen. Assemb., Reg. Sess. (DRH30357-ND-101) (N.C. 2019); S. 124, 2015 Leg., Reg. Sess. (Cal. 2015).

Reynolds v. Quiros, 990 F.3d at 294, this Court appeared to narrow the risk-of-harm inquiry to "whether the conditions may be properly characterized as 'solitary confinement.'" If yes, the plaintiff "could arguably prevail." *Id*. Defendants rely on *Almighty Supreme Born Allah v. Milling*, 876 F.3d 48 (2d Cir. 2017), for the proposition that this Court has not categorically rejected solitary confinement. *See* Resp. Br. 38. But *Almighty* did not address a *mentally ill* prisoner's solitary confinement. 876 F.3d at 54. And the prisoner there was in solitary confinement for less than two years—not nearly as long as Goode. *Id.* at 53. Both of these distinctions negate the value of every case in Defendants' laundry list of caselaw. *See* Resp. Br. 38-39.

Defendants further assert that this Court may not consider various sources in our opening brief, such as the "*Unlock the Box*" website and studies on the harms of solitary confinement. Resp. Br. 31, 34. Wrong. These materials are "legislative facts" the court may rely on. *See Burnet v. Niagara Falls Brewing Co.*, 282 U.S. 648, 651 (1931); *Snell v. Suffolk County*, 782 F.2d 1094, 1105-06 (2d Cir. 1986); *N.Y. State Rest. Ass'n v. N.Y.C. Bd. of Health*, 556 F.3d 114, 136 n.5 (2d Cir. 2009); *see also* Advisory Committee Note to Fed. R. Evid. 201.

* * *

Ample record evidence establishes multiple genuine disputes of material fact as to the past harms and future risks arising from Goode's conditions of confinement, in violation of contemporary standards of decency.

B. Mudano and Barone consciously disregarded the substantial risk of serious harm to Goode's health.

Defendants Mudano and Barone maintain they had no idea that Goode's mental health was at a substantial risk. But a reasonable jury could conclude otherwise based on Defendants' access to Goode's medical and disciplinary records, as well as the Connecticut Department of Corrections (DOC) policy advising against Goode's isolation in the first place. Defendants also fail to state a legitimate penological interest for Goode's isolation—and certainly not for *five years*.

1. Mudano and Barone were personally aware of and disregarded a substantial risk of serious harm.

Defendants Mudano and Barone do not contest that they had actual knowledge of the conditions of Goode's confinement, Resp. Br. 44 n.13, but they profess "sincere" ignorance of the substantial risk of serious harm those conditions imposed on Goode's mental health, Resp. Br. 40 (quoting *Salahuddin v. Goord*, 467 F.3d 263, 281 (2d Cir. 2006)); Resp. Br. 43. A reasonable jury could disbelieve that position. For one, Defendants' "knowledge of the health risks of solitary confinement is apparent through DOC's own policies," *Reynolds I*, 402 F. Supp. 3d at 21, which expressly advise against the isolation of prisoners "with serious impairment in psychological, cognitive, or behavioral functioning," JA 469. And as explained above (at 3), a jury could infer Defendants' knowledge that Goode was seriously mentally impaired from their access to Goode's medical

records—not to mention his hundreds of disciplinary violations. *See* JA 131 ¶¶ 23-24; JA 172-207.

DOC policy also dictates that a prisoner's mental-health status be reevaluated every six months. JA 417. While in solitary, prison officials classified Goode with a "severe mental disorder" that was "under good control," *id.*; *see* Opening Br. 11, Resp. Br. 57. But Goode's lengthy disciplinary history stemming from his untreated mental-health conditions shows that his illnesses were anything but controlled. *See supra* at 3; JA 172-207. Defendants cannot dispute that they were aware that Goode's disciplinary history prevented him from progressing out of solitary. *See* Resp. Br. 7. A reasonable jury could infer Defendants were also aware that Goode's untreated mental-health conditions caused these violations in solitary. *See supra* at 3, 9; *infra* at 20.

Our opening brief explains (at 31-32) that a reasonable jury could find that the risk Goode faced was so obvious that Defendants must have known about it. *See Farmer v. Brennan*, 511 U.S. 825, 842 (1994). It's not "rocket science," after all, "that prolonged isolation from social and environmental stimulation increases the risk of developing mental illness." *McClary v. Kelly*, 4 F. Supp. 2d 195, 208 (W.D.N.Y. 1998). And Connecticut prisons, in particular, have known since at least 2004 that solitary confinement of mentally ill prisoners like Goode is an extreme measure of last resort that first demands the exhaustion of "all potential alternative placements, both in Connecticut and outside the state." Settlement Agreement at 7 ¶ 2.b.,

Conn. Off. of Prot. & Advoc. for Pers. with Disabilities v. Choinski, No. 3:03CV1352 (D. Conn. March 8, 2004), https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/11252.pdf.

Here, the record lacks any evidence that Defendants sought alternatives. That failure even to pursue alternatives is in tension with *Brock v. Wright*, 315 F.3d 158 (2d Cir. 2003), on which Defendants paradoxically rely. Resp. Br. 44. *Brock* supports Goode's position because it suggests that non-medical officials could be deliberately indifferent if they were aware of the inmate's condition and "understood that an outside consultation would be necessary or even useful" notwithstanding prison medical officials' opinions. *Brock*, 315 F. 3d at 164. A reasonable jury could find that Defendants knew that an outside consultation would be useful because, as explained, *see* Opening Br. 44, Goode told Mudano face-to-face that his untreated mental-health conditions would make his transfer to Garner unsafe, JA 225-26 ¶ 35.

2. No penological interest justified keeping a mentally ill prisoner like Goode in solitary confinement for five continuous years.

That Goode has been transferred out of solitary confinement belies Defendants' assertion that his prolonged placement there was necessary to maintain the safety of staff and prisoners. Even if that were Defendants' legitimate justification for his initial placement in solitary, that justification would not hold indefinitely given Goode's mental illness. As just noted, DOC officials were on notice from the *OPA v. Choinski* settlement that

prisoners should receive "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). Here, Defendants did the opposite, punishing Goode for the behavioral symptoms of his mental-health conditions for years. Goode's eventual transfer out of solitary despite his continued symptoms underscores that Defendants could (and should) have transferred Goode out much sooner.

II. Defendants are not entitled to summary judgment because a jury could find that they were deliberately indifferent to Goode's medical needs in violation of the Eighth Amendment.

This Court may review whether Defendants provided Goode with adequate medical care because Goode presented this argument in the district court and repeatedly relied on the facts giving rise to it. And on the merits, a reasonable jury could find that Defendants provided Goode with objectively inadequate mental-health treatment and had actual knowledge of Goode's declining mental health during his years-long isolation but did nothing to provide the care he needed.

A. This Court may review whether Defendants were deliberately indifferent to Goode's serious medical needs.

1. Goode sufficiently presented his medical-needs argument to the district court. Defendants argue that Goode cannot raise "a medical deliberate indifference claim[]" on appeal, Resp. Br. 49-51, but the requirement that a party raise an issue in the district court to preserve it "does not demand the incantation of particular words," *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 469

(2000). Rather, a plaintiff need only put the lower court "on notice as to the substance of the issue." *Id.* In other words, plaintiffs must provide the facts underlying their legal arguments and nothing more. *See, e.g.*, *Morris v. Schroder Cap. Mgmt. Int'l*, 445 F.3d 525, 530 n.3 (2d Cir. 2006).

Goode gave the district court full notice of the facts underlying his medical-needs argument in both his complaint and opposition to summary judgment. *See, e.g.*, JA 24-27 ¶¶ 28-36, 41-42; ECF 133 at 8, 10, 14-19. One of his complaint's key allegations is that his untreated mental-health conditions caused him to commit disciplinary violations which prison officials used to keep him in solitary confinement. *See* JA 24-25 ¶¶ 27-33. And, in doing so, they disregarded how solitary exacerbated his underlying diagnosed conditions and refused to productively address his mental illness. JA 26 ¶ 41. And Goode's allegations against Reischerl centered on her duty to review, evaluate, and report on his psychological conditions. JA 24 ¶ 26.

Defendants also recognized that Goode alleged that his "mental health issues have been inadequately treated." ECF 42 at 1. In their successful motion to have their expert (Dr. Saathoff) examine Goode, Defendants noted that Goode "has clearly placed his mental health at issue in this case, and arguably, it is a central issue in the case." ECF 42-1 at 2 (citing Goode's allegations concerning the impact of solitary confinement on his psychological health).

Goode continued to press his medical-needs argument in his pro se opposition to summary judgment. For example, he stated that he was

bringing "a claim of deliberate indifference to serious medical needs against Defendant Reischerl." ECF 133 at 8, 15-16. He referenced the substantial risk of harm to his health posed by prolonged solitary confinement, ECF 133 at 10, 17-18, which he contended Defendants knew of and disregarded, ECF 133 at 14, 16. He also reiterated that most of his disciplinary violations were "adverse psychiatric effects of his conditions of confinement" in solitary. ECF 133 at 19.

2. Defendants criticize Goode for not pleading his inadequate medical care as a separate claim in his complaint. Resp Br. 50. But Goode was not required to separately plead his theories of liability—he was not required to plead a legal theory at all. *See Johnson v. City of Shelby*, 574 U.S. 10, 11-12 (2014) (per curiam).

Defendants attempt to support their contention that Goode needed to separately plead his theories by asserting that conditions of confinement and medical deliberate indifference are distinct claims that require different showings. *See* Resp. Br. 49. But all deliberate-indifference theories, including deliberate indifference to medical needs, contain the same two elements: an objective element showing that the conduct was "'harmful enough' or 'sufficiently serious' to reach constitutional dimensions" and a subjective element showing that a prison official "acted with a subjectively 'sufficiently culpable state of mind.'" *Crawford v. Cuomo*, 796 F.3d 252, 256 (2d Cir. 2015) (quoting *Hudson v. McMillian*, 503 U.S. 1, 8, 20 (1992)); *supra* at 2.

The only precedent cited by Defendants to argue that the two theories must be brought separately, *Walker v. Schult*, 45 F.4th 598 (2d Cir. 2022); Resp. Br. 48, explains that "conditions of confinement" violate the Eighth Amendment if they deprive a prisoner of certain minimal necessities, including medical care. *Walker*, 45 F.4th at 611 (citing *Wilson v. Seiter*, 501 U.S. 294, 304 (1991)). Thus, far from requiring that a prisoner plead inadequate medical care separately from conditions of confinement, *Walker* recognizes that medical care is one of life's necessities whose deprivation can result in unconstitutional conditions of confinement. *See id.*

B. Defendants deprived Goode of adequate mental-health care.

1. A reasonable jury could find Defendants provided Goode objectively inadequate mental-health treatment.

A reasonable jury could find that any mental-health treatment Defendants provided Goode during his years of solitary confinement was objectively inadequate to address his serious mental-health needs. Contrary to Defendants' suggestion, Resp. Br. 53-54, the Eighth Amendment requires more than just "access" to services. Prison officials must provide treatment that addresses a prisoner's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976). Thus, prison officials may be liable even when they provide some care if the choice of treatment is based on deliberate indifference rather

than an exercise of professional judgment. *See, e.g.*, *Williams v. Vincent*, 508 F.2d 541, 544 (2d Cir. 1974).

A reasonable jury could conclude that the few sporadic visits Goode received from mental-health staff—who were often unresponsive, *see* Opening Br. 39—were inadequate because Goode remained unable to control behaviors associated with his diagnosed mental-health conditions, *see* JA 172-207, 471-75, resulting in punishment, *see* JA 239, 457 ¶¶ 47-48; Opening Br. 40. Defendants point to Dr. Saathoff's report asserting that Goode received adequate mental-health care, Resp. Br. at 54, but a jury could reach a different conclusion. DOC policy identifies mental illness as a "[c]ontraindication[]" to placement in solitary, JA 416, 471-72, indicating that mentally ill prisoners may not receive adequate care in solitary.

A reasonable jury could also infer that Defendants' inadequate treatment of Goode's mental-health conditions resulted in his violent behavior, *see* ECF 46-2 at 8, instead of believing Saathoff's contrary account, *see supra* at 7-8, which Goode denied, JA 466. Dr. Hillbrand's evaluation explains that Goode was not receiving appropriate treatment, and Hillbrand therefore recommended that Goode be placed in a "different environment," "in combination with active mental health treatment." ECF 46-2 at 7-8. Hillbrand found that, when faced with triggering conditions, Goode's mental illness causes him to "respond in a near automatic aggressive manner without regard to consequences," which "has led to multiple disciplinary infractions." ECF 46-2 at 8. Even without Hillbrand's evaluation—and

contrary to Defendants' assertions, Resp. Br. 54—Goode need not present an expert to overcome Saathoff's claims at summary judgment. This Court has "never required plaintiffs alleging a denial of adequate medical care … to produce expert medical testimony." *Hathaway v. Coughlin*, 37 F.3d 63, 68 (2d Cir. 1994). A reasonable jury would be free to reject Saathoff's contested view.

2. A reasonable jury could find that Mudano and Barone were subjectively aware of and deliberately indifferent to Goode's serious medical needs.

Wardens Mudano and Barone had actual knowledge of the serious risks solitary posed to Goode's mental health. Opening Br. 42-45; JA 469; *supra* at 13-14. Defendants argue that Mudano and Barone relied on medical staff who did not raise concerns, Resp. Br. 43-44, but blaming their subordinates does not relieve them of liability given their actual knowledge of Goode's mental state. Defendants had access to Goode's records, including mental-health assessments and repeated disciplinary violations. JA 131 ¶¶ 23-24; Opening Br. 45. When Goode voiced concerns about having violent thoughts or potentially aggressive, uncontrollable behavioral symptoms—which are consistent with his mental-health conditions, *see* JA 471-75—the committee threw Goode back into Phase I, the harshest, most punitive solitary confinement, instead of making any effort to provide him the mental-health care he needed. *See* JA 225-26 ¶ 35.

3. Reischerl was personally involved and deliberately indifferent to Goode's mental-health needs.

Reischerl may have treated Goode appropriately during isolated visits in solitary, *see* Resp. Br. 57, but she never raised concerns about the risk that solitary confinement posed in light of Goode's diagnosed mental-health conditions, nor did she ever recommend appropriate treatment despite her knowledge of those needs. When medical professionals like Reischerl are aware of prisoners' serious medical needs, they are duty-bound to refer prisoners to the medical help they require. *See Hathaway*, 37 F.3d at 68; *Brock v. Wright*, 315 F.3d 158, 165-66 (2d Cir. 2003); Opening Br. 48-49.

A reasonable jury could find that Reischerl was subjectively aware of Goode's unmet serious medical needs. Reischerl noted that Goode suffered from multiple mental disorders, JA 239, 247, including multiple "contraindications" to solitary confinement, *see* JA 469. Opening Br. 48-49. Goode also indicated to Reischerl that he was experiencing "extreme anxiety, hypersensitivity to noise, and primitive aggressive fantasies." JA 234 ¶ 12. Reischerl noted that Goode was not progressing through the phases of solitary confinement because "he did not feel safe being unrestrained and fearful he might be aggressive." JA 239. A reasonable jury could infer Reischerl knew Goode was effectively receiving punishment rather than adequate treatment for "exhibiting symptoms of mental health impairments," contrary to the settlement agreement the Connecticut Department of Corrections entered in 2004. *Charles v. Saundry*, 2008 WL

11411166, at *12 (D. Conn. June 11, 2008) (citation omitted); *see also supra* at 15.

Reischerl was authorized to flag any "clinical contraindications" to solitary confinement and provide documentation about Goode's treatment to the review committees, JA 469; Opening Br. 46, but she never voiced concerns that Goode wasn't receiving adequate treatment for his mental-health needs. *See* JA 232-57. She knew Goode needed treatment but did not raise concerns when he expressed frustration and did not attend follow-up appointments, *see* JA 234-35, even though Goode's impulsive behavior is associated with his untreated mental disorders, *see* JA 471-75. In sum, a reasonable jury could find that Reischerl was deliberately indifferent to Goode's serious medical needs because she evaluated him on multiple occasions, JA 233-35 ¶¶ 11-18, was aware of his conditions, and failed to recommend appropriate treatment. *See* Opening Br. 45-49.

III. Goode is entitled to injunctive relief and damages.

A. Goode's claim for injunctive relief is not moot.

Although Goode has been transferred out of solitary confinement, Letter 1, ECF No. 57.1 (2d Cir. March 7, 2024), his claim for injunctive relief is not moot because Defendants' attitude toward Goode's mental and behavioral impairments leaves a reasonable expectation that he will be sent back to solitary. In other words, despite Defendants' voluntary cessation of Goode's solitary confinement, Goode's request for injunctive relief remains a live

controversy. *See Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 603-04 (2d Cir. 2016).

To find otherwise, this Court must conclude that there's no reasonable expectation of recurrence. *Mhany*, 819 F.3d at 603 (quoting *Granite State Outdoor Advert., Inc. v. Town of Orange*, 303 F.3d 450, 451 (2d Cir. 2002) (per curiam)). That standard is "stringent" and "formidable," *id.* at 604; *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000), and Defendants present no evidence to meet it. Why would they? For years, Defendants disregarded DOC policy discouraging the isolation of mentally ill prisoners like Goode. *See supra* at 3, 13, 22; JA 469; Opening Br. 6. And Defendants maintain that five continuous years in solitary presented *no* risk of serious harm to Goode in the first place, Resp. Br. 27-29, 43, raising the danger Goode will end up in solitary again, *Porter v. Clarke*, 923 F.3d 348, 365-66 (2d Cir. 2019).

Goode's claims are also not moot because Defendants' actions are capable of repetition yet evade review. *Accord United States v. Juv. Male*, 564 U.S. 932, 938 (2011) (per curiam); *In re Grand Jury Proc.*, 971 F.3d 40, 53 (2d Cir. 2020). That is so because, as just discussed, Goode could well end up in solitary again and because the duration of Goode's isolation, however prolonged, was still "too short to be fully litigated prior to cessation." *Id.*

Moreover, Goode's cyclical transfer history, from Corrigan to Northern and MWCI and now back again to Corrigan, JA 167; Resp. Br. 19, shows he can still be "freely transfer[red] [] between facilities"—and thus freely

transferred between general population and solitary confinement—"prior to full litigation of his claims," *Pugh v. Goord*, 571 F. Supp. 2d 477, 489 (S.D.N.Y. 2008). That militates against mootness because "prison officials could [otherwise] simply transfer a prisoner from facility to facility in order to moot his claims." *Id.*; *see Lozano v. Collier*, 98 F.4th 614, 620 n.2 (5th Cir. 2024) (per curiam).

Jordan v. Dep't of Corr., 2023 WL 2503376 (D. Conn. Mar. 13, 2023), is instructive. There, a mentally ill prisoner subjected to eighteen months in solitary at Northern brought an Eighth Amendment claim for injunctive relief against DOC officials, including Mudano. *Id.* at *3, *6, *8. That prisoner, like Goode, was later transferred out of solitary. *Id.* at *6. The court held that the prisoner's claim for injunctive relief was not moot in part because some defendants were capable of providing prospective relief at the prisoner's new DOC facility, but also because the prisoner otherwise "remain[ed] subject to similar protocols (*e.g.*, A/S placement)." *Id.* at *23 (quoting *Pugh*, 571 F. Supp. 2d at 489). Goode likewise remains subject to getting thrown back in solitary.

B. Defendants are not entitled to qualified immunity.

Defendants attempt to escape damages liability by turning the summary judgment standard on its head, Resp. Br. 61-62, and obscuring the right at issue, Resp. Br. 62-66. Qualified immunity is evaluated in two parts at summary judgment: "whether the right in question was clearly established

at the time of the violation" and "whether the facts, taken in the light most favorable to the party asserting the injury, show the officer's conduct violated [that] federal right." *Sloley v. VanBramer*, 945 F.3d 30, 36 (2d Cir. 2019) (citing *Tolan v. Cotton*, 572 U.S. 650, 656-57 (2014) (per curiam)).

Goode's right to be free from prolonged solitary confinement is clearly established. As explained above (at 11-12) and in our opening brief (at 23-26), prolonged solitary confinement is disfavored even for prisoners without mental-health conditions, *see, e.g.*, *Reynolds v. Quiros*, 990 F.3d 286, 294 (2d Cir. 2021), and the Supreme Court and this Court have long recognized that prisoners with mental-health impairments warrant less punishment when "they have diminished capacities … to control impulses," *Atkins v. Virginia*, 536 U.S. 304, 318 (2002) (finding death penalty inappropriate for mentally ill prisoners). That precedent, at a minimum, "clearly foreshadows" to a reasonable prison official—and therefore clearly establishes for qualified-immunity purposes—that isolating a mentally ill prisoner for five years is unconstitutional. *See Sabir v. Williams*, 52 F.4th 51, 63 (2d Cir. 2022); *Weber v. Dell*, 804 F.2d 796, 801 & n.6, 803-04 (2d Cir. 1986). So too does other circuits' caselaw, *see, e.g.*, *Porter v. Clarke*, 923 F.3d 348, 364 (4th Cir. 2019); *Palakovic v. Wetzel*, 854 F.3d 209, 226 (3d Cir. 2017); *Kervin v. Barnes*, 787 F.3d 833, 837 (7th Cir. 2015), which this Court may rely on "[e]ven in the absence of binding [in-circuit] precedent," *Townes v. City of New York*, 176 F.3d 138, 144 (2d Cir. 1999), because it "reflect[s] that the contours of the right in question are clearly established," *Terebesi v. Torreso*, 764 F.3d 217, 231 n.12 (2d Cir. 2014).

In addition to "the existence of Supreme Court or Court of Appeals case law on the subject," *Terebesi*, 764 F.3d at 231 (citing *Scott v. Fischer*, 616 F.3d 100, 105 (2d Cir. 2010)), overarching constitutional principles that make the violation obvious can preclude qualified immunity, *see supra* at 9, 14, even absent binding precedent involving similar facts. *See Taylor v. Riojas*, 592 U.S. 7, 8-9 (2020) (per curiam); *Hope v. Pelzer*, 536 U.S. 730, 741, 745 (2002). Our opening brief (at 6-8, 11-13) explains that Goode spent nearly every hour of the day inside his cell, where he was regularly subjected to in-cell restraints as punishment, JA 402, could not use the cell intercom to ask for help, JA 322; JA 407-08 ¶ 7, and faced "near-constant banging and yelling," JA 535 ¶ 27, noise that was no doubt heightened because he and the other inmates in solitary could only communicate by screaming into their vents, toilets, or at their locked metal doors, JA 87-88; JA 408 ¶ 9. Goode endured these conditions for over five continuous years. Moving a prisoner in and out of solitary for just one year can be an Eighth Amendment violation given "the increasingly obvious reality" that prolonged solitary confinement poses serious harm to mental health. *Palakovic v. Wetzel*, 854 F.3d 209, 226 (3d Cir. 2017); *see* Opening Br. 30-31. That Goode was demonstrably mentally ill also makes the violation obvious.

Defendants' qualified-immunity caselaw is inapt. *See* Resp. Br. 63-64, 68-69 (citing *Almighty Supreme Born Allah v. Milling*, 876 F.3d 48 (2d Cir. 2017); *Edwards v. City of New York*, 2019 WL 3456840 (S.D.N.Y. July 31, 2019); *Porter v. Pa. Dep't of Corr.*, 974 F.3d 431 (3d Cir. 2020)). Unlike here, the detainee in

Almighty did not suffer from mental illness, and the prison officials who placed the detainee in solitary were "following an established DOC practice" that did not involve the protocol applicable here for prisoners with mental illness. *Almighty*, 876 F.3d at 59. *Edwards* is similarly off-point because the plaintiff was subjected to only six months in solitary confinement—not five continuous years. *Edwards*, 2011 WL 2748665, at *1-2. And in those five years, Goode's solitary confinement involved other severe aggravators that acutely affected his untreated mental-health conditions—like "constant, loud banging" and "screaming," which *Porter v. Pa. Dep't of Corr.* noted could be a constitutional violation when coupled with solitary confinement. *See* 974 F.3d at 451 (discussing *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996)); *see also* JA 239, 535 ¶ 27.

Solitary confinement alone—as barbaric as it is—is not the only problem here and, thus, absolute freedom from it is not the relevant constitutional right. The clearly established right at issue is a mentally ill prisoner's right to be free from prolonged state-imposed isolation in a prison cell. And as shown, a reasonable prison official would have concluded that Defendants' conduct—placing and keeping a mentally ill prisoner like Goode in solitary confinement for years, despite no improvement in his behavioral dysfunction—was a violation of that right, *see Taylor*, 592 U.S. at 8.

CONCLUSION

This Court should reverse and remand for trial.

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 6,984 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f).

This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2019, in Palatino Linotype 14-point type.

I certify that, on May 2, 2024, 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/ Brian Wolfman

Brian Wolfman