United States Court of Appeals

for the

Third Circuit

Case No. 21-2310

ANGELO CLARK,

Appellant,

– v. –

ROBERT COUPE, DOC Commissioner; PERRY PHELPS; DAVID PIERCE; MAJOR JEFFREY CARROTHERS; CAPTAIN BURTON; CAPTAIN RISPOLI; CAPTAIN WILLY; DR. WILLIAM RAY LYNCH; DR. PAOLA MUNOZ; DR. DAVID YUNIS; RHONDA MONTGOMERY; SUSAN MUMFORD; STEPHANIE D. JOHNSON; CONNECTIONS COMMUNITY SUPPORT PROGRAMS INC; STEFANIE STREETS; STEPHANIE EVANS-MITCHELL; CAROL VODVARKA; CAROL VANDRUNEN; LEZLEY SEXTON.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE IN CASE NO. 1-17-CV-00066 HONORABLE RICHARD G. ANDREWS, U.S. DISTRICT JUDGE

BRIEF AND APPENDIX FOR PLAINTIFF-APPELLANT
Volume I of III (Pages Appx1 to Appx21)

SUSAN L. BURKE
ACLU DELAWARE
100 West 10th Street, Suite 706
Wilmington, Delaware 19801
(302) 654-5326

CHAD S.C. STOVER
BARNES & THORNBURG LLP
1000 North West Street, Suite 1500
Wilmington, Delaware 19801
(302) 300-3434

MICHAEL J. BROADBENT
COZEN O'CONNOR
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, Pennsylvania 19103
(215) 665-2000

Attorneys for Plaintiff-Appellant

CORPORATE DISCLOSURE STATEMENT AND STATEMENT OF FINANCIAL INTEREST

Pursuant to Fed. R. App. P. 26.1, Plaintiff-Appellant Angelo Clark makes the following disclosure:

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

   None.

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

   None.

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

   None.

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

   Not a Bankruptcy Proceeding.

/s/ Susan L. Burke
Susan L. Burke

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JURISDICTIONAL STATEMENT

The District Court properly exercised federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 over Angelo Clark's claims arising under the Eighth Amendment of the Constitution of the United States and 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. § 1291. The District Court issued a final judgment that disposes of all of Mr. Clark's claims. *Appendix, Volume I ("App-I") at 20.* Mr. Clark timely filed a notice of appeal. *App-I at 21.*

STATEMENT OF ISSUES PRESENTED FOR REVIEW

(1) Did the district court err as a matter of law in holding that the First Amended Complaint failed to allege a viable Eighth Amendment claim when it alleged that Commissioner Robert M. Coupe and Warden David Pierce kept Angelo Clark, an inmate diagnosed with manic depression and paranoid schizophrenia, in solitary confinement for six consecutive months, two consecutive weeks and seven consecutive months?

(2) Did the district court err as a matter of law in holding that Commissioner Coupe and Warden Pierce are entitled to qualified immunity?

STATEMENT OF RELATED CASES AND PROCEEDINGS

This case has not been before this Court. The claims not dismissed by the district court proceeded to be tried by a jury and a verdict was rendered. *App-I at 20.*

STATEMENT OF THE CASE

A. ALLEGATIONS MADE IN THE FIRST AMENDED COMPLAINT

Until January 2017, Robert M. Coupe served as Commissioner of the Delaware Department of Correction ("DOC"), operating and overseeing Delaware's prisons. *App-II at 62,* First Amended Complaint ("FAC") ¶ *20; id. at 73, ¶ 88.* Until January 2017, David Pierce served as warden of the James T. Vaughn Correctional Center. *Id. at 62, ¶ 23.* Warden Pierce had the power to veto and control an inmate's housing status, including placement in solitary confinement. *App-II at 66-67, ¶ 52*; *App-II at 74, ¶ 93.*

Commissioner Coupe and Warden Pierce (collectively, the "Vaughn Wardens") controlled the conditions of confinement for the approximately 300 prisoners with serious mental illness housed at Vaughn Prison. *App-II at 59, ¶ 4 App-II at 66-67, ¶ 52*; *App.-II at 68*; *¶ 60.* One of the inmates under their control was Angelo Lee Clark, who was diagnosed with serious mental illness, including manic depression and paranoid schizophrenia. *App-II at 58, ¶ 1.* The Vaughn Wardens knew that Mr. Clark suffered from paranoid schizophrenia and manic depression because they had been treating him for these conditions since at least

2006. *App-II at 59, ¶ 5*; *App-II at 72, ¶ 81*. Also known to them was the fact that solitary confinement inevitably harms those with serious mental illness. *App-II at 65, ¶¶ 43-45*; *App-II at 69, ¶ 67*; *App-II at 70, ¶ 74*. For that reason, fifteen days is considered the outer boundary of time in solitary allowed for those with serious mental illness. *App-II at 60, ¶ 10*. Indeed, the DOC's own policy manual requires daily face-to-face monitoring of the mentally ill in solitary confinement to assess for "potential decompensation." *App-II at 70, ¶ 74*.

Despite knowing these facts, the Vaughn Wardens repeatedly placed Mr. Clark in lengthy periods of solitary confinement. *App-II at 58, ¶ 1*; *App-II at 60, ¶ 11*; *App-II at 64, ¶ 38*; *App-II at 66, ¶¶ 48- 50*. Specifically, the Vaughn Wardens placed Mr. Clark into solitary confinement for six consecutive months in 2012, for two consecutive weeks in 2015, and for seven months (from January 22 to August 18) in 2016. *App-II at 60, ¶ 11*; *App-II at 66, ¶¶ 48- 50*.

While in solitary confinement, Mr. Clark, a paranoid schizophrenic with manic depression, endured being alone in a small cell measuring approximately eleven feet by eight feet. *App-II at 64, ¶¶ 38, 39*. The cell was solid except for a single slot four inches wide on the front door that allowed a constricted view of the hallway, and a single four-inch wide slot on the back that allowed a narrow glimpse of the outdoors. *App-II at 59, ¶ 8*; *App-II at 64, ¶ 39*

The Vaughn Wardens failed to ensure implementation of the DOC policy requiring daily face-to-face evaluations. *App-II at 68, ¶¶ 64, 65*; *App-II at 70-71, ¶¶ 73-76.* Instead, the Vaughn Wardens permitted Mr. Clark to go for months without any meaningful interaction with a health care provider. *App-II at 60, ¶ 9.* Mr. Clark repeatedly requested that he either be provided mental health treatment or transferred to a facility where such treatment was available. *App-II at 67, ¶ 56.*

When Mr. Clark reported his need for better mental health treatment and questioned his prolonged isolation, the Vaughn Wardens retaliated against him by further prolonging the isolation and placing him in the "naked room." *App-II at 67, ¶ 57.* The "naked room" is an isolation cell that contains only a commode and a single mattress on the floor and where Mr. Clark was given an open smock for clothing. *Id.* Prisoners confined in the "naked room" were not offered any effective mental health treatment. *Id.* The Vaughn Wardens placed Mr. Clark in the "naked room" whenever Mr. Clark questioned his solitary confinement or reported his need for better mental health treatment. *Id.*

During his time in solitary confinement, the Vaughn Wardens failed to ensure that Mr. Clark's manifestations of mental illness were not viewed as misconduct. *App-II at 69, ¶¶ 71-72.* Nor did the Vaughn Wardens have him evaluated and monitored despite the fact that the DOC's own policy manual requires that a prisoner placed in solitary confinement have his medical records

evaluated for mental illness within one hour of such placement. *App-II at 69 ¶ 72*; *App-II at 70, ¶¶ 73-74*. The Vaughn Wardens inhibited Mr. Clark's access to medical treatment by placing him in solitary confinement where he was given medications that caused allergic and other adverse side effects, including pronounced hallucinations, and paralysis and intense pain in his legs. *App-II at 68, ¶¶ 63-64*. The Vaughn Wardens considered Mr. Clark's manifestations of mental illness, such as yelling, difficulty "calming down," or banging on cell doors to be disciplinary incidents, and intentionally extended Mr. Clark's time in solitary confinement. *App-II at 69, ¶ 70*.

The Vaughn Wardens exclusively controlled the lights, which remained on from approximately 6:00 a.m. until 11:30 p.m. *App-II at 64, ¶ 39*. The Vaughn Wardens isolated Mr. Clark from all daily contact with humans with two minor exceptions: (1) meals were delivered to Mr. Clark by sliding food through small slots in the doors that were opened briefly, *App-II at 59, ¶ 8;* and (2) Mr. Clark was taken from his cell for one hour three times per week. *App-II at 64, ¶ 38*. The Vaughn Wardens prohibited Mr. Clark from talking with other humans, seeing other humans, working, participating in educational programs, participating in rehabilitative programs, and attending religious services. *App-II at 59, ¶ 7.*

The Vaughn Wardens failed to provide alternative housing options to Mr. Clark despite the existence and capacity at a specialized unit for housing prisoners

with mental illness who are incapable of remaining in other maximum security housing. *App-II at 71, ¶ 79*. The Vaughn Wardens denied Mr. Clark's requests for alternative housing, causing him to needlessly suffer in solitary confinement. *Id. ¶ 80*. Had the Vaughn Wardens transferred him to the specialized unit, Mr. Clark would have received the treatment he needed. *Id.*

Mr. Clark brought suit. *See App-II at 78-80, ¶¶ 110-115* (FAC alleging, *inter alia*, that the Vaughn Wardens violated Mr. Clark's Eighth Amendment right to be free from cruel and unusual punishment by placing Mr. Clark in solitary confinement). Mr. Clark sought an injunction and damages, alleging his time in solitary led to increased hallucinations, panic attacks, paranoia, nightmares and self-mutilation. *App-II at 75 ¶ 97*; *App-II at 78, ¶ 110*. The Vaughn Wardens moved to dismiss under F.R.C.P. 12(b)(6), arguing failure to state an Eighth Amendment claim and invoking qualified immunity.

B. THE MAGISTRATE'S REPORT AND RECOMMENDATION

On December 28, 2018, the magistrate issued a sixty-one-page Report and Recommendation ("Report") analyzing, *inter alia*, the Vaughn Wardens' invocation of qualified immunity. *App-II at 84-144*. The magistrate focused on whether "clearly established law" forbid housing an inmate with serious mental illness in solitary for "long periods of time." *Id. at 103-04*. The magistrate discussed *In re Medley*, 134 U.S. 160 (1890), but rejected that decision as

irrelevant to whether the solitary confinement of Mr. Clark violated the Eighth Amendment. *See id. at 104* ("[t]he statements in *In re Medley* have nothing to do with the question of whether solitary confinement of sane, or mentally ill, prisoners constitutes cruel and unusual punishment in violation of the Eighth Amendment.") The magistrate cited to Eleventh Circuit and Ohio decisions for this conclusion, but wholly ignored the Third Circuit's citation to *In re Medley* in *Williams v. Secretary Pennsylvania Department of Corrections*, 848 F.3d 549, 567, n. 115 (3d Cir. 2017). *Id. at 104, n. 102*. The magistrate held that "*In re Medley* fails to support Clark's argument that a reasonable official would have understood that housing an inmate with SMI in solitary confinement for long periods of time is a clearly established Eighth Amendment violation." *Id. at 105.*

The magistrate similarly rejected Mr. Clark's reliance on *Madrid v. Gomez*, 889 F. Supp. 1146, 1266 (N.D. Cal. 1995). *Id. at 106*. The magistrate rejected the case because "[t]he *Gomez* opinion never recites the phrase 'qualified immunity' and does not specifically address that doctrine. . . . Thus, *Gomez* determined whether certain constitution [sic] rights of prisoners were violated, not whether the particular right discussed was clearly established law in the context of a qualified immunity examination." *Id. at 107*. The magistrate deemed irrelevant all of the other Eight Amendment decisional law cited by Mr. Clark because the cases "do not address the existence of clearly established law in a qualified immunity

determination." *Id*. The magistrate concluded that the Vaughn Wardens were entitled to qualified immunity on the Count I claim that placing Mr. Clark in solitary confinement for six consecutive months and then seven consecutive months violates the Eighth Amendment. *Id*. *at 108-09*.

C. THE DISTRICT COURT'S TWO DECISIONS

On March 26, 2019, after considering objections filed by the parties, the district court adopted the magistrate's Recommendations as to Count I. *See App-I at 1-10* (district court decision) *and App-II at 84-144* (report). The district court explained in a single paragraph that the magistrate had found that placing a mental ill inmate in solitary confinement does not violate a clearly established Eighth Amendment prohibition and therefore the Vaughn Wardens enjoy qualified immunity. *App-I at 4*. Without any further analysis or discussion of the caselaw, the court adopted the Report's recommendation and dismissed Count I "to the extent it alleges an Eighth Amendment violation because of Plaintiff's confinement to the solitary housing unit." *App-I at 4.* Mr. Clark requested and received reconsideration. *App-I at 12-17.*

In its second decision, the court refined its holding, cited *Robinson v. California*, 370 U.S. 660, 667 (1962), and acknowledged that placing an inmate in solitary confinement *because* he is mentally ill violates the Eighth Amendment. *Id*. *at 13*. The court, however, again dismissed Mr. Clark's Eighth Amendment

claim premised on his placement in solitary confinement, stating "I stand by the Court's previous determination that no clearly established law supports finding that housing a mentally ill inmate in solitary confinement is *per se* a violation of the Eighth Amendment." *Id*. The court discussed *In re Medley*, *Madrid*, and *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017), and rejected each as a relevant precedent. As to *In re Medley*, the court noted that "the Court discussed the perils of solitary confinement and determined that solitary confinement is an additional punishment," but did not conclude solitary confinement was unconstitutional. *App-I at 14.* As to *Madrid*, the court acknowledged that "[i]t determined that placing seriously mentally ill inmates in the solitary housing unit, 'under conditions as they currently exist at [the prison],' was cruel and unusual punishment in contravention of the Eighth Amendment." But the court noted that "the court did not address the issue of qualified immunity." The court thus found that "*Medley* and *Madrid* do not represent clearly established law that it is unconstitutional to place mentally ill inmates in solitary confinement." *Id.*

The court then addressed this Court's decision in *Palakovic v. Wetzel*, and held it "gets Plaintiff closer to showing that there may be some right barring confinement of mentally ill individuals to the solitary housing unit, but still misses the mark." The court acknowledged the Third Circuit had cited to "the robust body of legal and scientific authority recogniz[ing] the devastating mental health

consequences caused by long-term isolation in solitary confinement." *App-I at 15*. Yet the court held that the case did not control the analysis because "the court did not consider whether they alleged a constitutional violation, whether the defendants were insulated by qualified immunity, or any other potential bar to the Palakovics successfully bringing such a claim. The fact that the Third Circuit found 'vulnerability to suicide' is not the only claim available to a deceased inmate's estate does not provide for a clearly established right. Thus, I again conclude that there is no clearly established Eight Amendment right that *per se* prohibits housing a mentally ill inmate in solitary confinement." *Id. at 15-16*.

SUMMARY OF THE ARGUMENT

This Court should reverse the district court's dismissal of Count I of the FAC and remand for discovery and trial. The Vaughn Wardens want to cloak themselves in ignorance and claim they could not have known that the Eighth Amendment prohibits placing a seriously mentally ill inmate into lengthy periods of solitary confinement. Yet adopting a posture of ignorance cannot save them from being forced to adjudicate Mr. Clark's Eighth Amendment claims.

By the time the Vaughn Wardens placed Mr. Clark in extended periods of solitary confinement, decisional law uniformly held that comparable conduct violated the Eighth Amendment's prohibition against cruel and unusual punishment. Indeed, the Third Circuit has noted that "researchers have found that

even *a few days* in solitary confinement can cause cognitive disturbances." *See Williams v. Sec'y, Pa. Dep't of Corrs.*, 848 F.3d 549, 562 (3d Cir. 2017). That this robust legal consensus existed simply cannot be controverted in light of the Third Circuit's decision in in *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017), which held that a complaint alleging harm from the solitary confinement of a mentally ill detainee stated a viable Eighth Amendment claim that should have been allowed to proceed to adjudication. Both *Williams*, 848 F.3d 549 (3d Cir. 2017), and *Porter v. Pennsylvania Department of Corrections*, 974 F.3d 431 (3d Cir. 2020), cite to and reinforce the consensus around the Eighth Amendment's prohibitions against excessive use of solitary confinement.

By the time the Vaughn Wardens placed Mr. Clark in extended periods of solitary confinement, they had been given ample and repeated fair notice that the Eighth Amendment prohibited placing seriously mentally ill inmates into isolation for extended periods of time. Indeed, the Vaughn Wardens were given actual notice when a district court in Delaware adjudicated similar claims against Commissioner Coupe and held that the complaint stated a viable claim under the Eighth Amendment. *See Cmty. Legal Aid Soc'y, Inc. v. Coupe,* No. 15-688, 2016 WL 1055741 (D. Del. Mar. 16, 2016) ("*CLASI*"). The uniformity of the decisional law across the nation placed them on fair notice, as did Delaware statutory law prohibiting solitary confinement for a period longer than three months. 2 *Del. C.* §

3902. Further, both an investigation by the United States Department of Justice and an audit by the American Correction Association expressly put the Vaughn Wardens on notice. Finally and importantly, the very obviousness of the violation served as fair notice that the Vaughn Wardens were violating the Eighth Amendment when they placed Mr. Clark, a seriously mentally ill inmate, into solitary confinement for more than thirteen months. *See Taylor v. Riojas*, 141 S.Ct. 52 (2020); *McCoy v. Alamu*, 141 S.Ct. 1364 (2021) (Mem.)*; Hope v. Pelzer*, 536 U.S. 730 (2002); *Kedra v. Schroeter*, 876 F.3d 424, 432 (3d Cir. 2017).

STANDARD OF REVIEW

This Court should conduct a plenary review of the district court's grant of Commissioner Robert M. Coupe and Warden David Pierce's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 367 (3d Cir. 2011). This Court should conduct a plenary review of the district court's grant of qualified immunity to Commissioner Coupe and Warden Pierce. *See Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013); *McLaughlin v. Watson*, 271 F.3d 566, 570 (3d Cir. 2013); *Argueta v. ICE*, 643 F.3d 60 (3d Cir. 2011); and *Kedra v. Schroeter*, 876 F.3d 424, 434 (3d Cir. 2017).

ARGUMENT

I. THE DISTRICT COURT FAILED TO RECOGNIZE THE ROBUST CONSENSUS AROUND INTERPRETATION OF THE EIGHTH AMENDMENT.

This Court should reverse the district court's legally erroneous decision. As explained in Subsection A, the review should be plenary and accept as true certain pivotal facts alleged in Mr. Clark's FAC. As explained in Subsection B, the district court operated under the mistaken impression that only decisions denying qualified immunity should be considered when interpreting the Eighth Amendment's prohibitions.

As explained in Subsection C, the district court's use of a faulty legal framework (first adopted by the magistrate) caused it to overlook the robust body of decisional law that has clearly established that placing seriously mentally ill inmates into solitary confinement for extended periods of time violates the Eighth Amendment's prohibition against cruel and unusual punishment. This consensus began to develop in the late 1980s and early 1990s, well before the Vaughn Wardens placed Mr. Clark in solitary confinement for extended periods of time. Indeed, by 2016, Delaware's own district court held that the Eighth Amendment prohibited placing seriously mentally ill inmates in solitary confinement for extended periods of time. *CLASI*, 2016 WL 1055741, at *4 (holding plaintiff stated a viable Eighth Amendment claim).

Subsequently, as explained in Subsection D, the Third Circuit added its controlling voice, issuing a decision holding that there was a legal and scientific consensus that a complaint states a viable Eighth Amendment claim if it alleges prison officials held a seriously mentally ill inmate in solitary confinement. *Palakovic*, 854 F.3d at 234.

Yet here, in 2019, the district court erroneously held Mr. Clark failed to state a viable Eighth Amendment claim when he alleged that the Vaughn Wardens knew of his severe mental illness; knew solitary confinement inevitably harms those with serious mental illness, *App-II at 65, ¶¶ 43, 44, 45*; *id. at 69,* ¶ 67; *id. at 70, ¶ 74*; knew that solitary confinement causes psychological harm, hallucinations, panic attacks, paranoia, and nightmares, and yet nonetheless placed Mr. Clark in extended periods (six months, two weeks and then seven months) of solitary confinement. This Court should reverse this result, and remand Mr. Clark's claim back to the district court for discovery and trial.

A. THE PROCEDURAL POSTURE OF THIS CASE REQUIRES THIS COURT TO CONDUCT A PLENARY REVIEW AND APPLY A BROAD INTERPRETATION OF THE EIGHTH AMENDMENT.

The Vaughn Wardens filed a motion to dismiss pursuant to F.R.C.P. 12(b)(6), arguing that Mr. Clark failed to state a viable Eighth Amendment claim, which the district court granted. *App-I at 12-17*. In light of this procedural posture, on appeal, this Court conducts a plenary review of the District Court's

decisions granting a motion to dismiss. *See Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 367 (3d Cir. 2011).

For purposes of the plenary review, the Court takes as true the factual allegations in Mr. Clark's complaint. *See, e.g.*, *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639, 642 n.1 (2008); *Phillips v. City of Allegheny*, 515 F.3d 224, 228, 230 (3d Cir. 2008); *Kedra*, 876 F.3d at 432. As long as the plaintiff pleads factual content that allows the Court to draw the reasonable inference that the defendant is liable, a claim has facial plausibility. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Sheridan v. NGK Metals Corp.*, 609 F.3d 239, 262, n. 27 (3d Cir. 2010).

As a result of this legal standard, certain factual averments made in the FAC control the analysis of the "clearly established" nature of the Eighth Amendment prohibition: ***First***, Mr. Clark is a paranoid schizophrenic suffering from manic depression who has been treated for schizophrenia and bipolar disorder while incarcerated since at least 2006. *App-II at 59, ¶ 5*. ***Second***, the Vaughn Wardens placed Mr. Clark into solitary confinement for six consecutive months in 2012, for two consecutive weeks in 2015, and for seven months (from January 22 to August 18) in 2016. *App-II at 60, ¶ 11*; *App-II at 66, ¶ 48-50*. ***Third***, conditions in solitary confinement were grim. Mr. Clark was confined to his cell for 24 hours per day, except for one hour, three times per week. *App-II at 64, ¶ 38*. His cell was

approximately 11' x 8' and had two four-inch windows that offered a constricted view of the hall outside of his cell. *Id. ¶ 39*. Mr. Clark had no control over the lighting in his cell which was operated by the Vaughn Wardens who kept the lights on from approximately 6:00 a.m. to 11:30 p.m. every day. *Id.* The Vaughn Wardens had Mr. Clark punished for speaking in a loud voice, without regard to the content of his speech or his intent and without considering Mr. Clark's hearing difficulties. *App-II at 67, ¶ 53*. As a result of his prolonged confinement, Mr. Clark experienced increased hallucinations, paranoia, self-mutilation, sleeplessness, and nightmares. *App-II at 60. ¶ 12.*

In conducting this plenary review and interpreting the contours of the Eighth Amendment protections, the federal courts in this Circuit follow a public policy of "broad interpretation of the rights sought to be protected." *Howell v. Cataldi*, 464 F.2d 272, 279 (3d Cir. 1972); *Valle v. Stengel*, 176 F.2d 697, 702 (3d Cir. 1949) (highlighting protections for "[t]he field of human rights"). A broad interpretation is appropriate because, unlike the varying strictures of private tort law, these federal rights were publicly created. *Howell*, 464 F.2d at 279; *see also Wallace v. Fegan*, No. 3:10-cv-1338, 2010 WL 11537503, at *4 (M.D. Pa. Nov. 15, 2010), *aff'd*, 455 Fed. App'x 137 (3d Cir. 2011) (recognizing importance of private vindication of public rights understood through a "broad interpretation" of those rights). Indeed, any narrow interpretations of these important civil and human

rights were long-ago "obliterated" in this circuit. *See Valle*, 176 F.2d at 702. This policy extends to civil rights cases created or adopted by the Federal Constitution or Congress, which would include the Eighth Amendment. *See Howell*, 464 F.2d at 279.

B. THE DISTRICT COURT USED AN ERRONEOUS FRAMEWORK IN ITS EIGHTH AMENDMENT ANALYSIS.

To follow these controlling precedents, the district court was required by controlling law to consider whether placing Mr. Clark in solitary for the length of time at issue here—six consecutive months, then two consecutive weeks and then seven consecutive months—rose to the level of an Eighth Amendment violation. Instead, the district court erroneously framed the issue as whether placing a mentally ill person in solitary was a "per se" violation of the Eighth Amendment. *See App-I at 13*. But Mr. Clark did not argue a *per se* violation of the Eighth Amendment; he argued that the solitary confinement specifically imposed upon him—its length, its nature, and its harm—was a sufficiently serious deprivation of his rights. By ignoring the facts alleged to consider only the binary question of whether solitary confinement was permitted *at all* for Mr. Clark, the district court mischaracterized Mr. Clark's claim, and failed to conduct an Eighth Amendment analysis of Mr. Clark's actual claim.

Mr. Clark challenged the conditions of his confinement to solitary for months on end; he did not challenge *every* use of solitary confinement for mentally ill

inmates. In *Porter v. Pennsylvania Department of Corrections*, 974 F.3d 431 (3d Cir. 2020), the Third Circuit drew an important distinction between class cases and as-applied challenges—that is, between claims based on conditions faced by the inmate as one of many housed in a similar unit (a facial challenge) and claims based on the circumstances of the plaintiff's specific confinement (an as-applied challenge). Yet the district court's binary analysis of Mr. Clark's claims considered his confinement along the lines of a facial challenge by a class of inmates, as if Mr. Clark represented all inmates with mental illness placed in solitary confinement, rather than an as-applied challenge requiring the court to examine the specific allegations related to Mr. Clark's actual circumstances.

In addition to erroneously framing the question as a binary one, the district court erred by applying a narrow lens to decide which decisional law mattered to the analysis of whether the scope of the Eighth Amendment's "clearly established" prohibitions includes the Vaughn Warden's conduct towards Mr. Clark. That is, the court appeared to view decisional Eighth Amendment law as irrelevant if the facts did not include an invocation of the qualified immunity doctrine. *See App-I at 1-10 and 12-17.*

But such a narrowed lens is inappropriate, both in light of the Supreme Court's jurisprudence and this Circuit's broad approach to Eighth Amendment analysis. The Supreme Court jurisprudence on qualified immunity nowhere binds

the judiciary to look only to decisions where defendants have invoked qualified immunity. In *Saucier v. Katz*, 533 U.S. 194 (2001), the Supreme Court adopted a two-part sequence that required a court to decide first whether the facts alleged rose to the level of a constitutional violation and second whether that right was "clearly established" at the time of defendants' misconduct. Later, in *Pearson v. Callahan*, 555 U.S. 223 (2009), the Court held this two-step *Saucier* protocol was not mandatory, and courts could skip over deciding whether the purported right exists in those cases where "it is plain that a constitutional right is not clearly established but far from obvious whether in fact there is such a right." *Id*. at 236-37. The Third Circuit, however, continues to use the two-step *Saucier* sequence, and has commented "we are mindful that 'it is often appropriate and beneficial to define the scope of a constitutional right' to 'promote[ ] the development of constitutional precedent' before deciding whether the right was clearly established . . . ." *Porter*, 974 F.3d at 437 (internal citations omitted).

Nowhere in the controlling jurisprudence does the Supreme Court or the Third Circuit hold that the *only* sources of law relevant to deciding whether a constitutional right exists are decisions where defendants were denied qualified immunity. The district court's circular and erroneous reasoning, if allowed to stand, would expand qualified immunity beyond the boundaries set by the Supreme Court. Under the district court's approach, a reasonable official could know with

certainty that his conduct obviously violated the Eighth Amendment because a robust legal consensus existed (as here), but still claim immunity because no prior decision had denied an official qualified immunity. This is wrong as a matter of law.

C. ROBUST DECISIONAL LAW ACROSS THE NATION CLEARLY ESTABLISHES THAT THE EIGHTH AMENDMENT PROHIBITS EXTENDED SOLITARY CONFINEMENT OF SERIOUSLY MENTALLY ILL INMATES.

By erroneously viewing as relevant only decisions ruling on invocations of the qualified immunity affirmative defense, the district court ignored the robust decisional law across the nation that "clearly establishes" the Eighth Amendment prohibited the Vaughn Wardens from placing Mr. Clark in solitary confinement for the extended consecutive periods of time.

The scope of conduct prohibited by the Eighth Amendment is not static, and it is not determined by reference to whether qualified immunity has been denied. Rather, the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *See Trop v. Dulles*, 356 U.S. 86, 101 (1958) (finding that statute allowing for the stripping of citizenship for convicted deserters qualified as cruel and unusual punishment even though such punishment does not involve physical mistreatment) (plurality opinion). As the Supreme Court explained in *Estelle v. Gamble*, 429 U.S. 97, 102

(1976), the Eighth Amendment reflects "broad and idealistic concepts of dignity, civilized standards, humanity and decency."

The Supreme Court has made clear that, because imprisonment strips a person's ability to care for himself, the Constitution imposes "a corresponding duty to assume some responsibility for his safety and general well being . . . ." *Helling v. McKinney*, 509 U.S. 25 (1993); *see also Farmer v. Brennan*, 511 U.S. 825 (1994). Over the years, the Supreme Court has expanded its interpretation of the Eighth Amendment's scope to find unconstitutional the use of excessive physical force against prisoners, the failure to provide humane conditions of confinement to prisoners, the execution of minors, the intellectually disabled, and those convicted of non-homicidal rape, the denial of "basic sustenance, including adequate medical care," to prisoners, and the sentencing of minors to life in prison without the possibility of parole. *See Hudson v. McMillian*, 503 U.S. 1 (1992); *Atkins v. Virginia*, 536 U.S. 304 (2002); *Roper v. Simmons*, 543 U.S. 551 (2005); *Kennedy v. Louisiana*, 554 U.S. 407 (2008); *Graham v. Florida*, 560 U.S. 48 (2010); *Brown v. Plata*, 563 U.S. 493, 510-11 (2011); *Miller v. Alabama*, 567 U.S. 460 (2012).

It has been black-letter law since 1976 that prison officials violate the Eighth Amendment if they are deliberately indifferent to a prisoner's existing serious medical needs. *Estelle*, 429 U.S. at 102. Given that solitary confinement destroys mental health, use of confinement for those susceptible to such damages

constitutes cruel and unusual punishment that violates the Eighth Amendment. As early as 1890, the Supreme Court recognized the negative impact of solitary confinement on inmates. In *In re Medley*, the Court noted the harms of solitary: "A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community." 134 U.S. 160, 168 (1890). Ultimately, the Court described solitary confinement as "an additional punishment [to ordinary imprisonment] of the most important and painful character," noting that its "essential character" "remains . . . to mark [prisoners] as examples of the just punishment of the worst crimes of the human race." *Id.* at 170-71. In 1962, a Supreme Court concurrence cited to *In re Medley* as an example of an Eighth Amendment interpretation. *Robinson v. California*, 370 U.S. 660, 675 (1962) (Douglas, J., concurring).

By the late 1980s and early 1990s, a national judicial consensus developed that the Eighth Amendment, as interpreted by the Supreme Court in *Estelle* and *Helling*, prohibited prison officials from using extended periods of solitary confinement for seriously mentally ill inmates, who deteriorated in such conditions. In 1989, in the Southern District of New York, the court held that

prison officials' failures to screen out prisoners whose mental illness would be exacerbated by solitary confinement could amount to deliberate indifference. *Langley v. Coughln*, 715 F. Supp. 522, 540 (S.D.N.Y. 1989). There, the court discussed the failures and denials of psychiatric care, and denied summary judgment to the prison officials. *See id.* at 540-42 (discussing various failures or denials of psychiatric care in denying summary judgment to the state defendants).

In 1993, in Arizona, the court considered whether placing mentally ill prisoners in isolation despite knowledge that their mental health needs were not being met violated Eighth Amendment. *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993). The court found unconstitutional the routine use of lockdowns to isolate mentally ill prisoners without providing adequate mental health care. *Id.* at 1548–49. The court found that inmates were being locked down for far longer than contemplated in the prison policy, and rather than getting proper daily visits by a psychiatrist, were getting safety and welfare checks only by nurses or security staff. *Id*. The court highlighted the "egregious" case of H.B., who was locked down for 11.5 months and saw a psychiatrist only 9 times—a case substantially similar to that of Mr. Clark. *Id.*

In 1995, the court in the Northern District of California adjudicated claims arising from the conditions of confinement at Pelican Bay State Prison and held extended solitary confinement violated the Eighth Amendment rights for those

who were mentally ill and certain others. *See, e.g.*, *Madrid v. Gomez,* 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995). In a lengthy decision that addressed a panoply of prison conditions, the court considered whether incarceration in solitary confinement—where inmates were subjected to near-total isolation for 22.5 hours per day and confined to 80 square feet cells—resulted in serious psychiatric consequences. *Id.* at 1228-33. Some of the inmates were in double, not solitary, cells, but the court held "this does not compensate for the otherwise severe level of social isolation in the SHU." *Id.* at 1229. The court made express factual findings on the impact of solitary conditions on mental health. *Id*. at 1230-31. The court cited to the Seventh Circuit decision in *Davenport v. DeRobertis*, 844 F.2d 1310, 1316 (7th Cir. 1988), which noted "'there is plenty of medical and psychological literature concerning the ill effects of solitary confinement . . . .'" *Madrid*, 889 F. Supp. at 1231 (internal citations omitted). The court in *Madrid* then found as fact "a severe reduction in environmental stimulation and social isolation can have serious psychiatric consequences. . . ." *Id.* at 1232 (internal citations omitted). The court considered whether these facts constituted an Eighth Amendment violation. Reasoning that the Supreme Court in *Helling*, 509 U.S. 25, had made clear that prisoners could not be forcibly incarcerated in conditions that would make them seriously physically ill, the court in *Madrid* held that "[s]urely, these

same standards will not tolerate conditions that are likely to make inmates seriously mentally ill." *Id*. at 1261.

Based on the evidence, the court held that solitary confinement does not violate the Eighth Amendment as to all inmates, but does violate the Eighth Amendment when used for extended periods of time for the seriously mentally ill. *Id*. For such inmates, "defendants have deprived inmates of a basic necessity of human existence – indeed, they have crossed into the realm of psychological torture." *Id*. at 1264. The court reasoned as to the seriously mentally ill inmates, the prison officials' use of solitary constituted deliberate indifference violative of the Eighth Amendment under the reasoning of *Farmer*, 511 U.S. at 837. *Id*. at 1267. The court held "[w]e do, however, find for the reasons stated above, that continued confinement in the SHU, under present conditions, constitute cruel and unusual punishment in violation of the Eighth Amendment for two categories of inmates: ***those who are already mentally ill*** and those who, as identified above, are at an unreasonably high risk of suffering serious mentally illness as a result of present conditions in the SHU." *Id*. at 1267 (emphasis added).

In 1999, the court in the Southern District of Texas considered an administrative segregation program that deprived inmates of "exercise, social activity, and outside contact" were "virtual incubators of psychoses-seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering

from mental infirmities." *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 907 (S.D. Tex. 1999), *rev'd and remanded on other grounds sub nom. Ruiz v. United States*, 243 F.3d 941 (5th Cir. 2001). Notably, in *Ruiz*, the court factored into its analysis a "paper gown" restriction sometimes imposed on inmates where they would be forced to wear nothing but a paper gown—an odious practice somewhat analogous to the "naked room" where Mr. Clark and others are forced to wear nothing but an open smock. 37 F. Supp. 2d at 908 & n.91. The court concluded that Texas's solitary confinement units violated Eighth Amendment "through extreme deprivations which cause profound and obvious psychological pain and suffering," including by "exacerbating illness in those already suffering from mental infirmities." *Id*. at 112

Throughout the nation, courts uniformly held that mentally ill inmates placed in solitary confinement stated Eighth Amendment claims worthy of adjudication. *See Jones 'El v. Berge*, 164 F. Supp. 2d 1096, 1117-18, 1125-26 (W.D. Wis. 2001) (granting preliminary injunction ordering removal of seriously mentally ill inmates from Supermax prison because solitary confinement but for four hours per week not appropriate for seriously mentally ill inmates); *Terry v. Rice*, No. IP 00-0600-C, 2003 WL 1921818, at *15-16 (S.D. Ind. Apr. 18, 2003) (placing a mentally ill and potentially suicidal prisoner in isolation could amount to deliberate indifference).

In *Indiana Protection & Advocacy Services Commission v. Commissioner, Indiana Department of Correction*, No. 1:08–cv–01317, 2012 WL 6738517 (S.D. Ind. Dec. 31, 2012), the court in the Southern District of Indiana detailed the near-total confinement of inmates for 22 hours and 45 minutes per day, the use of individual cells that are only 13' by 6' or 8' by 10', small windows, meals in cells, etc. *Id*. at *4, *23. The court found that all of these acted to create a "lack of social interaction," "significant sensory deprivation," and "enforced idleness" that exacerbate prisoners' symptoms of serious mental illness and lead to decompensation. *Id.* at *15. The court held that the isolation of and lack of mental health care for mentally ill prisoners in solitary confinement units violated Eighth Amendment. *See also Sardakowski v. Clements*, No. 12-cv-01326, 2013 WL 3296569, at *8 (D. Col. July 1, 2013) (allegations that isolation exacerbated prisoner's mental illness and that defendants had knowledge of this adequately stated an Eighth Amendment conditions of confinement claim); *Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1335 (D. Ariz. 2014) ("Holding inmates with serious mental illness in prolonged isolated confinement may cause serious illness and needless suffering in violation of the Eighth Amendment."); and *Easley v. Burns*, 1:16-cv-331, 2016 WL 3561797, at *2-3 (S.D. Ohio June 1, 2016) (plaintiff's allegations that he was "mentally ill and at risk of suicide as a result of being locked in solitary

confinement with no mental health care or medication" stated an Eighth Amendment claim).

Delaware prisons do not somehow stand uniquely apart from the nationwide consensus. The Delaware judiciary reflected adherence to the existing consensus in *CLASI,* 2016 WL 1055741. There, a class of the mentally ill sued, alleging that their placement in solitary confinement violated their Eighth Amendment rights. The district court rejected Commissioner Coupe's claim that non-punitive reasons supported the segregation. The court cited to *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) and *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991) and held CLASI stated a claim that Commissioner Coupe violated the Eighth Amendment by alleging that seriously mentally ill inmates were kept in solitary confinement. The court held "[a] substantial risk of serious harm exists when prison officials fail to address serious medical needs, including those posed by mental illness." *Id*. at *3; *see also Goodrich v. Clinton Cnty. Prison*, 214 Fed. App'x 105, 111 (3d Cir. 2007). The Court noted that a prison official had a culpable state of mind if "he is aware of facts from which the inference could be drawn that a substantial risk of serious harm exists . . . ." *Farmer*, 511 U.S. at 837; *Beers-Capitol v. Whetzel*, 256 F.3d 120, 131 (3d Cir. 2001). The court concluded that "CLASI has ***alleged facts which could support a viable Eight Amendment claim***." *CLASI*, 2016 WL 1055741, at *4 (emphasis added).

D. THIRD CIRCUIT JURISPRUDENCE REFLECTS THIS ROBUST NATIONAL CONSENSUS.

Although published subsequent to Mr. Clark's solitary confinement, the Third Circuit's decision in *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017) cited to the robust national consensus on the proper interpretation of the Eighth Amendment, and ruled that a complaint alleging harm from the solitary confinement of a mentally ill detainee stated a viable Eighth Amendment claim that should have been allowed to proceed to adjudication. *Palakovic*, 854 F.3d at 226; *see also Williams*, 848 F.3d at 566 (holding that a death row inmate stated a claim under the Fourteenth Amendment because "protracted solitary confinement so exceeds the typical deprivations of imprisonment as to be the kind of 'atypical, significant deprivation . . . which [can] create a liberty interest.'") (alterations in original); *Porter*, 974 F.3d 431.

1. The Third Circuit's Palakovic *Decision Held a Complaint Alleging Prison Officials Placed a Mentally Ill Inmate in Extended Solitary Confinement States a Viable Eighth Amendment Claim.*

In *Palakovic*, the parents of a mentally ill young man who committed suicide sued the prison officials, alleging that they violated the Eighth Amendment by repeatedly placing their son in solitary confinement despite his known mental illness. 854 F.3d at 215. They alleged that, while incarcerated, their son underwent an initial mental health screening that revealed that he had previously been diagnosed with anti-social personality disorder, impulse control disorder, and

alcohol dependence. *Id.* The son also informed the medical staff that he had a history of suicide attempts and had engaged in self-harm as recently as August 2010, and admitted that he still experienced periodic thoughts of self-harm and suicidal ideation. *Id.* The prison officials identified Palakovic as a "suicide behavior risk," and classified him as having "a substantial disturbance of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or cope with the ordinary demands of life," the lowest stability rating assigned by the Pennsylvania Department of Corrections. *Id.* The prison officials placed him on the mental health roster. *Id.*

In 2011, Palakovic was transferred to SCI Cresson where he acquired the nickname "Suicide." *Id.* Palakovic often reported feeling depressed, and "acknowledged suicidal thoughts and a wish to die." *Id.* SCI Cresson never performed a comprehensive suicide risk assessment and offered no counseling in a clinically appropriate setting. *Id.* Any purported therapy of counseling was conducted "through the cell door slot in the solitary confinement unit." *Id.* SCI Cresson had insufficient staff who were not trained to treat prisoners with mental illness and that there was poor oversight of medication regimes. *Id.* In accord with common practice regarding mentally ill inmates, SCI Cresson repeatedly sent the son to solitary confinement, where he was "isolated for approximately 23 to 24 hours each day, in a tiny cement cell of less than 100 square feet with only small

slit windows affording him minimal outside visibility." *Id.* at 217. On July 16, 2012, at just 23 years old, the son committed suicide in solitary confinement. *Id.*

His parents alleged that prison officials were well-aware of the dangers such confinement carried for prisoners with mental health issues, with more than 80% of SCI Cresson's documented suicide attempts occurring in isolation. *Id.* They alleged that various groups of defendants were directly responsible for repeatedly placing Palakovic in solitary confinement and that supervisory defendants were responsible for implementing and enforcing policies that punished behavior caused by mental illness and intellectual disability. *Id.*

The Pennsylvania district court dismissed the claim. The Third Circuit reversed, and held that "a pre-trial detainee may bring a claim under the Due Process Clause of the Fourteenth Amendment that is essentially equivalent to the claim that a prisoner may bring under the Eighth Amendment." *Id.* at 223–24. The Third Circuit also highlighted that "while Eighth Amendment standards do not directly control in pretrial detainee cases, the 'deliberate indifference' standard that applies to officials under the Eighth Amendment probably is the 'equivalent' to the 'should have known' element in a vulnerability to suicide case involving a detainee." *Id.* The Third Circuit specifically held that "to the extent [Palakovic] could have brought an Eighth Amendment claim contesting his conditions of confinement while he was alive, his family should not be precluded from doing so

because he has passed away." *Id.* at 225.

The Third Circuit began its analysis by first highlighting "***the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement***." *Id.* (emphasis added). The Court further opined about the "growing consensus" that "conditions like those to which [Palakovic] repeatedly was subjected can cause severe and traumatic psychological damage, including anxiety, panic, paranoia, depression, post-traumatic stress disorder, psychosis, and even a disintegration of the basic sense of self identity." *Id.* The Court also noted that prison officials at SCI Cresson, and indeed throughout the Pennsylvania Department of Corrections, were aware of the devastating effects that solitary confinement could have on a mentally ill prisoner such as Palakovic. The Court also found that the allegations of the amended complaint, particularly those regarding Palakovic's well-documented history of mental illness, were "more than sufficient to state a plausible claim that Brandon experienced inhumane conditions of confinement to which the prison officials . . . were deliberately indifferent." *Id.* Accordingly, the Third Circuit held that the court erred in dismissing the Palakovic's Eighth Amendment claims. *Id.* at 226.

The Third Circuit found the lower court's analysis to be flawed and held that that "[n]either the failure to plead a particular vulnerability to suicide nor the

acknowledgment that [Palakovic] received some mental healthcare during his incarceration precludes this claim." *Id.* at 227. Specifically addressing the holding that, because Palakovic had been provided *some* mental healthcare treatment, his claim was precluded, the Third Circuit held that "there are circumstances in which some care is provided yet it is insufficient to satisfy constitutional requirements." *Id.* at 228. For example, the Third Circuit noted that prison officials "may not, with deliberate indifference to the serious medical needs of the inmate, opt for an easier and less efficacious treatment of the inmate's condition," nor may they deny an inmate's reasonable requests for medical treatment. *Id.* (internal citations and quotations omitted). The Third Circuit held that when the defendants permitted Palakovic "with his fragile mental health condition and history of self-harm and suicide attempts—to be repeatedly subjected to the harsh and unforgiving confines of solitary confinement," this took any claim "from the realm of mere negligence to a potential claim of constitutional magnitude." *Id.* at 229.

The Third Circuit concluded that the parents stated viable Eighth Amendment claims and ordered the District Court to "permit the Palakovics to file a second amended complaint setting forth their Eighth Amendment claims concerning conditions of confinement, inadequate mental healthcare, vulnerability to suicide, and failure to train." *Id.* at 234.

Notably, in the proceedings below, Mr. Clark brought the Third Circuit's decision in *Palakovic* to the court's attention. The court correctly acknowledged that "*Palakovic* supports the conclusion that solitary confinement, especially of mentally ill individuals, is increasingly disfavored." *App-I at 15.* But the court then inexplicably and incorrectly held that the Third Circuit "***did not consider whether they had alleged a constitutional violation*** . . . ." *Id.* (emphasis added). This is simply inaccurate, as the Third Circuit expressly analyzed whether the Palakovics should be permitted to proceed under the Eighth Amendment.

2. The Third Circuit's Decisions Condemn Extended Solitary Confinement for Death Row Inmates Because It Causes Permanent Physical and Mental Harm.

The Third Circuit decision in *Palakovic* is on point and interprets the Eighth Amendment case to allow claims to be brought premised on the harm that arises from placing a seriously mentally ill inmate into solitary confinement. But even in instances when the inmate being placed in solitary confinement does not have pre-existing mental illness such as Palakovic, extended solitary confinement itself consistently causes such permanent physical and mental harm that the Third Circuit has held it violates the Eighth Amendment's prohibition against cruel and unusual punishment.

In *Williams v. Secretary, Pennsylvania Department of Corrections*, 848 F.3d 549 (3d Cir. 2017), plaintiffs Craig Williams and Shawn T. Walker brought suit

against various Pennsylvania Department of Corrections officials, alleging a violation of their constitutional due process rights as a result of being repeatedly subjected to solitary confinement. 848 F.3d at 553. Both plaintiffs had been housed in death row after being sentenced to death. *Id.* Ultimately, these sentences were vacated, and both plaintiffs were re-sentenced to life without parole but kept in solitary during the interim. *Id.* Plaintiffs' lawsuit sought damages on the grounds they had been repeatedly "subjected to solitary confinement on death row without meaningful review of their placements after their death sentences had been vacated." *Id.*

On appeal, plaintiffs argued that their continued confinement on death row, without regular placement reviews, violated their procedural due process rights under the Fourteenth Amendment. *Id.* at 557. Although they originally asserted claims for substantive due process and Eighth Amendment violations, they were not pursued on appeal. *Id.* at 553 n.8.

The Third Circuit found that the plaintiffs had shown "atypical hardship," sufficient to give rise to a protected liberty interest, highlighting that their isolation on death row lasted for six to eight years and was essentially "indefinite." *Id.* at 561. The Court highlighted that "researchers have found that even *a few days* in solitary confinement can cause cognitive disturbances." *Id.* at 562 (emphasis in original). Yet Plaintiffs were "confined to their respective cells for twenty-two to

twenty-four hours a day and ate all meals accompanied only by the emptiness within the walls of their cells. In addition, Williams was placed inside a small locked cage during much of the limited time he was allowed to leave his cell and Walker was subjected to invasive strip searches each time he left his cell for exercise. As discussed [in the opinion], a body of research has shown that such conditions can trigger devastating psychological consequences, including a loss of a sense of self." *Id.* at 563.

Notably, the Court dedicated an entire section of its opinion to the discussion of the devastating effects solitary confinement can have on the human psyche. The Court stressed that "[t]he empirical record compels an unmistakable conclusion: this experience is psychologically painful, can be traumatic and harmful, and puts many of those who have been subjected to it at risk of long-term . . . damage" and explained that "[t]here is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days **failed to result in negative psychological effects**." *Id.* (alterations in original) (emphasis added). In addition to the well-documented psychological effects, the Court highlighted the risks of physical damage, including suicide and self-mutilation, inherent in extended periods of solitary confinement. *Id.* at 567.

Indeed, as the Third Circuit stated, "scores of studies that have examined this phenomenon tell us: Continued solitary confinement, the experience Plaintiffs

complain of here, poses a grave threat to well-being." *Id.* at 568–69. The Court also rejected the idea that "the profound liberty concerns raised by Plaintiffs' continued confinement on death row can be overcome by a carefully worded prison policy. State policy cannot undermine a constitutional interest." *Id.* at 571.

The Third Circuit decision in *Porter v. Pennsylvania Department of Corrections*, 974 F.3d 431 (3d Cir. 2020), reaches the same conclusions as the *Palakovic* and *Williams* decisions: solitary confinement may be an Eighth Amendment violation. In *Porter*, a death row inmate kept in solitary confinement for over thirty years brought claims that the Pennsylvania Department of Corrections and certain prison officials violated his procedural due process rights and his right to be free from cruel and unusual punishment through the Eighth and Fourteenth Amendments. 974 F.3d at 437, 440. As in all Eighth Amendment cases, the inmate was required to satisfy the two-prong test of (1) an "objectively, sufficiently serious" deprivation and (2) a prison official "deliberately indifferent" to the inmate's "health or safety." *Id.* at 441 (internal quotation marks and citations omitted).

At summary judgment, the magistrate denied the claim on the grounds that the inmate failed to "offer evidence that he had experienced an actual injury." *Id.* (describing magistrate opinion). The Third Circuit, relying on *Mammana v. Federal Bureau of Prisons*, 934 F.3d 368, 374 (3d Cir. 2019), reversed and held

"an inmate need not provide evidence of actual injury," only a "'substantial risk of serious harm.'" *Id.* A "'substantial risk of harm [standard] is less demanding than the proof needed to show that there was a probable risk of harm.'" *Id.* (quoting *Chavarriaga v. N.J. Dep't of Corrs.*, 806 F.3d 210, 227 (3d Cir. 2015)). The Court held *Porter* was wrongly decided at summary judgment not only because an inmate need only show a substantial risk of harm, but further because the plaintiff in fact had "provided competent evidence [of] severe detrimental effects from his prolonged solitary confinement." *Porter*, 974 F.3d at 443. The Court went on to explain that "expert medical testimony" was *not* required "to satisfy the objective prong of the Eighth Amendment test," because—unlike adequacy of care—a layperson was competent to assess the risks of solitary confinement. *Id.* at 443 n.6.

In reversing on this issue, the Third Circuit viewed solitary confinement to pose such a substantial risk such that the first prong of the Eighth Amendment test will be easily established. *Porter*, 974 F.3d at 441-43. The court quoted extensively from the summary of empirical evidence in *Williams*, and cited further to an *amicus* brief by "Professors and Practitioners of Psychiatry, Psychology, and Medicine" explaining bluntly that "[s]olitary confinement causes substantial harm to prisoners' mental and physical health." *Porter*, 974 F.3d at 442. As the Court went on to explain, "[w]e have repeatedly recognized the severe effects of prolonged solitary confinement, as have our sister circuits and Justices of the

Supreme Court—citing, *inter alia*, the Third Circuit's decision in *Shoats v. Horn*, 213 F.3d 140 (3d Cir. 2000), in which a Pennsylvania Department of Corrections official acknowledged he "would be concerned about the psychological damage to an inmate after only 90 days of solitary confinement."

Turning to the second prong, the Third Circuit found sufficient evidence of deliberate indifference to survive summary judgment. The record reflected a consensus that "the risk of harm was longstanding, pervasive, well-documented, [and] expressly noted by prison officials in the past such that defendants must have known about the risk." *Porter*, 974 F.3d at 444-45. Department of Corrections policies "specifically recognize the mental health risks posed by solitary confinement," and a Department of Corrections representative testified as to the risks of solitary confinement, including that inmates "'start to decompensate,'" increasing the risk of harm to the inmate as well as to others with whom the inmate might later interact. *Id.* (quoting representative's deposition). The Court looked outside the record of the inmate's case finding, for example, that Secretary Wetzel had "acknowledged the risks of prolonged solitary confinement" in prior litigation and that Secretary Wetzel belonged to a trade group "which has published reports about efforts to limit solitary confinement." *Id.* at 444-45. The Third Circuit also recognized that the risks of harm are "obvious," given the "wide range of

researches and courts [which] have repeatedly described the serious risks associated with solitary confinement." *Id.* at 445-46.

The Third Circuit found that the defendants had qualified immunity, but only because it held that challenges to "conditions on death row" were distinct from challenges by inmates from other populations placed in solitary confinement, making the rights at issue not "clearly established." *Porter*, 974 F.3d at 450. Indeed, the court drew a distinction between the inmate's claim in *Porter* and the well-established rights of inmates with other exacerbating factors, such as mental illness as recognized in *Palakovic* where—as is true for Mr. Clark—the inmate "had preexisting serious mental health problems." *Id.* at 450. Because that inmate had "particular vulnerability in light of the known dangers of solitary confinement," that inmate "stated an Eighth Amendment claim." *Id.* Thus, *Porter* recognized, while there could be no doubt that the risks to an inmate placed in solitary confinement with exacerbating factors such as a pre-existing mental health condition were "clearly established," the same was not true for inmates on death row without exacerbating or pre-existing mental illness until the *Porter* decision was issued. *Id.* In short, *Williams* and *Porter* illustrate the robustness of the national legal and scientific consensus about the harms of solitary confinement for those with serious mental illness, and reflect a growing consensus that the harms

are so great that it should be limited even for those without pre-existing mental illness.

II. QUALIFIED IMMUNITY CANNOT PROTECT THE VAUGHN WARDENS WHO HAD FAIR NOTICE THAT EXTENDED PERIODS OF SOLITARY CONFINEMENT VIOLATED CLARK'S EIGHTH AMENDMENT RIGHTS.

The Vaughn Wardens invoked qualified immunity, in essence claiming it would unfair to force them to adjudicate Mr. Clark's claims because they had not been given fair notice that the Eighth Amendment prohibits placing a seriously mentally ill inmate into isolation for more than thirteen months. Erring as a matter of law, the district court granted them immunity despite the myriad ways in which the Vaughn Wardens were on notice of the unconstitutionality of their conduct. The decisional law across the nation, a Delaware code section, the Department's own policy, an investigation by the United States Department of Justice ("USDOJ"), an audit by the American Correctional Association ("ACA") and the very obviousness of the harms being done to Mr. Clark all put the Vaughn Wardens on fair notice that they were violating the Eighth Amendment prohibition against cruel and unusual punishment.

A. THIS COURT SHOULD CONDUCT A PLENARY REVIEW OF THE DISTRICT COURT'S GRANT OF QUALIFIED IMMUNITY.

"The doctrine of qualified immunity shields government officials from civil liability for constitutional violations only if 'their actions could reasonably have

been those consistent with the rights they are alleged to have violated.'" *Kedra*, 876 F.3d at 434 (citing *Anderson v. Creighton*, 483 U.S. 635, 638 (1987)). Given that the doctrine prevents those harmed from seeking redress from the involved government officials, any grant of immunity merits close scrutiny. This Court should conduct a plenary review of the district court's grant of qualified immunity to the Vaughn Wardens, and reverse the grant of immunity as unwarranted as a matter of law. *See Morrow v. Balaski*, 719 F.3d 160, 165 (3d Cir. 2013); *McLaughlin v. Watson*, 271 F.3d 566, 570 (3d Cir. 2013); *Argueta v. ICE*, 643 F.3d 60 (3d Cir. 2011); and *Kedra*, 876 F.3d at 434.

B. DECISIONAL LAW ACROSS THE NATION GAVE THE VAUGHN WARDENS FAIR NOTICE OF THE NATIONAL CONSENSUS ON THE EIGHTH AMENDMENT INTERPRETATION.

The Third Circuit acknowledged "the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement." *Palakovic*, 854 F.3d at 225. As of the time of Mr. Clark's confinements, any reasonable correctional officer would know that keeping a seriously mentally ill inmate in solitary confinement for lengthy periods of time caused significant harm. As noted in *Palakovic*, the consensus view is that solitary confinement "can cause severe and traumatic psychological damages, including anxiety, panic, paranoia, depression, post-traumatic stress disorder, psychosis, and even a disintegration of the basic sense of self identify."

Id. at 225 (citing *Williams v. Secretary of the Pennsylvania Department of Corrections*, 848 F.3d 549 (3d Cir. 2017)). Any reasonable correctional officer would know that the "Eighth Amendment prohibits prison officials from being deliberately indifferent to an inmate's serious medical needs. . . . 'To act with deliberate indifference to serious medical needs is to reckless disregard a substantial risk of serious harm.'" *Id*. at 227 (citing *Estelle v. Gamble,* 429 U.S. 97, 104 (1976) and *Giles v. Kearney*, 571 F.3d 318, 330 (3d Cir. 2009)).

Here, the Vaughn Wardens had *actual* notice of the District Court's ruling in a lawsuit filed against Commissioner Coupe by the Community Legal Aid Society ("CLASI") in September 2015. *CLASI*, 2016 WL 1055741. The complaint alleged that the Commissioner's excessive confinement of seriously mentally ill inmates violated the Eighth Amendment. *App-III at 617-642*. The court rejected the Commissioner's claim that the allegations non-punitive reasons supported the segregation. The court cited to *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) and *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991), and held CLASI stated a claim that Commissioner Coupe violated the Eighth Amendment by alleging that seriously mentally ill inmates were kept in solitary confinement. The court held "[a] substantial risk of serious harm exists when prison officials fail to address serious medical needs, including those posed by mental illness." *Id*. at *3; *see also Goodrich*, 214 Fed. App'x at 111. The court noted that a prison official had a

culpable state of mind if "he is aware of facts from which the inference could be drawn that a substantial risk of serious harm exists . . ." *Farmer*, 511 U.S. at 837; *Beers-Capitol*, 256 F.3d at 131. The court concluded that "CLASI has alleged facts which could support a viable Eight Amendment claim." *CLASI*, 2016 WL 1055741, at *4.

Further, in addition to actual notice of the CLASI decision, the Vaughn Wardens were given fair notice by the nationwide consensus in decisional law regarding about conditions of confinement. The following judicial decisions gave fair notice to the Vaughn Wardens that they were violating the Eighth Amendment when they placed Mr. Clark in extended periods of solitary confinement: *Langley*, 715 F. Supp. at 540 (S.D.N.Y. 1989); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 907 (S.D. Tex. 1999); *Jones 'El v. Berge*, 164 F. Supp. 2d 1096, 1117-18, 1125-26 (W.D. Wis. 2001); *Terry v. Rice*, No. IP 00-0600-C, 2003 WL 1921818, at *15-16 (S.D. Ind. Apr. 18, 2003); *Indiana Prot. & Advoc. Svcs. Comm'n v. Comm'r, Ind. Dep't of Corr.*, No. 1:08–cv–01317, 2012 WL 6738517, at *23 (S.D. Ind. Dec. 31, 2012); *Sardakowski v. Clements*, No. 12–cv–01326, 2013 WL 3296569, at *8 (D. Col. July 1, 2013); *Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1335 (D. Ariz. 2014); and *Easley v. Burns*, No. 1:16-cv-331, 2016 WL 3561797, at *2-3 (S.D. Ohio June 1, 2016).

Under controlling Third Circuit law, the Vaughn Wardens cannot ignore decisional law outside the Third Circuit. *Williams v. Bitner*, 455 F.3d 186, 194 (3d Cir. 2006) (decisions from other circuits put officials on notice). Indeed, in determining the scope of constitutional rights, even *dicta* will suffice, as the Supreme Court made clear in *Hope v. Pelzer* in its discussion of the *Ort* case. *See Hope* at 744-745.

C. DELAWARE CODE SECTION 3902 GAVE THE VAUGHN WARDENS FAIR NOTICE.

The Vaughn Wardens also received fair notice from the passage of a Delaware law prohibiting extended solitary confinement for all inmates, not only those with serious mental illness. In 2014, the Delaware Legislature passed legislation limiting the ability of a judge to sentence a person to solitary confinement. 2 *Del C.* § 3902 states, "[i]n every case of sentence to imprisonment for a term exceeding 3 months, the court may by the sentence direct that a certain portion of the term of imprisonment, ***not exceeding 3 months***, shall be in solitary confinement; and any person so sentenced shall not be allowed to work during that portion of the term of imprisonment." (Emphasis added.)

The Vaughn Wardens placed Mr. Clark, a person with serious mental illness in solitary confinement for more than thirteen months, with consecutive periods as long as six and seven months. Such excessive extended periods of solitary confinement violate the Section 3902 limitation that prohibits any inmate from

being sentenced to more than three months in solitary confinement. Even if Section 3902 were read to apply only to judges, the law provides fair notice to the Vaughn Wardens solitary confinement for longer than three months constitutes a cruel punishment expressly forbidden by Delaware law in other circumstances.

D. DEPARTMENT OF CORRECTION'S POLICY ON SEGREGATED OFFENDERS GAVE THE VAUGHN WARDENS FAIR NOTICE.

The Vaughn Wardens were also given fair notice of the unconstitutionality of their conduct by the Department of Correction's own policy on "Segregated Offenders," which makes clear that severe mental illness was "***contradictory to confinement or would require special accommodations***." *App-III at 502 (*emphasis added). The policy called for "an assessment of potential decompensation and assessment of appropriate treatment and placement, including but not limited to infirmary housing or psychiatric close observation (PSO)." *App-III at 504.*

Courts consistently have found prison officials failure to follow their own policies and training provides particularly strong support for the conclusion that the officials were on notice of the wrongful nature of their actions. *See, e.g.*, *Oken v. Vill. of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 433-34 (2d Cir. 2009) (failure to comply with training and state law compels denial of qualified immunity).

E. THE UNITED STATES DEPARTMENT OF JUSTICE INVESTIGATION GAVE THE VAUGHN WARDENS FAIR NOTICE.

As the Supreme Court held in *Hope v. Pelzer*, fair notice to prison officials need not flow from judicial decisions. There, officials were held to have fair notice of the unconstitutional nature of their conduct from a Department of Corrections regulation and the United States Department of Justice ("USDOJ") report. *Hope* at 741-42. The *Hope* Court relied heavily on the fact that "the DOJ specifically advised the ADOC [Alabama Department of Corrections] of the unconstitutionality of its practices before the incidents in this case took place." *Hope* at 744; *see also Young v. Martin*, 801 F.3d 172, 182 (3d Cir. 2015) (prison regulations may be considered to fairly establish the unconstitutionality of the conduct).

The Vaughn Wardens received fair notice of the violative nature of their conduct from a March 7, 2006, USDOJ investigation. *App-III at 552, 567, 573.* The USDOJ advised the State of Delaware that it was investigating whether the mental health care services—or lack thereof—"violated inmates' constitutional rights." *App-III at 552*. This investigation culminated in a Memorandum of Agreement that governed that State until December 29, 2009. *App-III at 550-573*.

The Vaughn Wardens ignored and violated the terms imposed by this 2006 USDOJ Memorandum by their subsequent treatment of Mr. Clark. *See, e.g.*, *App-*

III at 562-563 (requiring that "[i]nmates with serious mental illness who are placed in Isolation shall be evaluated by a qualified mental health professional within twenty-four hours and regularly thereafter to determine the inmate's mental health status, which shall include an assessment of the potential effect of the Isolation on the inmate's mental health. During these regular evaluations, the State shall evaluate whether continued Isolation is appropriate for that inmate, considering the assessment of the qualified mental health professional, or whether the inmate would be appropriate for graduated alternatives."); *see also App-III at 561-562* (requiring that "inmates have access to a confidential self-referral system by which they may request mental health care without revealing the substance of their request to security staff.") The Vaughn Wardens thus were given fair notice that their conduct violated the Eighth Amendment.

F. THE AUDIT BY THE AMERICAN CORRECTION ASSOCIATION GAVE THE VAUGHN WARDENS FAIR NOTICE.

The Vaughn Wardens also received fair notice of the unconstitutional nature of their treatment of Mr. Clark through the American Correction Association ("ACA") audit on the Vaughn prison. The ACA report set forth the "general consensus among clinicians that the ***conditions and duration of confinement in administrative segregation [solitary] are associated with potential psychological harm for many inmates with serious mental illness***." *App-III at 597*. The ACA

expressly advised that "[w]ithout access to necessary mental health care, some inmates may experience symptoms of depression, paranoia, perceptual distortions, delusional thinking, impaired problem solving ability and problems with impulse control." *Id.* The ACA made clear "the harsher the conditions and the longer the duration of confinement, the more likely deterioration may occur, or at least be resistant to improvement." *Id*.

The report noted that the Delaware Department of Correction did not have an established definition of Serious Mental Illness and "does not have defined levels of care to provide access to necessary treatment in accordance with the inmates/detainees assessed mental health needs." *App-III at 595*. The ACA noted that the solitary confinement units are locked down 22-24 hours per day. *App-III at 598*. Echoing the USDOJ, the ACA expressly recommended that [i]nmates with an identified serious mental illness should be placed in a secure residential treatment unit and receive at least 10 hours of out-of-cell structured therapeutic activities and at least 10 hours of out-of-cell exercise weekly." *Id.*

The ACA made explicit the fact that those with serious mental illness should not be placed in solitary at all—let alone for seven consecutive months as occurred with Mr. Clark: "Such [pre-screening] evaluations are necessary to determine not who can be placed in RH, but rather to identify mental and behavioral impairment in inmates/detainees ***that should preclude placement in [solitary]***." (Emphasis

added.) *Id*. The ACA explained, "[i]nmates/detainees that are determined by qualified mental health staff to be not suitable for placement in RH [solitary] based on their mental illness and/or cognitive impairment should be diverted to a secure residential treatment unit." *Id*.

In addition to providing fair notice to both Vaughn Wardens via the written report, the ACA team directly communicated its concerns to Warden Pierce. That is, the ACA team conducted a site visit to solitary confinement areas in Vaughn on November 19, 2015, and singled out the improper conduct of Warden Pierce towards the mentally ill. *App-III at 588*. Specifically, "[t]he ACA Team observed that the warden was not completely open to change in regards to restrictive housing objectives and classification concerning the mentally ill. In several instances he alluded to the 'Delaware Code' that allowed him to over-ride decisions on classification and/or mentally ill treatment issues." Later in the report, the ACA Team commented that Warden Pierce thinks he is entitled to override treatment decisions "based on his opinion of an inmate's actions." *App-III at 590*. Clearly Warden Pierce was aware of the ACA's views because he attended a group structured interview on site at Vaughn with the ACA on December 15, 2015. *App-III at 593.*

G. OBVIOUSNESS GAVE THE VAUGHN WARDENS FAIR NOTICE.

Finally and importantly, controlling Supreme Court decisions that made clear that officials are not entitled to qualified immunity—regardless of whether a prior judicial decision addressed the type of conditions at issue—if general statements of law apply with obvious clarity. In *Taylor v. Riojas*, 141 S.Ct. 52 (2020), the Court found that the Fifth Circuit properly held that Taylor's conditions of confinement violated the Eighth Amendment, with Taylor held in a feces-covered cell, and then moved to a frigidly cold cell. The Court, however, reversed the Fifth Circuit's holding that the officials were entitled to qualified immunity because they did not have fair warning that their specific acts were unconstitutional. The Court reasoned that "no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time." *Id*. at *53; *see also McCoy*, 141 S.Ct. 1364 (Mem.) (vacating grant of qualified immunity to an officer who pepper sprayed a prisoner for no reason).

The *Taylor* Court did not announce a new rule on qualified immunity. Rather, it simply added to the robust jurisprudence teaching that officials cannot be immunized when they engage in conduct that obviously violates the Eighth Amendment. For example, in *Hope v. Pelzer*, the Supreme Court confronted another obvious violation: prison guards handcuffed an inmate to a hitching post

for disruptive behavior despite the fact that he had already been subdued. There, as here, the prison guards argued that they had not been placed on notice of the unconstitutionality of their misconduct by any prior decision. The Supreme Court rejected this reasoning, holding "[t]his rigid gloss on the qualified immunity standard, though supported by Circuit precedent, is not consistent with our cases." 526 U.S. at 739. The Court reasoned that the "obvious cruelty inherent in this practice" gave prison officials "some notice that their alleged conduct violated Hope's constitutional protection against cruel and unusual punishment." *Id.* at 745. In short, the Court made clear that officials are not entitled to a free pass from liability when they engage in novel forms of misconduct towards inmates: "Our opinion in Lanier thus makes clear that officials can still be on notice that their conduct violates established law even in novel factual circumstances." *Id.* at 741 (citing *United States v. Lanier*, 520 U.S. 259 (1997)). The Hope Court explained that the *Lanier* decision "expressly rejected a requirement that previous cases be 'fundamentally similar.'" *See Hope*, 526 U.S. at 741; *see also id.* at 742 (lower court's "conclusion to the contrary exposes *the danger of a rigid, overreliance on factual similarity*") (emphasis added).

The Third Circuit rejected the same type of "rigid" argument relying on a lack of prior precedents in *Kedra*. There, a police firearms safety instructor accidentally fired a loaded pistol at a state trooper and killed him. The safety

instructor successfully argued in the district court that he was entitled to qualified immunity because no precedents put him on notice of the unconstitutionality of his actions. On appeal, the Third Circuit explained that "it need not be the case that the exact conduct has previously been held unlawful so long as the "contours of the right" are sufficiently clear." 876 F.3d at 450 (citing *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The Third Circuit, citing *Brown v. Muhlenberg Twp*., 269 F.3d 205, 211 n.4 (3d Cir. 2001), held that the proper analysis is whether the unlawfulness of the conduct would have been obvious and apparent to a reasonable official. *See also Atkinson v. Taylor*, 316 F.3d 257 (3d Cir. 2003) (denying qualified immunity to prison officials who exposed inmate to second-hand smoke and retaliated against him for filing a lawsuit); *Sharp v. Johnson*, 669 F.3d 144, 159 (3d Cir. 2012) (general constitutional rule may apply with obvious clarity); *Jacobs v. Cumberland Cnty.*, __ F.4th __, No. 19-3269, 2021 WL 3504036, at *6 (3d Cir. Aug. 10, 2021) (any reasonable officer would have known using gratuitous force against an inmate violated the Constitution).

Here, the district court erred by failing to consider whether a reasonable correctional officer would find it obvious and apparent that isolating Mr. Clark, an inmate with serious mental illness, for more than thirteen months violates the Eighth Amendment. *App-I at 1-10 and 12-17*.

By 2012, any reasonable correctional officer would find it obvious that extended solitary confinement damages the mental health of any inmate, let alone an inmate with serious mental illness. The Vaughn Wardens knew that Mr. Clark qualifies as someone with severe mental illness because the Delaware Department of Correction's doctors diagnosed him with schizoaffective disorder, antisocial personality disorder, bi-polar disorder, and various substance abuse disorders in remission. *App-II at 59, ¶ 5*; *App-II at 72, ¶ 81*.

As a result of the obviousness of the constitutional violation, the district court erred by finding the Vaughn Wardens entitled to qualified immunity. In sum, the Vaughn Wardens received extensive and multiple forms of fair notice: decisional law, including in a case where Commissioner Coupe was the named defendant; the Delaware Code, a 2006 USDOJ investigation, Department of Correction's policy, a ACA audit conducted during 2015, and obviousness. The Vaughn Wardens are not entitled to qualified immunity from a lawsuit alleging that they violated the Eighth Amendment by isolating the seriously mentally ill inmate Clark in harsh conditions for excessive periods of time. Qualified immunity exists to ensure fairness, and cannot be invoked by the Vaughn Wardens who knew or should have known that their conduct violated the Eighth Amendment. *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987). The fact that Warden Pierce stubbornly and improperly

fought against the DOJ and ACA compliance efforts—*see App-III at 590*—does not exonerate him or Commissioner Coupe from being forced to adjudicate Mr. Clark's Eighth Amendment claims. This Court should deny them qualified immunity as they had ample fair notice of the clearly established Eighth Amendment law.

CONCLUSION

This Court should reverse the district court's dismissal of Count I of the FAC and remand for discovery and trial. The Vaughn Wardens want to cloak themselves in ignorance and claim they could not have known that the Eighth Amendment prohibits placing a seriously mentally ill inmate into lengthy periods of solitary confinement. Yet adopting a posture of ignorance cannot save them from being forced to adjudicate Mr. Clark's Eighth Amendment claims. The robust national legal and scientific consensus to the contrary existed and was known to them while they were irreparably harming Mr. Clark. Indeed, Delaware statutory law, audits, investigations, the Department's own policies, and the very obviousness of the cruel and harmful nature of isolating Mr. Clark negate the Vaughn Warden's troubling claims of ignorance. This Court has already made clear that the Eighth Amendment prohibits placing seriously mentally ill inmates into conditions of solitary confinement that cause further mental deterioration. *Palakovic*, 854 F.3d 209. Under the relevant standard of plenary review, this Court

should reverse the district court's erroneous decision, which was based on the faulty assumption that only qualified immunity caselaw should be considered.

Respectfully Submitted,

/s/*Susan L. Burke*
Susan L. Burke
ACLU Delaware
100 W. 10th Street
Suite 706
Wilmington, DE 19801

Michael J. Broadbent
Cozen O'Connor
One Liberty Place
1650 Market Street
Suite 2800
Philadelphia, PA 19103

Chad S.C. Stover
Barnes & Thornburg LLP
1000 N. West Street
Suite 1500
Wilmington, DE 19801

CERTIFICATION OF ADMISSION TO BAR

I, Susan L. Burke, certify as follows:

1. I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

2. Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: September 20, 2021

By: /s/*Susan L. Burke*
Susan L. Burke

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B). This brief contains 12,847 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure.

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionally spaced typeface using the 2008 version of Microsoft Word in 14 point Times New Roman font.

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and the Vipre Virus Protection, version 3.1 has been run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: September 20, 2021

By: /s/*Susan L. Burke*
Susan L. Burke

CERTIFICATE OF FILING AND SERVICE

I certify that on this 20th day of September 2021, the foregoing Brief and Appendix Volume I were filed through CM/ECF system and served on all parties or their counsel of record through the CM/ECF system.

Dated: September 20, 2021

By: /s/*Susan L. Burke*
Susan L. Burke

APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANGELO LEE CLARK, Plaintiff, v. ROBERT COUPE, et al., Defendants.	Civil Action No. 1:17-cv-00066-RGA

MEMORANDUM

Presently before me is the lengthy Report & Recommendation ("Report") of a United States Magistrate Judge. (D.I. 69). It addresses DOC Defendants'[1] Motion to Dismiss and Medical Defendants'[2] Motion to Dismiss for Failure to State a Claim. (D.I. 32, 34). Plaintiff and DOC Defendants have filed objections to the Report. (D.I. 71, 72). DOC Defendants and Medical Defendants have responded to Plaintiff's objections. (D.I. 74, 76). Plaintiff has responded to DOC Defendants' objections. (D.I. 75).

I. BACKGROUND

Plaintiff has been an inmate at James T. Vaughn Correctional Center ("JTVCC") since 2004. (D.I. 29 at ¶ 19). While at JTVCC, Plaintiff has been treated for serious mental illness ("SMI"). (*Id.* at ¶ 1). He was housed in solitary confinement for fifteen days in 2015 and for seven months in 2016. (*Id.* at ¶ 11). He alleges that his placement in solitary confinement was "in retaliation for [his] SMI, loud voice, or minor rule infractions." (*Id.* at ¶ 1).

[1] "DOC Defendants" are Defendants Robert Coupe, Perry Phelps, Dana Metzger, David Pierce, Jeffrey Carrothers, Bruce Burton, Marcello Rispoli, and Roland Willey.
[2] "Medical Defendants" are Defendants Dr. William Ray Lynch, Dr. Paola Muñoz, Dr. David Yunis, Rhonda Montgomery, Susan Mumford, and Stephanie D. Johnson.

Plaintiff filed this Section 1983 lawsuit *pro se* on January 23, 2017. (D.I. 1). The Court appointed counsel for Plaintiff on September 12, 2017. (D.I. 22). With the aid of counsel, Plaintiff filed a first amended complaint (FAC) on January 12, 2018, alleging that Defendants violated his rights under the First, Fifth,[3] and Eighth Amendments of the United States Constitution applied through the Due Process Clause of the Fourteenth Amendment. (D.I. 29). He seeks damages and a permanent injunction. (*Id.* at 25). Defendants filed their motions to dismiss on April 2, 2018. (D.I. 32, 34).

I referred the motions to dismiss to a Magistrate Judge on July 31, 2018. (D.I. 48). A Report was issued on December 28, 2018. (D.I. 69). The Report recommends dismissal of Count I, violation of the Eighth Amendment, as to all Defendants. (*Id.* at 25-26, 49). It recommends dismissal of all claims to the extent that they allege that DOC Defendants are liable for failure to provide adequate medical or mental health treatment. (*Id.* at 33). It recommends dismissal of Count II, inadequate medical care, as to Medical Defendants Lynch and Muñoz. (*Id.* at 55). It recommends dismissal of Count III, retaliation, as to Medical Defendants. (*Id.* at 49 n.236). Finally, the Report recommends dismissal of all Counts against Defendant Metzger individually, as he was inappropriately named in his personal capacity. (*Id.* at 40 n.194).

II. LEGAL STANDARD

Magistrate Judges have authority to make recommendations as to the appropriate resolution of a motion to dismiss pursuant to 28 U.S.C. § 636(b)(1)(B). In the event of an objection, this Court reviews the objected-to determinations *de novo*.

[3] It is not immediately clear to me how Plaintiff's claims relate to the Fifth Amendment. My understanding is that Plaintiff's right to due process derives directly from the Fourteenth Amendment. This issue was not, however, raised by Defendants in their briefing and it does not appear to impact whether Plaintiff states a constitutional claim.

When reviewing a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court must accept the complaint's factual allegations as true. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). Rule 8(a) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.* at 555. The factual allegations do not have to be detailed, but they must provide more than labels, conclusions, or a "formulaic recitation" of the claim elements. *Id.* ("Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (internal quotation marks omitted)).

"A defendant in a civil rights action must have personal involvement in the alleged wrongs to be liable and cannot be held responsible for a constitutional violation which he or she neither participated in nor approved." *Baraka v. McGreevey*, 481 F.3d 187, 210 (3d Cir. 2007) (cleaned up). A defendant's personal involvement can be shown by particularly pleading "allegations of personal direction or of actual knowledge and acquiescence." *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988). Moreover, "[b]ecause vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676.

III. DISCUSSION

Plaintiff objects to the Report's recommendation that I grant DOC Defendants' and Medical Defendants' motions to dismiss Count I to the extent it alleges an Eighth Amendment violation because of Plaintiff's confinement to the solitary housing unit. (D.I. 71 at 3-5, 7-9; *see* D.I. 29 at ¶¶ 110-15 (Count I)). The Report recommends that the law does not support Plaintiff's claim "that housing a mentally ill inmate in solitary confinement for long periods of time violates a clearly established Eighth Amendment prohibition of cruel and unusual punishment." (D.I. 69 at 25). Accordingly, the Report recommends that DOC Defendants are entitled to qualified immunity and dismissal of Count I on this issue. (*Id.* at 25-26). Plaintiff argues that this is inconsistent with the Report's recommendation that Count III, alleging a violation of the First and Fifth Amendments, be maintained. (D.I. 71 at 5). I do not agree. It is not inconsistent that a right may be clearly established under one amendment, but not clearly established under another. Thus, I will adopt the Report's recommendation and dismiss Count I as to DOC Defendants to the extent it alleges an Eighth Amendment violation because of Plaintiff's confinement to the solitary housing unit.

The Report also recommends that I dismiss Count I, violation of the Eighth Amendment via placement in solitary confinement, as to Medical Defendants. (*See* D.I. 69 at 49). The Report's recommendation is based on a finding that "Medical Defendants did not participate in the decision to place Clark in the [solitary housing unit], or the length of time he was housed there." (*Id.* at 47). This conclusion stems from an analysis of rules and statutes that place responsibility for establishing procedures and standards with the Department of Correction and prison officials. (*Id.* at 47-49). Plaintiff argues that this is not a correct basis for dismissing his claim that Medical Defendants had a decision-making role in housing determinations under the standards set by the Department of Correction. (D.I. 71 at 7-9). I do not agree. The rules under

which the Department of Correction operates when deciding whether to place an inmate in solitary confinement suggest it is unlikely that Medical Defendants had a role in inmate housing determinations. More importantly, the allegations in the FAC regarding the housing decisions only refer to actions attributable to DOC Defendants. (D.I. 29 at ¶¶ 72-75). Thus, Plaintiff's claim that Medical Defendants violated the Eighth Amendment by placing him in solitary confinement, which is unsupported by any factual allegations, is implausible. I will adopt the Report's recommendation as to this Count and I will dismiss Count I as to Medical Defendants to the extent it alleges an Eighth Amendment violation because of Plaintiff's confinement to the solitary housing unit.[4]

Plaintiff also objects to the Report's recommendation that I grant DOC Defendants' motion to dismiss Count I's allegations of inadequate medical care. (D.I. 71 at 5-6). "In order to establish a violation of [a prisoner's] constitutional right to adequate medical care, evidence must show (i) a serious medical need, and (ii) acts or omissions by prison officials that indicate deliberate indifference to that need." *Natale v. Camden Cty. Corr. Facility*, 318 F.3d 575, 582 (3d Cir. 2003). "[A]bsent a reason to believe (or actual knowledge) that prison doctors or their assistants are mistreating (or not treating) a prisoner, a non-medical prison official . . . will not be chargeable with the Eighth Amendment scienter requirement of deliberate indifference." *Spruill v. Gillis*, 372 F.3d 218, 236 (3d Cir. 2004). The deliberate indifference standard may be satisfied, however, "when a prison official knows of a prisoner's need for medical treatment but intentionally refuses to provide it or delays necessary medical treatment based on a nonmedical reason." *Pearson v. Prison Health Serv.*, 348 F. App'x 722, 725 (3d Cir. 2009) (cleaned up).

[4] I will not dismiss Count I to the extent it alleges an Eighth Amendment violation due to Medical Defendants providing inadequate medical care. Those allegations may be duplicative of Count II but are not insufficient as a matter of law.

Plaintiff's allegations of deliberate indifference are sufficient to withstand a motion to dismiss. Plaintiff alleges that "Defendants are well-aware of Mr. Clark's serious mental illness," and that "Defendants deprived [him] of any meaningful mental health treatment." (D.I. 29 at ¶¶ 5, 9). He further alleges that he had "no access to therapy sessions or counselling, [that] he only saw a mental health provider who evaluated his medications once every few months," and that Defendants "ignored [his] need for and denied his requests for adequate counselling and proper medication." (*Id.* at ¶¶ 41, 62). As to each DOC Defendant, Plaintiff alleges that Defendant "denied him mental health treatment" or "authorized, approved of, or directed" such denial. (*Id.* at ¶¶ 91, 95, 97). The FAC also alleges that DOC Defendants failed to follow the Department of Correction's policy regarding the treatment of SMI patients who are housed in the solitary housing unit. (*Id.* at ¶¶ 71-78).

No one seriously disputes that Plaintiff requires medical treatment for his SMI, which is a serious medical need. Regarding deliberate indifference to that need, Plaintiff, as an SMI inmate, relies on the Department of Correction to provide him appropriate medical treatment. The FAC specifically alleges that, during his stay in the solitary housing unit, Plaintiff's medical needs were ignored by DOC Defendants and that his requests for appropriate medical treatment were denied. Accepting the allegations in the FAC as true, it is not implausible to conclude that DOC Defendants were aware of Plaintiff's need for treatment, were aware that he was not being treated appropriately, and intentionally failed to remedy the situation. The fact that DOC Defendants allowed Plaintiff occasional visits with mental health providers does not *per se* immunize them from liability. If, as Plaintiff alleges, DOC Defendants allowed Plaintiff to see a mental health provider only every few months, it is plausible to conclude that DOC Defendants had reason to believe such provider was not sufficiently treating Plaintiff. Thus, I will not

dismiss Count I as to DOC Defendants to the extent it alleges inadequate medical care in violation of the Eighth Amendment.

DOC Defendants object to the Report's recommendation that Plaintiff's request for prospective relief not be dismissed as moot.[5] (D.I. 72 at 2-3). Although they admit that Plaintiff requests relief that is different from the relief ordered in *CLASI*,[6] they argue that the *CLASI* order

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[5] Plaintiff requests an injunction that orders:

> a. Mr. Clark shall not be confined to the [solitary housing unit];
>
> b. If prison officials determine, in consultation with a medical doctor who evaluates Mr. Clark at the time and agrees with the officials' documented determination, that Mr. Clark is an immediate danger and needs to be segregated from the general population, and there is no reasonable alternative, Mr. Clark shall be placed in a facility, such as the [Special Needs Unit] or [Delaware Psychiatric Center], capable of providing him with proper mental health care as set forth in his individual treatment plan;
>
> c. Mr. Clark shall be given mental health treatment, including regular counseling sessions no less than twice a month, in a private setting determined by a medical doctor or licensed clinical social worker to be conducive to mental health counselling in a manner and location that promotes confidentiality;
>
> d. Mr. Clark shall have an individual treatment plan that shall be implemented regardless of his housing;
>
> e. Mr. Clark's individual treatment plan shall include components to remedy the extreme damage done to him by DOC's cruel and unusual punishment of Mr. Clark, and shall include a re-entry plan to be implemented beginning in early 2018 to prepare Mr. Clark for successful reintegration into society upon his currently scheduled release date in 2019;
>
> f. Mr. Clark's medications shall be evaluated by a medical doctor in consultation with Mr. Clark in a private setting no less than every three months;
>
> g. Mr. Clark shall have no less than three hours per day outside his cell regardless of his housing situation[.]

(D.I. 29 at Prayer for Relief ¶ 2). I note that the FAC mentions Plaintiff is scheduled to be released sometime in 2019. (*Id.* at ¶ 80). Plaintiff's release from custody may yet moot his request for injunctive relief.

[6] *Community Legal Aid Society, Inc. v. Coupe*, Case No. 15-688-GMS (D. Del.).

renders implausible the possibility that the treatment of seriously mentally ill inmates is constitutionally inadequate. (*Id.*). I do not find DOC Defendants' argument persuasive. I will decide the relief Plaintiff is entitled to, if any, once all the facts of this case are known. It would be wrong for me to decide, as a matter of law, that the order this Court issued in another case makes all care of seriously mentally ill inmates constitutionally acceptable in all circumstances. I will adopt the Report's recommendation and allow Plaintiff to move forward requesting prospective relief.

DOC Defendants also object to the Report's recommendation that Plaintiff sufficiently states a retaliation claim (Count III) based on his allegation that DOC Defendants placed him in solitary confinement *because* of his mental illness.[7] (D.I. 72 at 3-4). They argue that he wasn't put in solitary confinement for his mental illness, but rather, he was put in solitary confinement for *conduct* that was the result of mental illness. (*Id.*). They posit that putting an inmate in solitary confinement for mental-illness-related conduct is distinct from the clearly unconstitutional decision to place an inmate in solitary confinement because of the mental illness itself. (*Id.*). Plaintiff responds by identifying several places in the FAC where he alleges retaliation based on both his conduct and his mental illness. (D.I. 75 at 2-3). Plaintiff also argues that the difference between conduct and the mental illness itself is largely a distinction without meaning. (*Id.* at 3-5). Most manifestation of mental illness, indeed the way mental

[7] Count III alleges that Defendants retaliated against Plaintiff in violation of the First and Fifth Amendments as applied through the due process clause of the Fourteenth Amendment. (D.I. 29 at 24). It is not readily apparent which specific First Amendment activity Plaintiff alleges that Defendants were retaliating against. (*See id.* (listing "(i) requesting medical treatment, (ii) requesting for explanations of why he was in the SHU, (iii) mental illness and manifestations thereof, and (iv) providing information and assistance in the 2006 DOJ Investigation.")). Whether Plaintiff sufficiently pled that he engaged in protected speech and whether Plaintiff plausibly pled that Defendants retaliated against that speech were not, however, issues raised by Defendants.

illness is identified and diagnosed, is or could be considered "conduct." I agree with Plaintiff, at least at the motion-to-dismiss stage of the case. He has sufficiently alleged that DOC Defendants placed him in solitary confinement because of his mental illness. I also agree that the distinction between conduct and a mental illness itself is not a likely bound on which to lay a constitutional distinction. I will adopt the Report's recommendation on this point.

DOC Defendants further object to the Report's recommendation that Plaintiff adequately pled claims as to each named DOC Defendant. (D.I. 72 at 5-8). Many of their arguments on the specificity of the claims are new—raised for the first time as an objection to the Report. Per this Court's Standing Order for Objections Filed Under Fed. R. Civ. P. 17, a party wishing to make new arguments in an objection to a Magistrate Judge's recommended disposition must identify them and describe good cause for failing to previously make the argument before the Magistrate Judge. DOC Defendants argue, essentially, that they did not make the new arguments earlier because they chose to make different arguments before the Magistrate Judge. (D.I. 72-1). This is not good cause. Thus, I will not consider DOC Defendants' newly raised arguments. I will, however, consider the sufficiency of Plaintiff's retaliation claim against Defendants Coupe, Phelps, and Pierce, an issue which was raised at the appropriate time.

DOC Defendants argue that Plaintiff failed to plead sufficient facts to support a retaliation claim (Count III) against Coupe, Phelps, and Pierce. (D.I. 72 at 5-6). They argue that Plaintiff must sufficiently plead two facts to establish such a claim: (1) he was placed in solitary confinement *because* of his mental illness and (2) that there was a policy of placing inmates in solitary confinement because of their mental illness. (*Id.* at 5). As I explain above, Plaintiff has sufficiently pled that he was placed in solitary confinement because of his mental health. As to pleading a policy, the FAC alleges that Defendants have a "policy and practice of placing and

keeping SMI prisoners like Mr. Clark in the [solitary housing unity] because of their mental illness." (D.I. 29 at ¶ 78). It further alleges, "Defendants, including Coupe and Phelps, sanctioned and adhered to a practice of housing hundreds of SMI prisoners, including Mr. Clark, in the [solitary housing unit] because of and in retaliation for conduct related to their SMI." (*Id.* at ¶ 89). This is consistent with the Report's conclusion that the FAC plausibly alleges that "each of the named defendants were aware of Clark's mental illness, were involved in the alleged constitutional violations, and that the FAC adequately alleges a background of events and circumstances plausibly demonstrating the supervising DOC Defendants . . . were deliberately indifferent based upon their knowledge of and acquiescence in those violations." (D.I. 69 at 39-40). I agree with the Report's conclusion and I will adopt the Report's recommendation on this issue.[8]

IV. CONCLUSION

I will dismiss Count I as to all Defendants to the extent it alleges an Eighth Amendment violation because of Plaintiff's confinement to the solitary housing unit. I will overrule DOC Defendants' objection to the Report's recommended disposition of Plaintiff's request for prospective relief. I will also overrule DOC Defendants' objection to the Report's recommended disposition of Count III, retaliation, as to Defendants Coupe, Phelps, and Pierce. I will sustain Plaintiff's objection to the portion of the Report that finds Plaintiff's allegations of inadequate medical care in Count I are insufficient. Thus, I will not dismiss Count I to the extent it alleges inadequate medical care in violation of the Eighth Amendment. I will also adopt the unchallenged portions of the Report & Recommendation.

[8] DOC Defendants mention in a footnote that I should note the *CLASI* settlement as evidence that the senior managers did not condone a policy. (D.I. 72 at 5 n.8). I do not think the *CLASI* settlement, entered after the events alleged in the FAC, necessarily bears on whether senior DOC officials remain potentially liable for pre-*CLASI* actions or policies.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANGELO LEE CLARK, Plaintiff, v. ROBERT COUPE, et al., Defendants.	Civil Action No. 1:17-cv-00066-RGA

ORDER

For the reasons set forth in the accompanying Memorandum, **IT IS HEREBY ORDERED**:

1. Plaintiff's Objections (D.I. 71) are **SUSTAINED-IN-PART** and **OVERRULED-IN-PART**;
2. DOC Defendants' Objections (D.I. 72) are **OVERRULED**;
3. The Report & Recommendation (D.I. 69) is **ADOPTED-IN-PART**;
4. DOC Defendants' Motion to Dismiss (D.I. 32) is **GRANTED-IN-PART** and **DENIED-IN-PART**; and
5. Medical Defendants' Motion to Dismiss (D.I. 34) is **GRANTED-IN-PART** and **DENIED-IN-PART**.

Count I is **DISMISSED** as to all Defendants to the extent it alleges an Eighth Amendment violation because of Plaintiff's confinement to the solitary housing unit. Count II is **DISMISSED** as to Defendants Lynch and Muñoz. Count III is **DISMISSED** as to Medical Defendants. All Counts are **DISMISSED** as to Defendant Metzger in his individual capacity.

Entered this 26 day of March, 2019.

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANGELO LEE CLARK, Plaintiff, v. ROBERT COUPE, et al., Defendants.	Civil Action No. 1:17-cv-00066-RGA

MEMORANDUM

Presently before me is Plaintiff Angelo Clark's Motion for Reargument (D.I. 86) on certain issues I decided in my March 29, 2019 Memorandum and Order resolving Defendants' motions to dismiss (D.I. 82, 83). The Parties have briefed the issues. (D.I. 86, 88, 89). For the reasons discussed below, I will grant Plaintiff's motion.

The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." *Max's Seafood Cafe v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). "A proper Rule 59(e) motion . . . must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error of law or prevent manifest injustice." *Lazaridis v. Wehmer*, 591 F.3d 666, 669 (3d Cir. 2010). A motion for reargument/reconsideration is not an appropriate vehicle to reargue issues that the court has already considered and decided. *Justice v. Attorney Gen. of Del.*, 2019 WL 927351, at *2 (D. Del. Feb. 26, 2019).

Plaintiff requests that I reconsider my decision that qualified immunity insulates the DOC Defendants[1] from suit on Count I's Eighth Amendment claim. (D.I. 86 at 3-6). I will grant his request and reconsider. To overcome qualified immunity at the motion to dismiss stage, a Plaintiff must plead a violation of a clearly established right. *Bistrian v. Levi*, 696 F.3d 352, 366 (3d Cir. 2012). This Court previously found that there was no dispute that putting an inmate in solitary confinement because of his mental illness is a violation of clearly established law. (D.I. 69 at 19). This finding, which the Parties do not dispute, stems from *Robinson v. California*, where the Supreme Court found, "Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a [disease]." 370 U.S. 660, 667 (1962). This Court also found that no clearly established law supported Plaintiff's position that "housing a mentally ill inmate in solitary confinement for long periods of time violates a clearly established Eighth Amendment prohibition of cruel and unusual punishment." (D.I. 69 at 25).

I stand by the Court's previous determination that no clearly established law supports finding that housing a mentally ill inmate in solitary confinement is *per se* a violation of the Eighth Amendment. In his briefing on the motion to dismiss, Plaintiff identified two cases as support for his contention that housing a mentally ill inmate in solitary confinement is cruel and unusual punishment: *In re Medley*, 134 U.S. 160 (1890) and *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995). In his motion for reconsideration, Plaintiff identifies one additional case: *Palakovic v. Wetzel*, 854 F.3d 209 (3d Cir. 2017).

The *In re Medley* Court addressed a Colorado law that imposed solitary confinement on all capital offenders. 134 U.S. at 162-63. The law was enacted after Mr. Medley committed his

[1] "DOC Defendants" are Defendants Robert Coupe, Perry Phelps, Dana Metzger, David Pierce, Jeffrey Carrothers, Bruce Burton, Marcello Rispoli, and Roland Willey.

crime and the Supreme Court determined it was an unconstitutional *ex post facto* law, as applied to him. *Id.* at 171-73. In arriving at its conclusion, the Court discussed the perils of solitary confinement and determined that solitary confinement is an additional punishment. *Id.* at 167-71. The Court did not, however, conclude that solitary confinement was an unconstitutional punishment and it did not strike down the Colorado law as it applied to future capital offenders. *See id.* at 172-73.

The *Madrid v. Gomez* case was brought by a class of inmates seeking injunctive and declaratory relief from certain prison conditions. 889 F. Supp. at 1155. The court held a bench trial on a number of practices, including the conditions of the solitary housing unit. *Id.* at 1156, 1260-66. It determined that placing seriously mentally ill inmates in the solitary housing unit, "under conditions as they currently exist at [the prison]," was cruel and unusual punishment in contravention of the Eighth Amendment. *Id.* at 1265-67. Of course, as the *Madrid* Plaintiffs did not seek monetary damages, the court did not address the issue of qualified immunity.

The cases Plaintiff originally presented to this Court, *Medley* and *Madrid*, do not represent clearly established law that it is unconstitutional to place mentally ill inmates in solitary confinement. As this Court noted before, "The statements in *In re Medley* have nothing to do with the question of whether solitary confinement of sane, or mentally ill, prisoners constitutes cruel and unusual punishment in violation of the Eighth Amendment." (D.I. 69 at 21). Rather, the statements address the narrow issue of whether Mr. Medley was improperly placed in solitary confinement under an *ex post facto* law. And, although *Madrid* does address the constitutionality of placing mentally ill inmates in solitary confinement, it is a far cry from Supreme Court precedent or a "a robust consensus of cases of persuasive authority." *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011).

Palakovic v. Wetzel gets Plaintiff closer to showing that there may some right barring confinement of mentally ill individuals to the solitary housing unit, but still misses the mark. In *Palakovic*, the executors of Brandon Palakovic's estate brought suit against several prison officials and mental healthcare providers. 854 F.3d at 217. Brandon, a 23-year-old with a history of serious mental illness, committed suicide while in solitary confinement. *Id.* The district court had dismissed the plaintiffs' Eighth Amendment claim related to Brandon's time in solitary confinement by applying the "vulnerability to suicide framework," and refusing to consider other possible Eighth Amendment claims. *Id.* at 224-25. The Third Circuit concluded, "to the extent Brandon could have brought an Eighth Amendment claim contesting his conditions of confinement while he was alive, his family should not be precluded from doing so because he has passed away." *Id.* at 225. It said, "the District Court erred in dismissing it *solely* for that reason." *Id.* (emphasis added). The court then went on to address the "vulnerability to suicide" claim and the "the robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement." *Id.*

Palakovic supports the conclusion that solitary confinement, especially of mentally ill individuals, is increasingly disfavored. It does not, however, represent a clearly established right that *per se* prohibits housing a mentally ill inmate in solitary confinement. The Third Circuit found the district court erred in dismissing the Palakovics' other Eighth Amendment claims simply because Brandon had committed suicide. The court did not consider whether they had alleged a constitutional violation, whether the defendants were insulated by qualified immunity, or any other potential bar to the Palakovics successfully bringing such a claim. The fact that the

Third Circuit found "vulnerability to suicide" is not the only claim available to a deceased inmate's estate does not provide for a clearly established right.

Thus, I again conclude that there is no clearly established Eighth Amendment right that *per se* prohibits housing a mentally ill inmate in solitary confinement.

From Plaintiff's previous briefing, I did not apprehend his additional argument that his Eighth Amendment claim, as opposed to the other claims in this case, should proceed based on his argument that he was placed in solitary confinement *because* of his mental illness. There is no dispute that if a mentally ill inmate is placed in solitary confinement because of his mental illness, his clearly established right not to be punished for a disease has been violated. Count I asserts:

> Defendants' policies, practices, and procedures systematically violate the Eighth Amendment rights of Mr. Clark through institutional policies, practices, and procedures that place him at substantial risk of serious harm. Such policies, practices, and procedures include, without limitation: confinement in solitary confinement for exhibiting conduct caused by his mental illness, which poses a substantial risk of serious harm to Mr. Clark . . . .

(D.I. 29 at ¶ 112). I previously found, "the distinction between conduct and a mental illness itself is not a likely bound on which to lay a constitutional distinction." (D.I. 82 at 9). Depending on the underlying factual circumstances, punishment for mental illness related conduct may be no different than punishment for the mental illness itself. Thus, I will allow Mr. Clark to proceed with his Eighth Amendment claim on the theory that his Eighth Amendment rights were violated by Defendants placing him in the solitary housing unit because of his mental illness.

Mr. Clark also argues that I erred in partially dismissing Count I, violation of the Eighth Amendment by placing Mr. Clark in the solitary housing unit, as to the Medical Defendants.[2] (D.I. 86 at 6-7). I found that it was implausible that the Medical Defendants actively participate in the decision to place inmates in solitary confinement and that the allegations in the First Amended Complaint refer only to the DOC Defendants. (D.I. 82 at 4-5). Mr. Clark has not identified any new argument or evidence that persuade me that my conclusion on this issue was incorrect. I will, however, allow Mr. Clark to amend his pleading to allege any additional facts that support his allegations against the Medical Defendants.

[2] "Medical Defendants" are Defendants Dr. William Ray Lynch, Dr. Paola Muñoz, Dr. David Yunis, Rhonda Montgomery, Susan Mumford, and Stephanie D. Johnson.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANGELO LEE CLARK, Plaintiff, v. ROBERT COUPE, et al., Defendants.	Civil Action No. 1:17-cv-00066-RGA

ORDER

For the reasons set forth in the accompanying Memorandum, **IT IS HEREBY ORDERED** that Plaintiff's Motion for Reconsideration (D.I. 86) is **GRANTED**. My Order resolving the Defendants' Motions to Dismiss (D.I. 83) is amended as follows:

1. Plaintiff's Objections (D.I. 71) are **SUSTAINED-IN-PART** and **OVERRULED-IN-PART**;
2. DOC Defendants' Objections (D.I. 72) are **OVERRULED**;
3. The Report & Recommendation (D.I. 69) is **ADOPTED-IN-PART**;
4. DOC Defendants' Motion to Dismiss (D.I. 32) is **GRANTED-IN-PART** and **DENIED-IN-PART**; and
5. Medical Defendants' Motion to Dismiss (D.I. 34) is **GRANTED-IN-PART** and **DENIED-IN-PART**.

Count I is **DISMISSED WITHOUT PREJUDICE** as to the Medical Defendants to the extent it alleges an Eighth Amendment violation because of Plaintiff's confinement to the solitary housing unit. Plaintiff is given fourteen days to file an amended complaint on Count I against the medical Defendants. Count II is **DISMISSED** as to Defendants Lynch and Muñoz. Count III is **DISMISSED** as to Medical Defendants. All Counts are **DISMISSED** as to Defendant Metzger in his individual capacity.

Entered this 14 day of May, 2019.

Richard G. Andrews
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANGELO CLARK,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 17-66-RGA
	:	
ROBERT COUPE, et al.,	:	
	:	
Defendants.	:	

JUDGMENT

This 10th day of June 2021, the Court having held a jury trial, and the jury having rendered a verdict, pursuant to Fed. R. Civ. P. 58(b)(2), IT IS HEREBY ORDERED that:

Judgment is entered for Defendants Robert Coupe and David Pierce and against Plaintiff Angelo Lee Clark on all remaining claims of the Second Amended Complaint. (D.I. 92).

/s/ Richard G. Andrews
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANGELO LEE CLARK,

Plaintiff,

v.

ROBERT M. COUPE,

Defendant.

C.A. No. 17-00066-RGA

NOTICE OF APPEAL

Notice is hereby given that Angelo Lee Clark ("Plaintiff") in the above-captioned case, hereby appeals to the United States Court of Appeals for the Third Circuit from the District Court's Memorandum and Order regarding the Report and Recommendation, dated March 26, 2019 (D.I. 82 and 83), the Court's Memorandum and Order regarding Plaintiff's Motion for Reconsideration (D.I. 90 and 91), and the Judgment entered on June 10, 2021 (D.I. 235).

Dated: July 9, 2021

BARNES & THORNBURG LLP

/s/ Chad S.C. Stover

Chad S.C. Stover (No. 4919)
Regina S.E. Murphy (No. 5648)
William J. Burton (No. 6243)
1000 North West Street, Suite 1500
Wilmington, DE 19801
Tel: 302-300-3434
Fax: 302-300-3456
Email: chad.stover@btlaw.com
Email: gigi.murphy@btlaw.com
Email: William.burton@btlaw.com

Attorneys for Plaintiff