



Cruel, Inhuman, & Degrading: A Comparative Analysis of Solitary Confinement Using the United Nations Nelson Mandela Rules

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EXECUTIVE SUMMARY

Solitary confinement is a human rights problem which plagues the criminal legal systems of the United States. Incarcerated persons subjected to solitary confinement suffer serious mental and physical health crises with long-lasting and often permanent debilitating consequences. These practices of isolating individuals generate a heavy toll on families, communities, as well as state economies.

In 2015, in the midst of the decarcerality movement in the United States, the United Nations formally adopted the U.N. Standard Minimum Rules for Treatment of Prisoners (“the Nelson Mandela Rules”) which limit solitary confinement for use only “in the most exceptional cases, as a last resort,” and prohibit solitary confinement for detainees with mental health issues likely to be “exacerbated by such measures.” Under the Mandela Rules, solitary confinement lasting more than fifteen consecutive days is deemed torture and is prohibited under any circumstance.

This policy report reviews current prison isolation practices in the United States with a focus on North Carolina and seeks to reconcile those practices with human rights norms established by the Mandela Rules and other international human rights standards. It is clear that a change to the current system is necessary in order to fulfill the state’s obligation to respect, comply with, and champion human rights.

This report provides an overview of solitary confinement and compares North Carolina’s practices with other domestic and international jurisdictions as follows:

- **Section One: Introduction to Solitary Confinement as a Violation of Basic Human Rights.** This section reviews the history of solitary confinement in the United States and explores how its use has changed throughout the last several centuries.

In recent years, advancements in science have revealed the extent of psychological and physiological harms created and exacerbated by isolation. These effects are explored in detail, as are the collateral consequences. Additionally, personal narratives and stories from individuals subjected to solitary confinement highlight the need for reform.

- **Section Two: Understanding the Economic Effects of Solitary Confinement.** Not only is solitary confinement cruel and inhumane, but it is also unjustifiably expensive by all measures. This section evaluates the immediate costs levied by isolation, including increased staffing, medical, and facility costs.

This section also explores the consequential costs of solitary confinement. The damage caused by solitary confinement may be long-lasting and irreparable, leading to increased rates of death and recidivism rates within prisons and upon release. Solitary confinement also gives rise to high litigation costs. These costs are borne not only by incarcerated individuals, but their families, friends, and society as a whole.

- **Section Three: Addressing Solitary Confinement through Implementation of the Mandela Rules.** In 2015, the U.N. adopted the revised U.N. Standard Minimum Rules for the Treatment of Prisoners, known as the “Nelson Mandela Rules.” In doing so, the U.N. sought to bring awareness to the often-inhumane conditions in prisons around the world. This section examines the Rules and compares their standards governing isolation with current U.S. solitary confinement practices.
- **Section Four: Additional Human Rights Norms: Impact on Mandela Rules and Solitary Confinement.** Although the Mandela Rules reflect the most recent human rights attitudes on prison conditions, international human rights norms have long governed solitary confinement. This section examines various international treaties that have sought to establish standards of humane treatment. Some countries have already incorporated some of these standards into criminal legal policies.

This section considers how adopting policies in line with international customary law could improve North Carolina’s criminal legal system and increase the quality of life for incarcerated persons.

- **Section Five: Current Efforts to Address Solitary Confinement as Informed by the Mandela Rules.** Although arguably binding as international human rights norms, the U.N.’s adoption of the Rules have not been interpreted by the federal government as binding on federal or state prison facilities. However, some states have attempted to implement some of Rules’ proposed guidelines in their efforts at prison reform. This section surveys measures proposed and adopted throughout the United States aimed at limiting the use and duration of isolation. The section also posits that administrative policy changes are an option by which states may efficiently alleviate the harms caused by solitary.
- **Section Six: Current Efforts to Address Solitary Confinement through Litigation Strategies.** Solitary confinement is a form of torture and the abuses that occur behind the cell’s solid steel door are some of the most egregious state-sanctioned human rights violations. While the human costs remain the fundamental impetus for reform, additional considerations—such as a growing legal consensus that its use violates Eighth and Fourteenth Amendment protections—provide additional incentives for North Carolina policymakers to implement the Mandela Rules.

By surveying how advocates and stakeholders have argued against solitary confinement through reference to international law, this section compares and analyzes the various litigation avenues for integrating international laws and custom into North Carolina policy.

- **Section Seven: The End of Solitary Confinement for Juveniles in North Carolina: A Model and Framework for the Future.** Beyond the hundreds of thousands of incarcerated adults in the United States, youth under the age of eighteen are also incarcerated in facilities across the country. Well into the twenty-first century, juveniles were kept in solitary confinement in conditions similar to those of adult solitary units. However, in the past two decades, progress has been made in limiting the use of solitary confinement against juveniles in both federal and state systems. This section tracks changes made in the federal justice system and in the state systems of Florida and Massachusetts. It then analyzes the current state of juvenile solitary confinement in North Carolina and suggests that reforms related to juveniles and solitary may serve as a path toward further improvement for juveniles and adults alike.
- **Section Eight: Looking to the Future.** Although North Carolina has so far declined to implement the Mandela Rules governing solitary confinement, doing so would benefit the physical and mental health of incarcerated persons, and result in cost savings which could be reinvested into alternative programs. This section explores viable alternatives to solitary confinement, expansion of which could more effectively further the goals of public safety and rehabilitation.

I. Introduction to Solitary Confinement as a Violation of Basic Human Rights

Solitary confinement is a form of carceral punishment with a number of different designations: *isolation*, *lockdown*, *restrictive housing*, *segregation*, *the hole*. It is a prison practice that most people have heard of, yet what happens behind the confines of solitary cells is hidden from public view. Regardless of what kind of packaged phrasing is used to denote the practice, its purpose is the same: to isolate and strip a person of their dignity and humanity. Indeed, references to incarcerated individuals themselves often have the same effect—pejorative terms like “criminal,” “prisoner,” “convict,” and “inmate” replace an identity with an alleged crime. The authors have employed alternative language in an effort to counteract this “branding” effect.¹

While solitary confinement is generally thought of as being the ultimate punishment other than the death penalty, and its use limited for “extreme cases” only, isolation in prisons has become increasingly normalized.² In the United States, as many as 100,000 people are held in solitary confinement on any given day.³ This section will review the history of solitary confinement in the United States and identify specific concerns with regard to North Carolina’s use of isolation as punishment in prisons.

A. The History of Solitary Confinement in the United States

In the United States, the practice of isolating incarcerated individuals dates as far back as prisons themselves.⁴ In the early nineteenth century, two competing prison systems emerged.⁵ The “Auburn System” involved incarcerated individuals spending the bulk of each day amongst one another, performing “factory-style labor.”⁶ The Pennsylvania system, designed to reflect Quaker values of industriousness and contemplative spirituality, utilized solitary confinement.⁷ While both systems stressed reform through hard labor and silence, the Auburn System eventually triumphed due to the immense costs of the Pennsylvania System’s implementation and operation.⁸

Solitary confinement regained popularity in the second half of the twentieth century as a result of political wars waged on drugs and crime.⁹ Sanctions for even minor crimes became increasingly punitive,¹⁰ resulting in mandatory minimum sentencing and such legislation as “Three Strikes and You’re Out.”¹¹ Increased law enforcement and lengthy sentences resulted in mass incarceration.¹²

Ever-increasing prison populations led to overcrowding and civil rights litigation, spurring the demand for additional prison facilities.¹³ During this time, modern supermax prisons emerged.¹⁴ The potential for economic growth and job opportunities brought about by prison construction proved attractive to localities.¹⁵ From 1984 until the end of the twentieth century, approximately fifty-nine supermax prisons were built.¹⁶ Once the supermax prisons were built, economic and political pressure to fill them grew.¹⁷

By the early 2000s, the War on Crime had been deemed a failure.¹⁸ Still, the popularity of ever-increasing punitive sanctions for criminal and delinquent behavior continued.¹⁹ It wasn't until the housing crisis of 2008 and subsequent recession that policymakers came to terms with the fiscal unsustainability of mass incarceration.²⁰ National prison populations declined starting in 2009 and continuing through 2016,²¹ with many agencies transitioning toward shorter sentences and less expensive intermediate sanctions.²² By this time, emerging research supported decarcerality in the United States. Not only was unfettered punitiveness psychologically,²³ socially, and economically damaging,²⁴ it also conflicted with "evolving standards of decency."²⁵ Yet, even as incarceration rates diminish, the use of solitary confinement remains rampant in prisons and jails.²⁶

B. Psychological and Physiological Harms- A Focus on North Carolina

As in many other states, North Carolina has been resistant to reforming solitary confinement practices. Consistent with tradition, the state's legislature has taken a "hand's off" approach to prisons, vesting almost unfettered discretion in the state's wardens. Consequently, North Carolina continues to utilize solitary in especially dangerous and inhumane ways. Degrading treatment, combined with lengthy and indefinite sentences result in substantial physical and psychological harms to incarcerated individuals.

1. The Isolated Cell

The most recent report from the North Carolina Department of Public Safety estimates that more than 37,000 people are incarcerated in the state.²⁷ At the time of the assessment, forty-four of the state's facilities had restrictive housing units, and about 2,500 incarcerated people were being held in solitary confinement.²⁸ Solitary cells in North Carolina are about six-by-eight feet, which is roughly the size of a parking space.²⁹ They are routinely described as fully concrete filthy spaces that are crawling with cockroaches and mice, with an open toilet just feet from the bed.³⁰ Artificial lighting remains on at all times and there are often no windows for

natural light or views of the outside world.³¹ A survivor of solitary in North Carolina, Lauren G. noted that even if a person was lucky enough to have a window, it was placed up and out of eye sight and often covered with blurred glass.³² Additionally, Ms. G explained that she was given only one change of clothes, and forced to consistently repeat her soiled pair since laundry was limited to once a week.³³

Those in solitary in North Carolina spend twenty-two to twenty-four-24 hours a day in their cells with little to no personal items, stimulation, or human interaction.³⁴ They are allotted one hour of out-of-cell recreation five times per week, where they may be placed in small cages behind steel bars.³⁵ A shower is permitted three times per week for a maximum of ten minutes, and incarcerated persons may be shackled while exercising and showering.³⁶ Depending on which guard is on duty, the requisite recreational hour may be skipped or taken away as punishment.³⁷ Similarly, prisons often deny access to reading materials as punishment, or may require the payment of fees to obtain literature.³⁸ Medical professionals have described the practice of holding people in these conditions for months to years—even decades—as “hazardous at best.”³⁹

2. The Toll of Time

Incarcerated persons placed in isolation often receive no indication of the expected duration of their confinement.⁴⁰ The indefiniteness and uncertainty can take a toll.⁴¹ Donna Hylton, a criminal justice advocate and survivor of solitary, observed that the time given to serve is already the punishment, yet solitary is used to further weaponize this concept of time.⁴² Ms. G. recalled that if she asked a guard for the time, they would completely ignore her existence.⁴³ She described that the days blend together, and that building some sort of routine is necessary for survival.⁴⁴ However, the possibility of a routine is diminished by the rigid restrictions placed on access to intellectual and spiritual stimulation.⁴⁵

With few options other than retreating into their own thoughts,⁴⁶ survivors experienced shame and describe inflicting self-punishment.⁴⁷ They have also described the experiences of dehumanization as a result of feeling completely forgotten—that no one cared whether they lived or died.⁴⁸ A survivor, James Burns, explained losing his identity was “more painful than anything [he had] ever experienced.”⁴⁹ He added that there were times when he was so desperate for human interaction that he would purposefully act out because “having punches rained down on you was better than not having any contact at all.”⁵⁰

Psychologists have described this experience as “ontological insecurity:”⁵¹ a mental state in which people are unsure of whether they exist and of who they are.⁵² This phenomenon has led a number of incarcerated people to precipitate confrontations with prison guards in an effort to “reaffirm their existence,” even if doing so resulted in brutal “cell extractions.”⁵³ Despite the documented harms of isolation, incarcerated people continue to be placed in conditions with “haunting similarities to zoos.”⁵⁴ In reference to this analogy, Dr. Chris Haney, a psychologist who testified before the congressional subcommittee on human rights, stated “one is hard-pressed to name any other place in our society where sentient beings are housed and treated the ways that they are in solitary confinement.”⁵⁵ Caged like animals for days to years on end, it comes as no surprise that these isolated individuals suffer a myriad of harmful physical and mental consequences.

3. Physical Manifestations of Harm

Although psychological effects of solitary confinement are the most commonly reported, the confines of a solitary cell and the loneliness of isolation can also cause a multitude of physiological health effects.⁵⁶ Recorded physical health effects of solitary include “eyesight deterioration; hypersensitivity to light and noise; chronic headaches, digestive problems; dizziness; excessive sweating; fatigue and lethargy; genitourinary problems; heart palpitations; loss of appetite; muscle and joint pain; sleep problems; trembling hands; weight loss.”⁵⁷

Exercise is crucial for health at any age, and the opportunity to simply walk around a house from one room to another helps to maintain health and prevent disease.⁵⁸ For those in solitary confinement, their only option is to pace back and forth in six-by-eight-foot cells.⁵⁹ Individuals in solitary are supposed to receive one hour of recreational time per day.⁶⁰ If the guard on duty allows the requisite hour, people in solitary may be placed in “recreational” cages or shackled during their exercise.⁶¹ These cages and shackles prevent incarcerated persons from experiencing a full range of movement and increase the risk of injuries from falls.⁶² For instance, a pregnant woman held in solitary tripped over her shackles and experienced pain from her fall.⁶³ Over a period of eleven weeks, she repeatedly asked for a doctor, but never received care.⁶⁴ She miscarried her baby and after finally receiving medical attention, prison officials informed her that they had discarded her child in the trash.⁶⁵

In North Carolina, Ms. G described being shackled and made to walk along a concrete slab in what looked to be a “dog pen” for her recreational time.⁶⁶ Many facilities have high

concrete walls and partial roofs enclosing the outdoor recreational spaces, preventing those incarcerated from seeing grass, trees, or the sky, potentially for years at a time.⁶⁷ This prolonged lack of sunlight is a cause of vitamin D deficiency which places incarcerated persons at a higher risk of injury from falls and fractures.⁶⁸ Vitamin D deficiency is also associated with a myriad of other negative health effects, including cardiovascular, autoimmune, and infectious disease, neurological disorders, cancer, diabetes, obesity, and dental problems.⁶⁹

People in solitary confinement experience profound sensory deprivation, particularly reductions in visual and auditory stimuli.⁷⁰ Incarcerated persons have described a sense of not knowing where the floor is, creating a fear of falling at any moment.⁷¹ Such sensory deprivation can lead to increased confusion and memory loss, as well as amplify the feeling of being isolated.⁷² Research has shown that social isolation can worsen coronary heart disease, increasing the risk of early mortality and sudden cardiac death.⁷³ A study of loneliness and isolation as risk factors for early mortality found that social isolation increased the likelihood of death by 26-32%.⁷⁴ While the extent of adverse physical effects of solitary confinement are largely under-documented, such studies are crucial to understanding the consequential harm of this form of torture.⁷⁵

4. Psychological Harm

A large body of scientific research has established the negative psychological effects of solitary confinement.⁷⁶ The psychological effects of being isolated and prohibited from having human contact can increase the risk of mental health issues, as well as negatively impact physical well-being.⁷⁷ For those who experience this deprivation, the psychological impact of isolation can be as distressing as physical torture.⁷⁸

While the degree of harm may depend on the nature, severity, and duration of the particular conditions the individual experiences,⁷⁹ research has shown that even one to two days in isolation may increase risk of death by accident, suicide, or other causes.⁸⁰ The psychological consequences of solitary confinement include, but are not limited to:

anxiety and stress; depression and hopelessness; anger, irritability, and hostility; panic attacks; worsened preexisting mental health issues; hypersensitivity to sounds and smells; problems with attention; concentration, and memory; hallucinations that affect all of the senses; paranoia; poor impulse control; social withdrawal; outbursts of violence; psychosis; fear of death; self-harm or suicide.⁸¹

Solitary confinement can lead to permanent neurological damage and “fundamentally alter the structure of the brain.”⁸² Research has shown that the negative psychological effects and

the lack of stimuli in isolated units can cause atrophy in the brain, affecting the hippocampus, which is vital for learning and memory.⁸³ This loss in “neuroplasticity” causes the brain to physically shrink, as neurons become shriveled and cease to connect.⁸⁴ When this region of the brain fails to function properly, a person can experience defects in memory and spatial orientation, and in extreme cases, severe depression.⁸⁵ The loss of emotional and stress control can lead to erratic and unpredictable behavior, particularly under the severe stress of solitary confinement.⁸⁶

Additionally, solitary confinement not only creates, but exacerbates preexisting mental health conditions.⁸⁷ Although it has been well-established that significant numbers of incarcerated people are identified as needing mental health treatment, prisons severely restrict the availability of care.⁸⁸ In an increasing number of states, it is now illegal to confine individuals with mental illnesses in solitary confinement.⁸⁹ However, incarcerated persons with psychiatric disorders continue to be disproportionately represented in isolation,⁹⁰ where repeated misconduct—largely due to mental illness—may keep the individual in isolation indefinitely.⁹¹ A federal judge in California described the practice of putting an individual with mental health issues in solitary confinement as “the mental equivalent of putting an asthmatic in a place with little air.”⁹²

In his congressional testimony, Dr. Chris Haney discussed the circumstances of a man in solitary who had sewed his mouth completely shut using a makeshift needle and thread from his pillowcase.⁹³ Instead of receiving any sort of psychiatric treatment, he was unstitched and given a disciplinary infraction for destroying state property—the pillowcase.⁹⁴ His time in isolation was extended.⁹⁵ Haney referenced another man who had amputated or chewed off multiple body parts, including his pinkie fingers, testicles and scrotum, and ear lobes, yet remained in his isolated cell rather than being transferred to a psychiatric facility.⁹⁶

In North Carolina, Michael Kerr, an Army veteran suffering from severe psychiatric illness was placed in solitary confinement.⁹⁷ He allegedly received no psychiatric treatment once in solitary.⁹⁸ After Kerr intentionally flooded his cell, staff cut off his water access.⁹⁹ He spent five days handcuffed and largely unresponsive before eventually dying of dehydration.¹⁰⁰

Although designed for punishment, prison systems are operating as “*de facto* psychiatric facilities” despite an extreme lack of necessary mental health services;¹⁰¹ and solitary confinement are making patients sicker.

5. Suicide: Deadliest Year for North Carolina Prisons

Research indicates that “social isolation is one of the main risk factors associated with suicidal outcomes.”¹⁰² In North Carolina prisons, suicides of incarcerated persons are increasing;¹⁰³ in 2022, thirteen incarcerated individuals died by suicide.¹⁰⁴ Moreover, state records show that at least four of the people who died by suicide in 2022 were in “restrictive housing,” the state’s term for solitary confinement.¹⁰⁵

One of these victims was Didier J. Carias, Jr., a twenty-nine year old who was found hanging by a bedsheet tied to a sprinkler, just thirty-two days after entering Piedmont Correctional Institution in Salisbury in August.¹⁰⁶ According to his parents, Carias long suffered from schizophrenia and paranoia.¹⁰⁷ His mother poignantly questioned, “Why they would put him in solitary? He needed help.”¹⁰⁸ Although Carias suffered from mental health illnesses, he was forced to cope in extreme isolation, and was eventually driven to the same fate as at least five other incarcerated individuals at Piedmont in recent years.¹⁰⁹

6. Long-term: PTSD, Impeded Integration, & Post-Release Mortality

People who experience solitary confinement face long-term psychological consequences and increased difficulty reentering society.¹¹⁰ Studies have shown that among individuals released from prison, those who experienced solitary confinement were more likely to report symptoms of post-traumatic stress disorder (PTSD).¹¹¹ Dr. Haney explained how isolation “renders many people incapable of living anywhere else,” and that “[t]hey actually get to the point where they become frightened of other human beings.”¹¹² Deprived of meaningful social interaction for months to years, survivors experience difficulty forming human connections.¹¹³ Additionally, the absence of intellectually stimulating activity deteriorates their educational and employment skills, which have already been limited by their time spent in prison.¹¹⁴ With no rehabilitative assistance, survivors are again left alone to navigate this extreme transition, which can lead to elevated rates of recidivism as they struggle to cope with reintegration.¹¹⁵

For many, the adjustment from isolation to the real world can prove to be too difficult and they are unable to survive.¹¹⁶ A North Carolina study on the use of solitary confinement during incarceration found that isolation was associated with an increased risk of death upon reentry to society.¹¹⁷ The results showed that incarcerated people who spent time in isolation were 24% more likely to die in the first year after release.¹¹⁸ Specifically, isolated individuals were 78% more likely to die by suicide and 54% more likely to die by homicide, as well as 127%

more likely to die from an opioid overdose within the first two weeks after release.¹¹⁹ These findings demonstrate the consequential harms of solitary confinement, as well as the extreme risks faced by survivors of solitary confinement upon community reentry.¹²⁰ These harms also have economic implications, discussed further in Section II.C.

C. Solitary Survivors: North Carolina Narratives

Support for solitary confinement often arises from the misguided belief that the practice is reserved only for the most dangerous, intractable individuals. In reality, isolation is most often used for facility convenience and control purposes to mitigate organizational issues posed by understaffing and lack of training. As evidenced by the first-hand accounts by survivors below, the practice is unnecessarily punitive and disparately affects already-vulnerable populations.

1. Lauren G.

The following is from an interview with Lauren G on November 10, 2022.¹²¹ Ms. G was introduced to North Carolina's prison system in her early twenties as she was struggling with substance abuse. She was placed in a women's correctional facility in Rocky Mount, N.C. Two months into her sentence, Ms. G and another woman kissed in the prison yard. They were both placed in solitary confinement for committing "sexual acts," a Class B disciplinary offense. The prison sent a letter to her family stating she had committed "sexual acts" and was therefore placed in isolation. While Ms. G's family was supportive of her, she explained that this practice could effectively "out" other women who may not have such support.

Ms. G was given thirty days in solitary confinement. Her cell was concrete, the lights remained on at all times, and she was only given one change of clothes. She had no concept of time and began scraping on the walls to keep track of the days. If she asked for a book, she was ignored, and allowed no personal items or communication with family. Ms. G described that she did not smile for the entire thirty days, she lost ten pounds, and if her recreational time was not skipped, she would be shackled.

In prison, Ms. G was known only by her prison identification number, and was threatened with more time in solitary if she forgot it. She described that this fed the narrative that, "nobody is coming to help you, nobody is going to do anything, nobody cares." Ms. G explained, "I went completely black, my insides went black," and that solitary was the first time where "I told myself that I wanted to die, that I would rather be dead than be in this space." At times when she

felt the most suicidal, an officer showing her just a little kindness would make her feel seen as a human again.

Solitary has severely impacted Ms. G's mental health. She recalled the pain and suffering from the loss of human connection was "catastrophic," and that she operated with an "animalistic brain." Ms. G believed she deserved consequences for her actions, but not this profound form of torture. After her release, she immediately started using opiates and heroin to cope, and found herself falling in and out of the prison system for years. During her interview for this report, Ms. G revealed that she was shaking and continuously looking at the door as she described her experiences.

2. Brandon S.

The following is from an interview with Brandon S on November 5, 2022.¹²² Mr. S got caught up in the prison system when he was eighteen or nineteen for allegedly participating in an armed robbery, a charge he disputes. Once in prison, he was wrongfully accused of gang affiliation simply for having a deck of red playing cards in his cell, the color of the Bloods. Mr. Smith was placed in disciplinary segregation for ten days and recalled that knowing he had an end date to his isolation was the only thing that kept him sane.

Mr. S described the psychological problems he experienced as a result of having been confined to solitary confinement. Prior to this experience, he was an independent man who had been taking care of his family and had grave difficulties while held in isolation in a cell while at the mercy of the prison system actors. To pass the time, he would sing his favorite song over and over in his head and repeatedly read the one magazine he was given from front to back. Mr. S described solitary confinement as "treacherous"; he would not wish it on an enemy. It made him feel like "nothing," and he questioned "why would they want to cage me up like a dog when I'm already in a cell."

Mr. S largely reflected on the lasting psychological effects of his experience in isolation. He explained that solitary "put [him] in a shell," and stated that he is a completely different person than before. Since his release, Mr. S has continued to experience difficulties, and states that he feels like he is operating in the world as a "robot"; he is still programmed to always keep his hands out of his pockets, and his friends describe him as "militant." He misses being the guy that could light up the room, yet now the idea of attracting attention is terrifying to Mr. S. He struggles to go anywhere by himself, he cannot sit alone in a restaurant or public place, nor can

he function in large crowds. He recalled trying to go Christmas shopping last year but was overcome with an anxiety attack.

While trying to find his way back into society, Mr. S experienced depression and struggled with the reality of falling behind his friends who had excelled in their pursuits. Mr. Smith views solitary confinement as crippling, detrimental, and in no way rehabilitative. He explained that survivors are not equipped to function once released back in society, and that it is no surprise that people are reincarcerated when they are released from solitary. To Mr. Smith, isolation as a “prison in a prison, it’s cruel and unusual, and inhumane.”

3. Pamela G.

The following is from an interview with Pamela G on November 3, 2022.¹²³ Ms. G is a fifty-six-year-old from North Carolina. Her story illustrates the consequences of solitary confinement beyond those experienced by the person held in isolation. Ms. G’s son spent six months in solitary confinement for a disciplinary infraction. With no familial contact allowed in isolation, she could not speak to her son for the entire six months.

Ms. G described the torment of not knowing if her child was okay, and of constantly thinking the worst. In one conversation, her son told Ms. G he almost lost his mind, witnessed people hanging themselves, and that guards would often skip his requisite recreational time. Ms. G and her daughters scheduled a visit after his release into the general prison population. They checked into the prison and waited in the visitation room for nearly an hour before being informed that her son was back in solitary, and thus, the visit was cancelled. Her son had been framed for sending a note to another incarcerated person and was held in isolation for another three months.

Ms. G described the extreme toll on the family. She struggles to be there for her son, while still working through her own mental health issues. She also explained the difficulty of continuing to support him while he is incarcerated. Ms. G has had to ask extended family for money, noting that the financial costs can be overwhelming. She described solitary confinement as “dungeon,” that it is inhumane to lock people up without the community they need. She noted emphatically that “the law needs to be changed.”

4. Laurie S.

The following is from an interview with Ms. S on November 8, 2022.¹²⁴ Ms. S is a survivor of the opioid epidemic that has affected millions of families in the United States. She became addicted after a doctor prescribed her Oxycontin, which resulted in her time in prison.

While incarcerated, Ms. S's husband died unexpectedly. During a period when she was on work-release, her employer went online and searched for any additional information he could find regarding Mr. S's death. Prison officials later learned of this and gave her an "A Charge," the most serious charge a detainee can receive. Though she attempted to appeal the charge—the rules only prohibit incarcerated individuals themselves from online access—she was sentenced to sixty days in solitary confinement.

As Ms. S stated, "If you don't already have mental health issues going in, you're going to have them [after]." Ms. S did not receive any mental health services while in solitary. Further, she was denied access to her sponsor, someone she depended on in her active recovery. "You're in this little room, isolated...with nothing but your thoughts. You can only think so much, and you can only sleep so much." Though she was technically allowed to have books, the prison was so short-staffed that the guards were seldom able to deliver any.

Ms. S's family was also affected. Before her incarceration, she had been staying with her elderly mother to help coordinate doctors' visits. When Ms. S went to solitary, her mother, now around ninety years old, couldn't even speak to her on the phone, as telephone access was prohibited, contributing to family stress and anxiety.

Leaving solitary was just as difficult. After weeks of isolation, Ms. S had difficulty adjusting to life outside the tiny room. "I didn't want to leave. I didn't know how to talk to people. I didn't know how I was going to get through a day again." Once outgoing and friendly, Ms. S left solitary, timid and withdrawn. She still has difficulty trusting others and much prefers the company of animals over people.

5. Jeff W.

The following is from an interview with Jeff W conducted on November 10, 2022.¹²⁵ Mr. W lives in Wilkes County, NC. His substance use disorder was a precipitating factor in his incarceration. In 2015, Mr. W was incarcerated at Avery Mitchell, which is where he faced his first period of solitary confinement. He did not receive a specific infraction, but rather was placed in solitary for ninety days while "under investigation." He was never caught with any

contraband, nor was there any sort of hearing, yet he was held in “the hole” pending an investigation of what essentially amounted to rumors. Mr. W described Avery Mitchell’s solitary confinement cells as better than what he later experienced elsewhere, because at Avery Mitchell, the solitary confinement area was very quiet and had air conditioning. Although not the worst of solitary, lost a significant amount of weight having been deprived of food other than “meals, ready to eat” (or “MREs”), the same notoriously unpalatable meals provided to service members when other food is not available, such as in combat or field conditions.¹²⁶ After ninety days, he was released without any sort of finding regarding his alleged infraction.

After his release from solitary, he was shipped to a minimum-security facility. Mr. W was six months infraction-free but never got an explanation for why he was sent to solitary. He describes one of the impacts of this time in solitary as changing his social presentation and mental health. Formerly an extrovert, he found himself withdrawn upon release.

After being transferred to Lincoln, a new facility, another detainee used Mr. W’s number to make a phone call to plan illegal activity. Though the other detainee was eventually caught, Mr. W was still required to serve forty-five days in solitary confinement. Mr. W’s second experience in solitary confinement was different from his first. He was sent to a different camp, called Salisbury, because Lincoln did not have solitary confinement. At Salisbury, the solitary confinement cells had no air conditioning and were old, dirty, and extremely hot in June. The solitary facility was also quite loud. Mr. W could hear fellow incarcerated individuals talking to themselves, yelling, and screaming, usually throughout the night. He had “yard time” in an approximately twenty-by-twenty foot, four-sided, covered cage that was too small for Mr. W to stand up straight. Detainees were allowed to shower only every other day despite the heat. The only positive difference was that he was fed real food instead of MREs. Even still, he lost thirty-five pounds in forty-five days.

After his forty-five days were up, Mr. W went back to Lincoln. He again felt more introverted than before he was sent to solitary. His sleep habits were also adversely impacted by the experience. He received no form of counseling on his return to the general population.

Though solitary confinement has been used in the United States for hundreds of years, advances in science have only recently revealed the practice’s long-lasting physical and psychological impacts. Those who have lived the experience confirm the damage inflicted by isolation. Survivors and their loved ones, however, are not the only ones harmed by solitary

confinement. The high monetary and social costs arising from the practice are borne by society as a whole.

II. Understanding the Economic Effects of Solitary Confinement

In the United States, an estimated 80,000 – 100,000 people per day are subjected to solitary confinement.¹²⁷ Any time a facility utilizes restrictive housing, it expends substantial financial resources. Some of those costs (such as housing and staffing) are obvious, while others are less apparent. Solitary confinement creates lasting physical and psychological issues which increases monetary costs as well as collateral social costs that extend to correctional officers, family members of incarcerated individuals, and society at large. This section examines these secondary costs, which are less likely to be considered in the cost-benefit analysis of solitary confinement.

A. Immediate Correctional Costs

Housing a detainee in solitary confinement costs about three times as much as in general population.¹²⁸ A solitary cell requires additional space and materials compared to multiple-occupancy cells and dorm-style housing. A supermax prison costs more than twice as much to build as a maximum security prison.¹²⁹

Use of solitary confinement also increases staffing expenses.¹³⁰ The heightened supervision requires a higher detainee-to-officer ratio.¹³¹ At least two officers are routinely present for detainee moves between cells, exercise areas, and showers.¹³² In some supermax prisons, three officers are required for detainee moves.¹³³ Additionally, “[w]ork done by prisoners in other types of prison settings (such as cooking and cleaning) must be done by prison staff.”¹³⁴ For example, instead of meals being held in a common area, detainees in solitary must have all meals delivered to their cell.¹³⁵

B. Consequential Correctional Costs

The immediate costs of housing and staffing for solitary confinement are unsurprising. The “tough on crime” rhetoric of the 1970s, along with the assumed efficacy of solitary confinement, made such expenses more palatable to policymakers and taxpayers.¹³⁶ Public opinion appeared to endorse increased spending in order to further goals of decreased crime and increased public safety through incapacitation, retribution, and deterrence.¹³⁷ Presumably, increased costs were justified because solitary confinement was expected to aid in accomplishing these goals.

Modern research, however, has shown that solitary confinement is an ineffective deterrent on detainee misconduct.¹³⁸ Conversely, studies show that solitary confinement may lead serious physical and mental health impacts, and an increase in behavior that poses dangers to correctional staff, other incarcerated individuals, and solitary detainees themselves.¹³⁹ It may also increase the general disorder within an institution,¹⁴⁰ and create poor working conditions for correctional staff. Such effects resulting from the use of extended solitary confinement increases facilities' costs.¹⁴¹

1. Healthcare

According to one study, the average annual cost of healthcare for individuals incarcerated in state-run facilities was \$5,720—or 18% of the total operating costs—per person as of 2015.¹⁴² These figures included costs for medical supplies (including pharmaceuticals), healthcare personnel, primary care, psychiatric care, and dental and optical costs.¹⁴³ The study did not include costs related to ambulatory care, such as emergency hospital stays following the use of an ambulance.¹⁴⁴ In 2021, North Carolina reported that it spends more than \$280 million per year on healthcare for incarcerated individuals, including more than \$80 million on mental health and pharmacy services.¹⁴⁵

Exposure to solitary confinement, especially long-term solitary confinement, increases the likelihood of numerous psychological and physiological conditions.¹⁴⁶ These conditions may require additional healthcare resources such as medication, therapy, and hospitalization,¹⁴⁷ “presumably increas[ing] medical costs.”¹⁴⁸

a. Mental Illness

About 43% of individuals incarcerated in state prisons and 23% of those incarcerated in federal prisons have a history of mental illness.¹⁴⁹ Many of those experience mental illness prior to incarceration, while others may develop mental illness in response to certain conditions of incarceration, such as prolonged isolation.¹⁵⁰ One judge found that “even mentally healthy prisoners can develop mental illness such as depression, psychosis and anxiety [in solitary confinement].”¹⁵¹ Common psychiatric symptoms produced by solitary confinement include hallucinations, paranoia, and panic attacks.¹⁵² Even after leaving solitary, incarcerated individuals may continue to suffer from solitary-induced mental health issues, such as Post-Traumatic Stress Disorder (“PTSD”) and decreased tolerance to stimuli.¹⁵³

b. Physical and Physiological Consequences

In addition to mental health issues, prolonged isolation and restriction of movement may also bring about physical ailments, such as heart palpitations, insomnia, shaking, weakness, deterioration of eyesight, sensory hypersensitivity, and aggravation of pre-existing medical problems.¹⁵⁴ One study showed that the risk of developing hypertension was almost three times higher for people held in solitary confinement than for those held in general population in a maximum security facility.¹⁵⁵ Isolation can also decrease an individual's life expectancy, "comparable to that caused by cigarette smoking."¹⁵⁶ For older incarcerated individuals, solitary confinement may increase the likelihood of dementia.¹⁵⁷

The social deprivation in solitary confinement can permanently alter the structure of the brain,¹⁵⁸ and lead to "increase[d] salivary cortisol levels . . . and blood flow to brain regions associated with physical pain," and substantial changes in attention, memory, thinking, and self-regulation, as well as changes in aggression.¹⁵⁹

Even excluding some significant sources of medical expenses, such as emergency room stays, detainee healthcare is one of the highest expenses of confinement.¹⁶⁰ Additional costs created by prolonged isolation could be reduced or avoided by strict limitation of use and duration of solitary confinement.

2. Self-Harm and General Disorder

"Prisons with higher rates of restrictive housing had higher levels of facility disorder."¹⁶¹ In a correctional setting, "disorder" can mean many different things. For purposes of the current discussion, "disorder" refers to disruption to normal facility functioning tending to follow solitary detainee unrest and desperation. In this context, disorder may include protests, cell-flooding, self-harm, and other behaviors intended to create a reason for an isolated detainee to leave their cell. In such cases, disorder results in the expenditure and utilization of additional work-hours and resources.

In their desperation to be heard, incarcerated individuals must sometimes resort to unconventional methods of communication. In the last decade, incarcerated individuals have organized and executed several hunger strikes to bring attention to the use of extended solitary confinement.¹⁶² Perhaps the most notorious of these strikes took place in 2013 and involved almost 30,000 incarcerated individuals across the state of California to protest the Secured Housing Unit ("SHU") of supermax facility Pelican Bay.¹⁶³ The strike lasted about eight weeks,

during which time many participants required medical intervention and hospitalization.¹⁶⁴ One of the strike leaders died by suicide while the strike was ongoing.¹⁶⁵

In other instances, individuals incarcerated in solitary confinement may feel compelled to resort to destructive or hazardous behaviors. In a review of medical records from the New York City jail system, researchers described:

One patient with relatively mild mental illness inserted a deodorant canister into his rectum, requiring surgical removal, all in an attempt to be taken out of his cell. Others set fire to their cells or smear their own feces. In our experience, these are actions that are solely associated with seeking to escape solitary confinement.¹⁶⁶

Cell-flooding, wherein detainees intentionally clog plumbing, is also a way for individuals in solitary confinement to protest.¹⁶⁷ Resulting floods may cause property damage, require plumbing and cleaning services, and create biohazards. In South Dakota, solitary reforms led to a significant reduction in such incidents.¹⁶⁸

Time spent in solitary confinement is also strongly associated with detainee self-harm.¹⁶⁹ While self-harm may often be a symptom of mental illness,¹⁷⁰ self-harm in restrictive housing may be influenced by other factors,¹⁷¹ such as the desire to escape solitary confinement.¹⁷² One study found that jail detainees exposed to solitary were almost seven times as likely to engage in self-harm behaviors than those who were not.¹⁷³ This phenomenon may be explained by the desperation experienced by those isolated.¹⁷⁴ Physical pain may seem a small price in exchange for even temporary relief from their current experience.

In the face of the monotony, deprivation, and punitive environment of segregation units, many prisoners resort to feigning illness or engaging in self-harm in an attempt to be removed to a medical setting. Correctional health providers are routinely required to determine whether adaptive behavior to avoid anguish caused by solitary confinement is connected to a “legitimate” health concern. This places providers in an ethical bind: labeling prisoners’ behavior as malingering typically means that they will continue to be held in solitary and may receive additional punishments.¹⁷⁵

Institutional disorder and instances of self-harm result in considerable costs to a facility. In addition to the costs associated with cleanup, facilities may expend additional medical resources, including hospitalization and surgery, and extra staff hours dedicated to restoring order. Disorder resulting from extended solitary confinement may also generate non-pecuniary costs. In 2013, Juan Mendes, the U.N.’s appointed Special Rapporteur on Torture, had been waiting for over two years to receive authorization from the United States government to inspect segregation pods.¹⁷⁶ The hunger-strike of 2013 gained such attention that a California judge

authorized entry into Pelican Bay by Mendes.¹⁷⁷ The tour of the segregation conditions led Mendes to publicly condemn California on August 23, 2013.¹⁷⁸ Then-governor Jerry Brown also received ample backlash from Mendez,¹⁷⁹ the press, and California citizens.¹⁸⁰

3. Violence

One of the most persistent justifications for the continued use of solitary confinement is the proposition that isolation promotes prison safety. Intuitively, the logic of incapacitating the most dangerous individuals seems sound. In practice, however, use of short-term solitary confinement has not been shown to deter violent behavior; extended solitary confinement may even lead to increased institutional violence.¹⁸¹ On the other hand, facilities that restrict use of solitary confinement experience a general decrease in violence.¹⁸²

This phenomenon might be attributable to a number of factors. First, extended deprivation of social contact creates a multitude of adverse psychological effects, including hypersensitivity to stimuli and problems with impulse control.¹⁸³ This combination may lead to disproportionate and volatile reactions to the noise, bustle, and social dynamics of varying social groups upon an isolated detainee's return to the general population.¹⁸⁴ "The increased likelihood that inmates will overreact to stimuli makes their return into the general prison population much more difficult."¹⁸⁵

Second, an incarcerated individuals' behavior may be influenced in large part by the perceived fairness of an institution's rules and methods of enforcement.¹⁸⁶ This may be especially relevant in instances where solitary confinement is used to punish minor, non-violent infractions, where a detainee may feel the punishment is undeserved, disproportionate, or discriminatory.¹⁸⁷ As a result, "post-isolation . . . [detainees] may engage in increased prison misconduct and express hostility toward correctional officers."¹⁸⁸

An increase in facility violence will produce many pecuniary losses. Injuries to incarcerated individuals and staff are likely to require additional correctional resources, such as healthcare, paid time off, increased insurance premiums, and increased litigation expenses. Contrarily, facilities that implement solitary reforms experience decreased institutional violence,¹⁸⁹ with one study reporting that decreased use of solitary confinement led to a nearly 90% decrease in detainee-on-staff violence.¹⁹⁰

4. Impacts on Correctional Staff

As of May 2021, about 450,000 correctional workers and supervisors were employed by local, state, and federal agencies in the United States.¹⁹¹ Of those, about 16,000 were employed in North Carolina.¹⁹² Research indicates that more than just those incarcerated are negatively impacted by the use of solitary confinement.¹⁹³ In 2021, North Carolina budgeted \$2.5 million for fiscal year 2022-23 to provide funding to the Integrated Behavioral Health services, “an employee benefit designed to enhanced mental health and trauma-related services for department employees.”¹⁹⁴

In general, working as a correctional officer is linked to poor health outcomes.¹⁹⁵ “Working conditions in segregation units are psychologically stressful and can be physically harmful. Correctional officers are at risk for injury, and they endure some of the same conditions as the prisoners.”¹⁹⁶ An Oregon study revealed that one in three correctional staff suffered from symptoms of PTSD.¹⁹⁷ The study also revealed that the average life-span of a correctional officer was fifty-eight years,¹⁹⁸ compared to an average life span of seventy-three years for men and seventy-nine years for women in the United States.¹⁹⁹ Officers were also at higher risk for obesity, hypertension, high cholesterol, cancer, alcohol abuse, sleep deprivation issues,²⁰⁰ and suicide.²⁰¹

The highest risk of these issues is borne by officers working in maximum-security facilities,²⁰² where detainees are largely, if not entirely, solitarily confined. One New Jersey correctional officer stated, “When I see a human being who is reduced to throwing feces and urine, it wears me down . . . I am breathing the same canned air, sitting under the same fluorescent lights, listening to the same noises. I don’t believe this is good for officers or good for the prisoners.”²⁰³

In addition to the increased risk of violence, verbal abuse by incarcerated individuals may be especially high in solitary units. In a study of state prison personnel in Florida, participants suggested that extended isolation bred a “culture of defiance and manipulation.”²⁰⁴ They noted that “inmates in [extended solitary confinement] have nothing else to do but to identify officers’ weaknesses as a source of ‘mental stimulation.’”²⁰⁵

Internal workplace dysfunction may also contribute to correctional officer stress. A facility may use solitary confinement in order to compensate for disorder and violence caused by inadequate staffing and insufficient detainee programming.²⁰⁶ As a result, officers employed

where there is strong reliance on the use of solitary confinement may be overworked and undertrained. Job dissatisfaction may lead to high staff turnover, resulting in “inconsistent rule enforcement, limited officer rapport, and a reduced ability among officers and staff to defuse potential conflict among inmates.”²⁰⁷

The effects of solitary confinement on correctional officers may also extend to another class of persons. Evidence suggests that family members of correctional officers may experience a heightened risk of domestic violence and abuse.²⁰⁸ While there do not appear to be any studies correlating domestic abuse and facility security level, or abuse and employment within solitary units, research does show an association between work-related stressors and domestic abuse.²⁰⁹ Correctional officers working in solitary units are at greater risk of work-related stress, and thus may also be more likely to bring that stress home.

Some correctional officer unions appear opposed to solitary reform, but this stance may be misguided. In institutions that implement reduction of the use of solitary confinement, correction officers report dramatic improvements in their work environments connected to lower levels of stress and violence.²¹⁰

When the “end” is increased public safety, the initial costs of housing and staffing for solitary confinement may appear to be justifiable “means.” The cost-benefit analysis changes sharply, however, when substantial unanticipated consequential costs are added. The analysis is further altered when the purported benefit ceases to exist.

C. Societal Costs

The social toll of a community’s unrestricted use of solitary confinement must be borne by every citizen. Most of those presently incarcerated will reenter society,²¹¹ and trauma from solitary confinement—along with the usual social barriers produced from past incarceration and criminal history—may seriously impede a former detainee’s chance at successful reintegration. Such failures produce quantifiable social costs and directly counter some of the main objectives of isolation as punishment for crime.

1. Increased Risk of Recidivism and Preventable Death

Formerly incarcerated individuals face onerous social and economic obstacles to reintegration, and may be unable to secure housing, education, and employment as a result of their criminal record.²¹² Solitary confinement—and its accompanying psychological and physiological symptoms—may exacerbate these difficulties.²¹³ For some, the impediments to

social reintegration may prove too great to overcome. Research reveals that people who spend time in solitary confinement are more likely than those who do not to be reincarcerated,²¹⁴ and are at a higher risk for post-release mortality.²¹⁵ In North Carolina, people released from prison who had spent any time in solitary were more likely to die within one year of release, especially from suicide, homicide, and drug overdose.²¹⁶ Individuals who had spent time in solitary were 78% more likely to die from suicide within the first year post-release than those who had not experienced solitary confinement.²¹⁷

2. Impacts on Employment and Family Members

Experiencing solitary confinement may contribute to work-related difficulties similar to those experienced by veterans and other trauma survivors. Like other traumatic experiences, an experience in solitary confinement is significantly associated with PTSD symptoms and other mental health issues long after the traumatizing event.²¹⁸ PTSD and other disabling mental disorders contribute to lower productivity and increased time off of work, “creating an economic burden for workers, their employers, and society at large.”²¹⁹

Family members also experience the negative impacts of solitary confinement. Though parental incarceration may lead to negative impacts,²²⁰ one study found that the impacts “can be mitigated if children with strong parental bonds are permitted to maintain and develop their family relationships.”²²¹ Another study revealed that regular contact, especially in-person visitation, is associated with increased parent-child relationship quality.²²² Better parent-child relationships appear to lead to lower rates of child behavioral issues in families dealing with incarceration.²²³ The opportunities for a parent to contact their children drastically decrease while the parent is in solitary confinement; such contact may become sporadic or nonexistent.²²⁴ As a result, a parent held in solitary confinement may be deprived of their opportunity to mitigate the negative impacts experienced by their children.

An individual’s experience in solitary confinement may continue to negatively impact their domestic partners and children even after incarceration. Lingering psychological and physiological symptoms produced by trauma, such as PTSD, disrupt interpersonal functioning.²²⁵ Like other traumatic experiences, solitary confinement may disrupt an individual’s attachment behavior necessary for the maintenance of close relationships,²²⁶ and create an “incapacity to partake in family moments, such as eating meals together” due to hypersensitivity to stimuli and the resulting intolerance to noise and non-routine activities.²²⁷ Weakened familial attachment and

increased household stress may result in higher rates of divorce, and poor academic and health outcomes for children.²²⁸

D. Conclusion

The practice of isolating individuals sets in motion a sort of “butterfly effect” of losses, rippling indiscriminately through society. These effects, while especially damaging to those who are most vulnerable, such as children, minorities, and people with disabilities, reach even society’s most privileged and indifferent. Still in the midst of a global pandemic and with a potential recession on the horizon, North Carolina must release its grip on this outdated, uninformed, and unjustifiably expensive method of punishment. Policymakers should invest the resulting cost-savings into expanding under-utilized alternatives that may alleviate, rather than compound, problems within our criminal justice system.

III. Exploring the Mandela Rules and their Relevance to Current Solitary Confinement Practices

Nelson Mandela spent twenty-seven years in a South African prison in his quest for “human rights, equality, democracy and the promotion of a culture of peace.”²²⁹ He later served as the president of South Africa, ending the apartheid that had plagued the country for over forty-five years.²³⁰ As a tribute to Mandela’s legacy, the U.N. chose to honor him by ordering the revised Standard Minimum rules for the Treatment of Prisoners be known as the “Nelson Mandela Rules.”²³¹ This section examines the Rules and explores their relevance to current U.S. solitary confinement practices.

A. Background of the Mandela Rules: Timeline of Creation & Adoption

The original Standard Minimum Rules for the Treatment of Prisoners (“SMRs”) were adopted during the first U.N. Congress on the Prevention of Crime and the Treatment of Offenders in 1955.²³² In the decades that followed, the SMRs played a key role in the development of prison law, policies, and practices in nations around the world.²³³

However, despite the goal of the SMRs to establish at least minimal safeguards with regard to the treatment of persons incarcerated, in time it became apparent that a reassessment of the rules was necessary. Changes were needed because in the time since the original SMRs had been created in 1955, international research concerning law and penal policies had significantly advanced and the SMRs became outdated.²³⁴ In order to update the SMRs, the U.N. General Assembly created an inter-governmental “Expert Group” in 2011.²³⁵ The purpose of this Expert Group was to review and possibly revise the SMRs to align with twenty-first century values

without lowering any of the existing standards already established.²³⁶ Many groups were allowed input on this process, including nongovernment organizations and relevant U.N. bodies, such as the United Nations Office on Drugs and Crime (“UNODC”), which oversaw the revision process.²³⁷

In March of 2015, the Expert Group held its fourth annual meeting in Cape Town, South Africa.²³⁸ During the meeting, after four years of reviewing the SMRs, the Group reached consensus on all of the rules open for revision.²³⁹ The Expert Group recommended revising over one-third of the original SMRs,²⁴⁰ and suggested organizing the new rules along nine thematic areas.²⁴¹ These areas are: (1) “[r]espect for prisoners’ inherent dignity” as human beings; (2) protection and special needs of vulnerable groups; (3) healthcare services; (4) restrictions, discipline, and sanctions; (5) investigations of death and torture in custody; (6) prisoners’ access to legal representation; (7) complaints and inspections; (8) prison staff training; and (9) updated terminology.²⁴²

In December 2015, the U.N. General Assembly adopted by consensus the revised U.N. Standard Minimum Rules for the Treatment of Prisoners, or the “Mandela Rules.”²⁴³ The U.N. cited several reasons for adopting the Mandela Rules: “[T]o promote humane conditions of imprisonment; to raise awareness about prisoners being a continuous part of society; [and] to value the work of prison staff as a social service of particular importance.”²⁴⁴ The purpose of the Mandela Rules was specifically geared towards reforming inhumane treatment of individuals incarcerated by nations around the world.²⁴⁵ As Yury Fedotov, Executive Director of the UNODC, said, “In our efforts to make societies more resilient to crime and to promote social cohesion . . . , we cannot disregard those in prison. We must remember that prisoners continue to be part of society, and must be treated with respect due to their inherent dignity as human beings.”²⁴⁶

B. Relevant Foundational Principles and Rules

The new adopted standards contained 122 rules in nine thematic areas almost exclusively concerning prisoners’ rights.²⁴⁷ As stated in the first preliminary observation preceding the Rules, the Mandela Rules

are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is

generally accepted as being good principles and practice in the treatment of prisoners and prison management.²⁴⁸

It is important to note that the Mandela Rules are considered “soft law,” and thus, often considered to lack legally binding authority on nations.²⁴⁹ The Rules, however, are still valuable because they can serve as a baseline that nations should use in order to create a more humane prison system that is in line with international expectations and norms.²⁵⁰ Though all the Rules are important in guiding penal policy, this paper will specifically focus on the Rules that create foundational principles, as well as those that focus on standards applicable to solitary confinement.

1. Rules 1-5: The Basic Principles

The first five Rules cover the basic principles that inform standards of humane treatment. To begin, the Rules reiterate the long-held principle of human rights law that *all* human beings, including incarcerated individuals, “shall be treated with the respect due to their inherent dignity and value as human beings.”²⁵¹ Additionally, the Rules emphasize that no incarcerated individual should be subjected to “torture or other cruel, inhuman or degrading treatment or punishment” and that there are never any circumstances which could justify such practices.²⁵² The Rules also emphasize that a detainee’s religious beliefs are to be respected.²⁵³ When implementing policies within a prison, a nation is also barred from utilizing such policies in a discriminatory manner, including on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.”²⁵⁴ In order to create a system that equitably applies the standards to all of those incarcerated, prison administrators must consider the individual needs of all detainees, including those who are most vulnerable due to age, pregnancy, medical, or cognitive condition.²⁵⁵

The Rules also stress that the purpose of prison is to help reintegrate formerly incarcerated individuals back into society once their sentence has been served.²⁵⁶ To do this, the Rules suggest that prisons should “offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature.”²⁵⁷ Furthermore, prison practices should aim to reduce the differences between life in prison and life at liberty, and must “make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.”²⁵⁸ It is on these

basic principles that the rest of the Rules, including those covering solitary confinement, are based.

2. Rules 41-46: Rules Covering Solitary Confinement

In the 1950s, solitary confinement was not a standard prison practice, and the extent of its negative effects were largely unstudied. Thus, the original SMRs, adopted in 1955, did not provide adequate standards regarding the practice of isolation.²⁵⁹ Since then, however, the negative physical, emotional, and psychological effects of solitary confinement have been extensively examined.²⁶⁰ The findings motivated the Expert Group to include specific standards for the treatment of individuals incarcerated in solitary confinement in the new Rules.²⁶¹

The Mandela Rules define solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact,” and prolonged solitary confinement as “solitary confinement for a time period in excess of 15 consecutive days.”²⁶² The Rules state that an incarcerated individual has the right to be notified of the offense for which prison officials are seeking to take disciplinary action, and they are to be allowed judicial review of the decision.²⁶³ Though Rule 1 already prohibits practices that amount to “torture or other cruel, inhuman or degrading treatment or punishment,”²⁶⁴ the Expert Group reiterated this standard, noting in Rule 43 that “(a) Indefinite solitary confinement; (b) Prolonged solitary confinement; [and] (c) Placement of a prisoner in a dark or constantly lit cell” shall be considered torture and is prohibited.²⁶⁵

According to the Mandela Rules, the practice of solitary confinement should “be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review.”²⁶⁶ Importantly, the Mandela Rules specifically prohibit the use of solitary confinement on individuals with mental or physical disabilities, especially if such disabilities would be exacerbated by isolation.²⁶⁷ Finally, the Rules recommend that individuals incarcerated in solitary confinement be visited everyday by medical personnel in order to ensure that the practice does not cause adverse effects to persons held in isolation.²⁶⁸

C. Current Solitary Confinement Practices Violates the Mandela Rules

International human rights experts have recognized solitary confinement as being contrary to the promise of rehabilitation and as torture when used for longer than fifteen consecutive days.²⁶⁹ In order to address these harms, the U.N. has called for universal implementation of the Mandela Rules,²⁷⁰ which set forth standard minimum guidelines for

treating detainees with respect and upholding the inherent dignity and value of human beings.²⁷¹ The Rules call for a limit of solitary confinement to fifteen days, and for a complete ban on its use for juveniles and people with mental disabilities.²⁷² The current use of solitary in the United States, and in North Carolina, violates multiple principles set forth in the Rules by degrading basic human dignity and contributing to poor mental and physical health.²⁷³

Some of the more prevalent violations include failing to comply with the overall principles of Rule 1, which call for “[a]ll prisoners to be treated with respect due to their inherent dignity and value as human beings,” and further, that no individual should be subjected to “torture and other cruel, inhuman or degrading treatment or punishment.”²⁷⁴ Similarly, Rule 3 prevents prisons from furthering isolating people from the outside world, while Rule 45 calls for solitary to be used “in exceptional cases as a last resort,” and prohibits solitary confinement for those with mental or physical disabilities that could be exacerbated by such conditions.²⁷⁵ However, as studies and narratives have demonstrated, people held in solitary confinement are systemically cut off from social interaction and dehumanized—they are shackled, prohibited from seeing sunlight or grass, and deprived of human contact and mental stimulation.

A range of rules address requirements for cell accommodations and personal hygiene.²⁷⁶ Among other things, the Rules require individuals to be provided with clean clothes and appropriate lighting.²⁷⁷ Additionally, “[a]ll parts of a prison regularly used by prisoners shall be . . . kept scrupulously clean at all times.”²⁷⁸ In North Carolina, however, those in solitary may spend months to years in dirty cells the size of parking spaces, with constant lighting and unlaundered clothes.²⁷⁹

The Rules also require adequate sanitary installations and establish that incarcerated individuals shall be “provided with water and with such toilet articles as are necessary for health and cleanliness.”²⁸⁰ As Michael Kerr’s story evidences, North Carolina prison practices are not always consistent with these mandates.²⁸¹ It has been alleged that turning off water access in solitary confinement cells is a common method of punishment.²⁸²

Additionally, the rules extensively address physical and mental health requirements, including minimum standards for exercise, care for detainees with mental health issues, and psychiatric treatment in facilities with continued treatment upon release.²⁸³ Rule 24 declares that “[p]risoners should enjoy the same standards of health care that are available in the

community.”²⁸⁴ However, North Carolina detainees report receiving little to no healthcare while in solitary confinement.²⁸⁵

Finally, the Rules maintain that the purpose of a prison sentence should be to reduce recidivism and encourage the reintegration of individuals who have been incarcerated into society.²⁸⁶ However, people released from solitary confinement face extreme challenges upon reentry, struggling to function back in their communities, to desist from harmful behavior, and in extreme cases, resorting to suicide.²⁸⁷

In sum, a wealth of research and numerous narratives indicate that the North Carolina prison system fails to comply with international *minimal* standards for the use of solitary confinement.²⁸⁸ If the state were to reform its policies and practices to better reflect the ideals promulgated by the Mandela Rules—ideally as part of an end goal of total eradication—incarcerated people would be permitted to maintain their dignity, and return and contribute to their families and society as a whole person.

IV. Additional Human Rights Norms: Impact on Mandela Rules and Solitary Confinement

It is important to recognize that although the Mandela Rules reflect the most recent human rights attitudes on prison conditions, international human rights norms have long governed solitary confinement. Before the Mandela Rules were adopted by the U.N., international and regional laws prescribed the treatment of incarcerated individuals, including the use of solitary confinement. It is on these international instruments that the Expert Group based their recommendations for Mandela Rules governing solitary confinement. In assessing the Rules’ applicability to U.S. prison practices and policy, a review of these instruments, especially those that bind or otherwise influence the United States, is informative. Additionally, this part will examine how the Mandela Rules work in conjunction with international and regional treaties.

A. International Law Instruments that Regulate Solitary Confinement

Several international treaties seek to establish the scope of prisoner rights, such as the Universal Declaration of Human Rights,²⁸⁹ the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,²⁹⁰ and the International Covenant on Civil and Political Rights.²⁹¹ Each of these treaties has served as a basis for the creation of the Mandela Rules and may also be used as a justification for the argument that the United States should be bound by these Rules. The United States has signed or signed and ratified several of these

instruments.²⁹² Accordingly, there is an expectation that the United States. will respect the principles within these treaties, such as human dignity.²⁹³

1. Universal Declaration of Human Rights

To begin, the Universal Declaration of Human Rights (“UDHR”) was adopted by the U.N. General Assembly in December 1948.²⁹⁴ Though not legally binding, the UDHR is seen as customary international law and has been cited in many subsequent international treaties.²⁹⁵ The UDHR was created as a response to the atrocities of the Second World War, and focused mainly on human rights abuses stemming from the Holocaust.²⁹⁶ Because of this, it did not specifically cover prisoners’ rights.²⁹⁷ Regardless, many standards of the UDHR implicitly cover prisoners’ rights and were used as baseline principles in drafting the Mandela Rules.²⁹⁸

For example, Article 5 of the UDHR was the first global international treaty to state that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁹⁹ This prohibition has been cited in several international treaties since and is the basis for several of the international documents informing the Mandela Rules.³⁰⁰ Other examples include Article 7, which prohibits discrimination in the application of the law, or the principles found in the UDHR.³⁰¹ The UDHR also protects the “right to freedom of thought, conscience and religion,”³⁰² as well as the right to an education,³⁰³ the “right freely to participate in the cultural life of the community,”³⁰⁴ and the “right to a standard of living adequate for the health and well-being” of the person.³⁰⁵ However, many people who serve time in solitary confinement are prohibited from exercising these rights.³⁰⁶

2. Convention Against Torture

Apart from the UDHR, one of the most influential instruments for the Mandela Rules was the Convention Against Torture (“CAT”), which was signed in 1985.³⁰⁷ Significantly, CAT was the first international treaty that outlined torture,³⁰⁸ defining it as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.³⁰⁹

Under CAT, torture is unequivocally prohibited and there is never an excuse or exception to use it.³¹⁰ Until recently, whether or not solitary confinement amounted to torture per se under CAT was debatable. Now, as the U.N. Secretary-General has stated, solitary confinement can amount to torture, cruel, inhuman, or degrading treatment prohibited by this treaty.³¹¹ The Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment also stated that “prolonged solitary confinement may itself amount to prohibited ill-treatment or torture.”³¹² Lastly, because of the social isolation and sensory deprivation imposed by the practice of solitary confinement, the U.N. recommends that solitary confinement “should be used only in very exceptional circumstances, as a last resort, for as short a time as possible” in order to stay within the boundaries of the CAT.³¹³

The United States is a party to CAT, ratifying the treaty in October of 1990.³¹⁴ It must be noted that, in ratifying CAT, the United States included a reservation on Article 16 which clarified “the treatment prohibited is only treatment which is cruel, inhuman, or degrading punishment as interpreted via the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution.”³¹⁵ Recently, experts at the U.N. have begun to voice concerns that the practices concerning solitary confinement, specifically within the United States, may have teetered over the line into torture prohibited by CAT.³¹⁶ According to Nils Melzer, U.N. Special Rapporteur on torture, the practice of solitary confinement within the United States “trigger[s] and exacerbate[s] psychological suffering, in particular in inmates who may have experienced previous trauma or have mental health conditions or psychosocial disabilities.”³¹⁷ Melzer asserts that the practices of the United States are arguably torture within the prohibitions of CAT.³¹⁸

3. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (“ICCPR”) adopted by the U.N. General Assembly in December 1966 and which went into force in 1976 also informed the Mandela Rules.³¹⁹ The ICCPR, as the name suggests, focuses on the protection of civil and political rights such as freedom from discrimination, freedom from torture, the right to be treated with humanity in detention, freedom of religion and belief, and freedom of expression.³²⁰

Specifically, there are two Articles within the ICCPR that are relevant to prison rights and the practice of solitary confinement. As with most other treaties, the ICCPR declares that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”³²¹ However, as it did with CAT, when the United States ratified the ICCPR, it

included a reservation that the phrase “cruel, inhuman or degrading treatment or punishment” would be interpreted according to the prohibitions of the Fifth, Eighth, and/or Fourteenth Amendments of the U.S. Constitution.³²² Article 10 of the ICCPR states “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”³²³ Additionally, this Article mandates that the essential aim of any treatment of detainee will be reformation and social rehabilitation.³²⁴ These two Articles in the ICCPR directly informed the Expert Group when creating the revised Mandela Rules. Rule 1, as explained above, reinforces the absolute ban on “torture and other cruel, inhuman or degrading treatment or punishment.”³²⁵ Additionally, Rule 3 emphasizes the affirmative duty to not exacerbate the suffering of incarcerated individuals, as their liberty has already been taken from them.³²⁶

B. The Practices of Nations

Though the various international human rights norms and the Mandela Rules are intended to apply to all nations, it is beyond the scope of this paper to create an exhaustive list of all nations and their practices regarding solitary confinement. Rather, this paper aims to persuade the fifty United States, as well as the federal government, to adopt the Mandela Rules. Thus, for purposes of assessment, this discussion highlights practices from nations whose jurisprudential systems are similar to the United States. As a result, the comparisons and examples of “best” or “better practices” will focus on commonwealth and European countries notwithstanding the likelihood that other nations may also offer important lessons for the United States with regard to ending solitary confinement. Notably, the Inter-American Court of Human Rights, the European Court of Human Rights, and the African Court on Human and Peoples’ Rights have all ruled that the prolonged use of solitary confinement violates the ban on cruel, inhuman, and degrading treatment or punishment found in each respective human rights convention.³²⁷

1. The Council of Europe

Prior to the adoption of the Mandela Rules in 2015, the Council of Europe was making important strides in developing prisoners’ rights. The Council, formed in 1949, is comprised of forty-seven European nations.³²⁸ This body created the European Convention on Human Rights (“ECHR”) to which all forty-seven member nations are party.³²⁹ The ECHR was crafted after the Second World War with the aim of ensuring human rights for all people in Europe, including citizens of Europe and people of other nationalities.³³⁰ Though several Articles of the ECHR may

be used to argue against the use of solitary confinement,³³¹ the most commonly cited is Article 3, which states that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”³³²

The European Court of Human Rights (“ECtHR”), also known as the Strasbourg Court, was created to protect the rights as stated in the ECHR.³³³ In the years since its inception, the ECtHR has handed down landmark cases regarding prisoners’ rights, including rights concerning solitary confinement. These decisions have made it clear that the use of solitary confinement may amount to torture, inhuman, or degrading treatment.³³⁴ In *Soering v. United Kingdom*, the ECtHR refused to extradite an incarcerated individual to the United States because it anticipated that the current practices of the United States in isolating death row detainees would violate the ECHR’s “cruel, inhuman or degrading” standard.³³⁵ The Court found that death row isolation constituted inhuman treatment because it caused intense physical and mental suffering.³³⁶ In *Iorgov v. Bulgaria*, the ECtHR found that the plaintiff had experienced “suffering exceeding the unavoidable level inherent in detention” when he had been held in solitary with no security justifications provided by the government.³³⁷ In *Dankevich v. Ukraine*, the ECtHR found a violation of Article 3 where a detainee had been held in solitary as a punishment for a suicide attempt.³³⁸ According to the Court, the use of solitary as punishment in this case was “particularly severe and disproportionate to the aim which it was to attain.”³³⁹ These few of the many examples of the ECtHR demonstrate its jurisdictional mandates seeking to limit the use of solitary confinement.³⁴⁰

In addition to the ECtHR, the European Commission of Human Rights has also played a part in minimizing the use of solitary confinement. In *Krocher v. Switzerland*, the Commission condemned the use of solitary confinement in prisons, stating that “complete sensory isolation coupled with total social isolation, can destroy the personality and constitutes a form of treatment which cannot be justified by the requirements of security or any other reason.”³⁴¹

The Council of Europe, even prior to the enactment of the Mandela Rules, independently revised the SMRs which emphasized the need to minimize the use of segregation techniques in prisons.³⁴² Under the European standard, before an incarcerated person may be placed in solitary confinement, a medical officer must examine the person and certify in writing that they are fit to be confined.³⁴³ Additionally, the person held in isolation must be monitored daily, and any change to their condition may require immediate termination of their confinement.³⁴⁴ Finally, the

Council of Europe created the European Committee for the Prevention of Torture (“ECPT”), which found that “[s]olitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible.”³⁴⁵ In 2011, the ECPT released a statement urging member states to limit the use of solitary confinement to only “exceptional circumstances and for the shortest possible period of time.”³⁴⁶

2. The United Kingdom

In addition to the Council of Europe system, the United Kingdom (“U.K.”) serves as a pertinent comparison because the U.S. legal system was largely based on that of the U.K.’s. Moreover, the U.K. has the highest incarceration rate in Western Europe, making it especially apt for comparison with the United States.³⁴⁷ As of June 2022, the U.K. had a total prison population of 89,520 people.³⁴⁸ Due to reporting failures, the exact number of U.K. individuals in solitary confinement is unknown.³⁴⁹ However, based on the number of isolation facilities within the U.K. prison system, it is estimated that around 500 incarcerated individuals are confined to solitary confinement, a number that has been decreasing.³⁵⁰ Moreover, public opinion in the U.K. appears to reject solitary confinement: a report issued in 2015 found that twenty-four detainees in the U.K.’s high security prisons had been held in solitary confinement for six months or more, a number that was condemned by the public as “unacceptably high.”³⁵¹

Pursuant to the requirements of CAT, the U.K. established the HM Inspectorate of Prisons for England and Wales (“HMI”) as an independent inspectorate tasked with providing independent scrutiny concerning the conditions of prisons and the treatment of incarcerated individuals.³⁵² The HMI creates expectations based on international human rights standards and uses those expectations to inform their prison inspections and reviews.³⁵³ In one of the documents regulating practices related to “managing behavior,” the HMI stipulates expectations with regard to the use of solitary confinement.³⁵⁴ These expectations include: (1) segregation is to be used as a last resort, (2) care plans are to be established, and (3) detainees are to receive regular mental health review.³⁵⁵ Importantly, the document establishes the expectation that “[p]risoners are never subjected to a regime which amounts to solitary confinement (when prisoners are confined alone for 22 hours or more a day without meaningful human contact).”³⁵⁶ At the end of the document, the HMI cites a number of Mandela Rules as the applicable human rights standards informing their expectations.³⁵⁷ Based on the Rules as guidance, the HMI

inspects a prison and renders a report stating any key concerns.³⁵⁸ Though the HMI is not a regulator and does not have the power to close a prison that violates expectations, the HMI can raise concerns via Urgent Notification with the Secretary of State for Justice.³⁵⁹

In addition to the HMI, prisons in the U.K. have established parameters to regulate how and when a detainee may be placed in solitary confinement. First, before an individual may be placed in isolation, prison authorities must justify and explain in writing the decision to use solitary confinement and must include “[t]he authority making the decision ... and [the authority is] accountable for [its decision].”³⁶⁰ Additionally, an individual in solitary confinement must be kept in a sanitary environment.³⁶¹ Individuals in solitary must be examined by a doctor or registered nurse within two hours of entering isolation, and must thereafter be visited by a healthcare professional every day they remain isolated.³⁶² Finally, “national prison policy says that segregation should be for the shortest period of time consistent with the original reasons for separation; that reviews must consider the prisoner’s ability to cope in segregation; and that any prisoner segregated for more than 30 days must have a care plan setting out how their mental health will be safeguarded.”³⁶³

3. Canada

Like the United States, Canada is a party to both the CAT and the ICCPR.³⁶⁴ Additionally, Canada has been proactive when it comes to prisoners’ rights. For example, Canada was an original supporter of the 1955 SMRs.³⁶⁵ Canada has taken important steps to protect human rights with regard to conditions of incarceration. The country prides itself on being a nation that takes human rights seriously.³⁶⁶

Since the adoption of the Mandela Rules, Canada has made strides in limiting the use of solitary confinement in Canadian prisons. In early 2019, British Columbia’s Court of Appeal held that the use of solitary confinement for more than fifteen consecutive days constituted cruel and unusual punishment.³⁶⁷ In this decision, the Court specifically endorsed the Mandela Rules’ fifteen-day time limit on the imposition of solitary confinement.³⁶⁸ Moreover, the Court called for the implementation of an independent review system, in alignment with the Rules.³⁶⁹

Later that year, the Canadian government passed an *Act to amend the Corrections and Conditional Release Act and another Act*, which ended solitary confinement, or “administrative segregation,” in Canadian federal prisons.³⁷⁰ The Act also mandated funding for mental health services in prisons as well as the implementation of Structured Intervention Units (“SIU”) to

accommodate individuals who must be separated for safety reasons.³⁷¹ In line with the new law, Canadian prison policy states that “[i]nmates confined in an SIU must be provided with the opportunity to be out of their cell for a minimum of four hours daily, of which a minimum of two hours must include opportunities for meaningful human contact.”³⁷² The four-hour rule is a baseline, and prison staff are encouraged to find reasonable options to provide detainees even more time out of their cells.³⁷³

Additionally, incarcerated individuals are to be given “programs, interventions, services, cultural activities, religious and spiritual practice, leisure activities, family and community contact.”³⁷⁴ They may only be placed in an SIU if there are no other reasonable alternatives and the safety of self or others is at risk, or it is necessary for a criminal investigation.³⁷⁵

Furthermore, there are procedures in place to ensure a fair and impartial review of the decision to place an inmate in an SIU.³⁷⁶ Once in an SIU, residents have a right to a health assessment within twenty-four hours of entering an SIU, and additional assessments every fourteen days.³⁷⁷

Additionally, the resident must receive daily visits from a registered healthcare professional.³⁷⁸

Finally, residents have a right to legal counsel throughout the entire process, from being recommended and transferred to an SIU through review.³⁷⁹

C. Conclusion

“I found solitary confinement the most forbidding aspect of prison life. There is no end and no beginning; there is only one’s mind, which can begin to play tricks.”³⁸⁰

The U.S. Declaration asserts: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”³⁸¹ However, decades of detrimental U.S. policy concerning crime and punishment, most notably the war on drugs, has pushed the United States out of balance.³⁸² Nowadays, the United States is considered one of the most (if not the most) punitive countries in the world.³⁸³

In the time since the original SMRs were created in 1955, there have been several advances in the understanding of the traumatic implications of the use of solitary confinement.³⁸⁴ With this new evidence, several regional bodies, as well as individual nations, have begun to develop policies that are more in line with the Mandela Rules and existing international norms.³⁸⁵ Now, more than ever, it is imperative for the United States to not simply follow other nations, but to fully adopt and implement the Mandela Rules. With the highest number of

incarcerated individuals, as well as the highest number of individuals held in solitary confinement, the United States is uniquely positioned to make a positive difference in global penal policy and practice.³⁸⁶

V. Current Efforts to Address Solitary Confinement as Informed by the Mandela Rules

In the absence of sweeping federal action to eliminate solitary confinement for all incarcerated people, advocates are seeking to limit solitary at the state level through legislation and administrative advocacy.³⁸⁷ In 2016, after the federal government ended the practice of placing juveniles in solitary confinement,³⁸⁸ many states also acted to limit or entirely prohibit placing juveniles in solitary.³⁸⁹ Other states have limited the use of solitary on other vulnerable populations, such as people aged twenty-one and under,³⁹⁰ people aged fifty-five³⁹¹ or sixty-five and over,³⁹² people who are pregnant³⁹³ or who were recently pregnant,³⁹⁴ people who have suffered traumatic brain injuries,³⁹⁵ people with developmental disabilities,³⁹⁶ people with serious medical conditions,³⁹⁷ people with serious mental health conditions,³⁹⁸ and people who are lesbian, gay, bisexual, or transgender.³⁹⁹ Others have worked to restrict the reasons a person can be placed in solitary.⁴⁰⁰

As of June 2023, four states have placed significant limits on the length of solitary confinement: Connecticut, New York, New Jersey, and Colorado.⁴⁰¹ The following case studies share lessons learned from these attempts to implement bans on prolonged solitary confinement at the state level, although the history of each effort is more extensive than can be addressed in this compilation. The case studies have been shaped by narratives of survivors, advocates, and policymakers involved in the effort to end prolonged solitary confinement.

A. Legislation

Connecticut, New York, and New Jersey have each passed legislation to limit the amount of time state departments of corrections can place incarcerated people in solitary confinement.⁴⁰² In both Connecticut and New Jersey, the bills initially were vetoed by the state's governors, and the ultimate versions of the bills signed into law contained concessions to opponents of the reforms.⁴⁰³ In New York, the new law is facing vociferous opposition and an ongoing repeal effort from the New York State Correctional Officers and Police Benevolent Association.⁴⁰⁴ In each state, the laws have significantly reduced the number of people placed in solitary confinement, but advocates are continuing to push for full and complete implementation.⁴⁰⁵ In

2022, California passed legislation to ban prolonged solitary confinement, but that legislation was vetoed.⁴⁰⁶ A similar bill was reintroduced in early 2023.⁴⁰⁷

1. Connecticut

In 2021, Connecticut Governor Ned Lamont vetoed a ban on long-term solitary confinement in favor of his own, more limited Executive Order, which faced significant criticism from advocates and policymakers.⁴⁰⁸

After Governor Lamont vetoed the 2021 bill, advocates including Barbara Fair, a former victim of solitary confinement working with Stop Solitary Connecticut knew she needed to adjust her tactics to ensure that the bill became law.⁴⁰⁹ In the 2022 legislative session, Fair took on more lobbying herself, because she felt that the words of directly impacted people carried more weight than those of a professional lobbyist.⁴¹⁰ Fair also credits the use of a replica cell and a U.N. complaint filed by the Lowenstein International Human Rights Clinic at Yale Law School with increasing pressure on state policymakers to end prolonged solitary confinement.⁴¹¹ In what she initially felt was a risky move, Fair even reached out to the correctional officer's union, and was able to get its support.⁴¹²

Fair worked to build her own relationship with the Commissioner of the Department of Corrections and negotiated to reach a compromise with him on key provisions of the revised bill.⁴¹³ Over time, they were able to come up with a compromise bill, and with the blessing of the Commissioner, the Governor signed it into law.⁴¹⁴

The law also established an independent ombudsperson to investigate complaints against the Departments of Corrections, and a Corrections Advisory Committee,⁴¹⁵ but as of late 2022, these oversight mechanisms were not yet in place.⁴¹⁶ Fair is frustrated about the delays, but hopeful that the board will be in operation soon.⁴¹⁷

2. New York

New York became the first state to codify the U.N.'s Mandela Rules⁴¹⁸ with the Humane Alternatives to Long-Term Solitary Confinement Act ("HALT") signed into law in the spring of 2021 and went into effect in 2022.⁴¹⁹ The law was the culmination of eight years of a campaign, led by the New York Campaign for Alternatives to Isolated Confinement, to end solitary confinement.⁴²⁰ During the campaign, organizers drew on a wide variety of strategies—lobbying, rallies, use of a model cell, and a hunger strike—to move the issue forward.⁴²¹ As Jean Casella, Director of Solitary Watch, noted, "[t]he legislator-by-legislator approach that they took, takes a

long time and a lot of energy, but it works.”⁴²² By the time HALT passed, it garnered significant majorities in the Assembly and the Senate.⁴²³

However, implementation of the Act has been rocky. As of September 1, 2022, five months after HALT went into effect, 276 people had been in solitary for more than fifteen days, in direct violation of the law.⁴²⁴ Although the Act built in a year of lead time before implementation, the Department of Corrections and Community Supervision (“DOCCS”) did not prepare updated rules and regulations until a week before HALT was supposed to go into effect.⁴²⁵ The proposed regulations “violate[d] explicit provisions of HALT” and “ignore[d] key components of the law.”⁴²⁶ Further, incarcerated people have reported that the “residential rehabilitative units” and “step-down units” created by the Act as alternatives to prolonged solitary confinement are operating as illegal extensions of solitary units in some state prisons.⁴²⁷ Finally, DOCCS has been actively obfuscating access for the state’s oversight organization, Correctional Association of New York, which cannot currently monitor state prisons due to disagreements about the conditions of their visits.⁴²⁸

As DOCCS refuses to fully implement the law, New York corrections officers are actively campaigning to repeal it.⁴²⁹ Despite significant evidence that reducing solitary confinement *decreases* violence,⁴³⁰ the officers have claimed the use of prolonged solitary confinement is necessary to protect officers from increasing prison violence.⁴³¹ DOCCS statistics have shown an increase in prison violence over time,⁴³² but as Jean Casella of Solitary Watch pointed out, “Who creates the violence statistics? It’s the [correctional officers]. They’re the people who report the violent incidents, so they can manufacture whatever statistics they want to.”⁴³³ In Casella’s eyes, New York’s story emphasizes the challenges of legislative reform:

Your campaign doesn’t dissolve when you pass a law, it just changes over to overseeing implementation. And we don’t really have enough evidence for that how that’s going to go in the long run, because all these laws have all just been passed in the last couple of years... But it’s safe to say it’s going to be an uphill battle for a long time.⁴³⁴

3. New Jersey

New Jersey Governor Phil Murphy signed the Isolated Confinement Restriction Act into law in 2019, which limited the duration of solitary confinement to a maximum of twenty consecutive days or thirty days total over the course of sixty days,⁴³⁵ but implementation has not been straightforward.⁴³⁶ One New Jersey facility sent incarcerated people to a “restorative housing” unit for terms of sixty to 365 days at least 125 times in the first several months after the

ban on prolonged solitary confinement went into effect.⁴³⁷ According to Jean Ross of the People’s Organization for Progress, the “restorative housing” units “are just the old administrative segregation units with a different sign.”⁴³⁸ A Department of Corrections spokesperson claimed that the “restorative housing” units comply with the law, but incarcerated people and advocates say the law’s implementation has been inconsistent at best.⁴³⁹

*“It certainly appears as if every change has been cosmetic.”*⁴⁴⁰

4. California

In September 2022, California Governor Gavin Newsom vetoed the California Mandela Act,⁴⁴¹ which would have reduced the number of people held in solitary confinement in California at any given time—around 4,000—by 70%.⁴⁴² Governor Newsom stated that he supported limiting solitary confinement, but felt the bill was too far-reaching, and risked the safety of correctional officers.⁴⁴³ Instead, Governor Newsom directed the California Department of Corrections and Rehabilitation to make administrative changes— a prospect advocates view with deep skepticism.⁴⁴⁴

Chris Holden, one of the authors of the 2022 bill, reintroduced a similar bill in early 2023.⁴⁴⁵ Holden’s AB 280 seeks to address Newsom’s concerns by “set[ting] minimum standards for all carceral facilities that should not conflict with higher regulations” of the state’s department of corrections.⁴⁴⁶ On May 31, 2023, the bill passed off the assembly floor with supermajority support.⁴⁴⁷

5. Colorado

Department of Corrections Director Rick Raemisch officially ended long-term solitary confinement in Colorado in 2017, calling the practice “counterproductive and inhumane” after spending just twenty hours in a solitary cell himself.⁴⁴⁸ But in 2020, the Department quietly returned to the widespread use of prolonged solitary confinement to slow the spread of COVID-19.⁴⁴⁹ According to a December 2020 report, some Colorado prisons isolated incarcerated people for far longer than the official policy allows.⁴⁵⁰ Incarcerated people at Centennial Correctional Facility South spent ninety days in isolation, and at another facility, the average isolation period was fifty-two days.⁴⁵¹ The Executive Director noted that the “context of the pandemic” meant that the Department needed to isolate incarcerated people for their own health protection—but this rationale does not eliminate the severe and dire impacts of prolonged solitary confinement.

Effective July 1, 2023, new Colorado legislation will place limits on the use of solitary confinement in local jails.⁴⁵² Isolation is prohibited for certain individuals, including those with serious mental or neurocognitive health conditions, pregnant or postpartum individuals, and those under the age of eighteen.⁴⁵³ Placement in solitary confinement for over fifteen days will be prohibited without a court order.⁴⁵⁴

“I felt as if I’d been there for days. I sat with my mind. How long would it take before [administrative segregation] chipped that away? I don’t know, but I’m confident that it would be a battle I would lose.”⁴⁵⁵

B. Administrative Changes to End Long-Term Solitary

In contrast to legislative efforts which require the support of a wide swath of legislators, an administrative strategy often only needs the approval of a few key players. Some correctional department leaders may be aware that changes are needed and may be open to shifting policies. For example, the Idaho Department of Corrections has implemented some restrictions on its use of solitary confinement,⁴⁵⁶ though it does not appear any legislation mandates such changes.⁴⁵⁷ In Idaho prisons, an assignment to solitary confinement in response to an infraction, or “disciplinary detention,” may not exceed fifteen days, and the time may not be extended.⁴⁵⁸ Additionally, juveniles, individuals who are pregnant or recently gave birth, and individuals with a serious mental health condition “must be considered for alternative placement in a mental health unit or in a holding cell on suicide watch or loose observation status.”⁴⁵⁹

However, administrative changes are not a guarantee— new leadership can simply reverse policy changes, and the lack of transparency in which many correctional departments operate can leave the status of policies murky. Moreover, at the time of this writing, there is no indication in North Carolina that correction officials are willing to implement the Mandela Rules as guidance with regard to the use of solitary confinement.

C. Conclusions and Reflections on State Paths to Implementation of Limits on Long-Term Solitary

In examining the varied state paths to ending prolonged solitary confinement, there are no easy answers. But throughout these case studies, several patterns emerge. First, legislative work generally requires years of lobbying, education, and organizing to pass, and in several states the legislation has had to pass more than once to garner the Governor’s signature. Second, while administrative changes can happen quickly, they can also change back quietly and without warning. Third, whether the path to ending prolonged solitary confinement is administrative,

legislative, or a combination of administrative and legislative work, rigorous monitoring and oversight is crucial. As modeled in the Connecticut legislation, independent oversight and mandated data collection should be core features of future proposals. In some cases, advocates can gain traction by filing a complaint with the United Nations.

Lastly, advocates must be prepared to overcome opposition from correctional unions and reactionary narratives about the safety of correctional department workers. Some of the most effective ways to blunt this backlash can be increasing public awareness through media engagement, survivor storytelling, and building relationships with correctional leadership. It is crucial not only to uplift survivor stories, but also to ensure that directly impacted people are leading the charge to change carceral policies. Ultimately, campaigns must be “prepared to be in this for the long haul.”⁴⁶⁰

VI. Current Efforts to Address Solitary Confinement through Litigation Strategies

Legal challenges to solitary confinement conditions—particularly in the federal appellate courts—are an important tool for mitigating the horrors and curtailing the use of solitary confinement in U.S. prisons. This tool has been used practically from the outset of our nation’s history with solitary.⁴⁶¹ While incarcerated persons have challenged their conditions of solitary confinement under several constitutional provisions and statutes, this section will primarily focus on Eighth Amendment challenges because the broad concept of “evolving standards of decency” provides an opening to incorporate international human rights norms, agreements about human rights standards, and examples other countries’ interpretations of those standards into legal arguments.

The broad reach of appellate decisions is a key part of their value. For advocates invested in integrating international human rights norms into the conversation around solitary confinement, these cases present a particularly rich opportunity—a human rights argument or norm cited in an opinion (or even a dissent) provides future litigants with legitimized arguments and serves as an important signal of where courts are expanding analyses of prisoners’ rights issues and evolving standards of decency.

While Supreme Court review is rare, the federal circuits hear thousands of appeals each year.⁴⁶² And though many prisons still impose harsh solitary confinement conditions,⁴⁶³ the strides made in protecting certain populations from the harms of restrictive housing owe at least some of their successes to legal and scientific arguments cited and accepted by the decision-

makers of these courts.⁴⁶⁴ Reliance on the courts, however, is not without significant challenges, and progress is often slow. In his 2015 opinion in *Davis v. Ayala*, Justice Kennedy, addressing the harms facing persons held in prison, noted that the “condition in which prisoners are kept simply has not been a matter of sufficient public inquiry or interest.”⁴⁶⁵ This acknowledgement highlights the need for a paradigm shift in cases challenging the constitutionality of solitary confinement. The need for such a shift, in turn, creates an opportunity for advocates to employ both binding U.S. legal precedents and international norms in arguments advancing the reduction of solitary confinement’s use in prisons. *Davis* itself has been cited in 208 appellate briefs and 1,689 opinions, shedding light on the prevalence of challenges to prison conditions in the United States and fact that the need to address solitary confinement’s impact is dire.⁴⁶⁶

A. Eighth Amendment Solitary Confinement Jurisprudence

In 1890, the Supreme Court took up a challenge to solitary confinement.⁴⁶⁷ The Court noted that from the first experimentations with solitary confinement in U.S. prisons, the impacts revealed the practice’s cruelty and its ineffectiveness as a carceral tool.⁴⁶⁸ The Court held that the statute at issue (which mandated that the individual be held in solitary confinement pending his execution) subjected the individual to “an additional punishment of the most important and painful character” that was not statutorily required at the time of his conviction.⁴⁶⁹ In its analysis of solitary confinement as a practice in U.S. prisons, the Court noted that Britain had moved away from its use after public outcry in response to a statute mandating solitary as a punishment for detainees convicted of murder and awaiting execution.⁴⁷⁰ This early case provides one example where the U.S. Supreme Court considered international developments in a decision curtailing the use of solitary confinement.

Courts have since further defined Eighth Amendment standards of cruel and unusual punishment. The “basic concept underlying the Eighth Amendment is nothing less than the dignity of man,” and Eighth Amendment protections should reflect “evolving standards of decency that mark the progress of a maturing society.”⁴⁷¹ In *Trop v. Dulles*, the Supreme Court held that stripping a U.S. soldier of his citizenship for desertion violated the Eighth Amendment’s prohibition on cruel and unusual punishment, relying in part on the fact that “[t]he civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime.”⁴⁷²

In 1970, a federal district court in Arkansas held that “confinement itself within a given institution may amount to a cruel and unusual punishment prohibited by the Constitution where the confinement is characterized by conditions and practices so bad as to be shocking to the conscience of reasonably civilized people.”⁴⁷³ While the opinion in that case (holding that the entire Arkansas penal system was unconstitutional) countenanced and even encouraged the use of solitary confinement, the court also ordered the prison system to remediate some of the more heinous conditions of isolation.⁴⁷⁴ A later Supreme Court case arising out of this litigation upheld Arkansas’ thirty-day cap on solitary confinement, acknowledging that “punitive isolation ‘is not necessarily unconstitutional, but it may be, depending on the duration of the confinement and the conditions thereof.’”⁴⁷⁵

In *Estelle v. Gamble*, the Supreme Court established the “deliberate indifference” standard plaintiffs must meet to state an Eighth Amendment claim for relief from cruel and unusual prison conditions.⁴⁷⁶ The Court later clarified that establishing deliberate indifference by prison officials requires “inquiry into state of mind” of the officials whose conduct is challenged.⁴⁷⁷ Stated succinctly in a recent Third Circuit case, the two-prong test for whether conditions of confinement violate the Eighth Amendment is as follows: “(1) the deprivation must be ‘objectively, sufficiently serious; a prison official's act or omission must result in the denial of the minimal civilized measure of life’s necessities’; and (2) the prison official must have been ‘deliberate[ly] indifferen[t] to inmate health or safety.’”⁴⁷⁸ This standard, while acknowledging that solitary confinement can amount to cruel and unusual punishment, has proven a high bar for actual relief.⁴⁷⁹

B. International Law and Human Rights Norms Currently Informing Solitary Confinement Litigation in the United States

Given the difficulties of mounting Eighth Amendment challenges to solitary confinement conditions, advocates should explore the potential merits and drawbacks of including and arguing by analogy to international human rights norms. This section will highlight recent circuit court cases as examples of how such arguments could have been used in U.S. appellate briefing and explore a possibly broader opportunity for argument by analogy in state-level appellate litigation.

1. Human Rights Norms in Court Opinions

The Supreme Court has a history of citing international norms in determining the scope of U.S. citizens’ rights.⁴⁸⁰ The issue of solitary confinement is a prominent concern in the realm

of international human rights discussions and authorities, including treaties that the United States has signed and ratified. Solitary confinement's treatment in international human rights law shows how the United States trails peer nations and provides an opportunity for advocates to urge the courts to bring U.S. systems in line with "evolving standards of decency" around the globe. The Mandela Rules are one example of international human rights principles that are particularly relevant to the issue of solitary confinement.⁴⁸¹ The Rules constitute international legal principles reflecting thoughtful deliberation on difficult questions of incarceration and efforts of the international human rights community to strive for more just treatment of people in prisons.⁴⁸² The Mandela Rules' predecessor, Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955 by the UN General Assembly,⁴⁸³ were conceived in the aftermath of World War II and aimed to prevent signatories from holding incarcerated individuals in torturous and inhumane conditions. These norms are applicable to U.S. courts.

Neither the Mandela Rules nor their predecessor have been signed by the United States or adopted by Congress, thus creating challenges for advocacy that suggests that federal courts must fundamentally rely upon them in adjudicating prisoners' rights claims.⁴⁸⁴ Since the rules were updated in 2015, their use in U.S. litigation has been sparse—only nine federal district court cases have referred to them at all as of October 12, 2022, largely in passing (often footnote) reference in unreported decisions.⁴⁸⁵ However, in 2021, the U.S. District Court for the Southern District of Illinois favorably acknowledged a plaintiff's arguments based on the Rules in an order granting class certification to a group of incarcerated individuals challenging the Illinois Department of Corrections' conditions of restrictive housing.⁴⁸⁶ While only an interlocutory order from the trial court, Magistrate Judge Beatty's reference to the Rules indicates that though federal judges may not be required to rely on the rules as bases for legal claims, they may use them as a frame of reference for standards used in the treatment of detainees.⁴⁸⁷ Moreover, courts have acknowledged that "there is an increasing awareness in both the legal community and the public at large of the issues concomitant with prolonged solitary confinement."⁴⁸⁸ While the same courts do not often find in favor of plaintiffs facing solitary confinement, gradual acceptance of these evolving standards of decency appear to be informed, at least in some cases, by international norms such as the Mandela Rules.⁴⁸⁹

2. International Human Rights Arguments Offered by Former Corrections Directors and Prosecutors: Repeat-Player *Amici*

In solitary confinement appellate litigation, several groups routinely file *amicus* briefs in support of the confined plaintiffs or petitioners. These include former prison officials; current and former prosecutors; professors and practitioners of psychiatry, psychology, and medicine; and international human rights scholars and advocates.⁴⁹⁰ The briefs vary based on the facts of the cases in which they are filed, but often make similar arguments and serve as examples of advocates incorporating international human rights norms into briefing challenging solitary confinement practices.

Amici often cite international human rights documents, demonstrating a blended approach for framing evolving standards of decency in prisoners' rights litigation.⁴⁹¹ For example, one mental health-focused *amici* cited a U.N. Special Rapporteur report, published in 2011 shortly before the Mandela Rules were adopted, suggesting the creation a maximum time period in terms of days for the use of solitary confinement.⁴⁹²

Perhaps surprisingly, one group of “repeat-player” *amici* in solitary confinement cases is a cohort of former corrections directors and experts.⁴⁹³ These officials cite their “extensive experience managing prison systems and with safely reducing the use of solitary confinement” and their unique perspectives on the ways in which “solitary confinement is devastating to prisoners, penologically unnecessary, and . . . produces counterproductive outcomes for prison administration.”⁴⁹⁴ The briefs of corrections experts also rely on international human rights norms. In a 2016 brief, they noted that “the Inter-American Commission on Human Rights has singled out the United States for its excessive use of solitary confinement,” and pressed the Court to acknowledge that solitary confinement is torture based on “the United Nations Special Rapporteur on Torture[’s]” condemnation of the practice.⁴⁹⁵ *Amici* pair their international norms arguments with U.S. case law sources dating back to *In re Medley* (1890) that condemn the practice of solitary confinement, exemplifying a blended approach to arguing for the end of the practice.⁴⁹⁶

A recent brief by current and former prosecutors and Department of Justice officials (“DOJ *Amici*”) points out another key international issue related to solitary confinement: that “[p]rosecutors rely on the cooperation of foreign partners to prosecute crimes that cross international boundaries and to seek extradition of defendants located abroad who have been charged with crimes in the United States,” but that these prosecutors often struggle to secure

extradition because of other countries' hesitancy to send people into the U.S. prison system, which they view as inhumane and "contrary to a growing international consensus against the practice" of solitary confinement.⁴⁹⁷

The DOJ *Amici* cite the Mandela Rules, noting that "the United Nations passed a resolution adopting the Nelson Mandela Rules, which, inter alia, prohibit solitary confinement for more than 15 consecutive days as a form of cruel, inhuman or degrading treatment or punishment."⁴⁹⁸ The brief also details a number of foreign court decisions decrying U.S. prison conditions and citing them as reasons for denying United States requests for extradition of a number of individuals charged with various crimes, including several people involved in hacking high-security U.S. government computer systems.⁴⁹⁹

In noting that the United States lags behind allied nations in providing a bare minimum of humane treatment of those it incarcerates, the brief also highlights a viable blended approach to international and domestic-focused arguments in prisoners' rights litigation.⁵⁰⁰ By pointing out that the United States' refusal to bring its policies in line with the international community's views on basic human rights undermines the country's ability to pursue its interests in investigating and prosecuting crimes perpetrated against our own government, the DOJ *Amici* underscore another absurdity of the practice of solitary confinement.

International human rights scholars focus their arguments on the United States' status as an outlier in its pervasive and brutal use of solitary confinement, pointing out that "England and Wales, Canada, France, and Ireland, hold perhaps dozens or, at most, a few hundred people in confinement and have worked to develop policies to mitigate the harms for those few prisoners."⁵⁰¹ While "[i]n [U.S.] federal prisons, solitary confinement can legally be used for an unlimited duration," peer countries "limit the initial duration of solitary confinement to thirty days or less."⁵⁰² Citing international laws and regulations placing strict limitations on the use, duration, and conditions of solitary confinement, *amici* highlight the stark contrast between these countries' practices and those of U.S. prisons. The briefs also note that the United States has ratified both the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT),⁵⁰³ treaties that they argue have "long been interpreted to include the use of prolonged and indefinite solitary confinement."⁵⁰⁴ The international human rights arguments—including direct reliance on the Mandela Rules—made by repeat-player *amici*

demonstrate one way advocates can incorporate these important sources of law and custom into U.S. jurisprudence.

3. Case Study: *Hope v. Harris*

Dennis Wayne Hope, a man subjected to prolonged solitary confinement, is a litigant whose case exemplifies both the challenges and potential for positive outcomes in mounting challenges to solitary confinement conditions. Notwithstanding the holding of courts that “[t]here is a line where solitary confinement conditions become so severe that its use is converted from a viable prisoner disciplinary tool to cruel and unusual punishment,” Mr. Hope spent over two decades in solitary.⁵⁰⁵ His case illustrates the difficulty of meeting the rigorous test for Eighth Amendment violations based on conditions of confinement, which requires “(1) that the prison conditions pose a ‘sufficiently serious’ threat to his health, including his mental health, and (2) that prison officials acted with ‘deliberate indifference’ to such threat.”⁵⁰⁶

In Mr. Hope’s case, the Fifth Circuit held that “solitary confinement cannot violate the Eighth Amendment, no matter how long it is imposed.”⁵⁰⁷ His petition to the Supreme Court identified a split of authority among the federal courts of appeals on the issue of whether the length of time of solitary confinement can give rise to an Eighth Amendment violation.⁵⁰⁸ While Mr. Hope’s petition was pending, he was transferred out of solitary confinement and was moved to general population.⁵⁰⁹ Thus, it is unlikely that the Court will reach the constitutional question in his case because, as the state parties’ brief noted, the conditions challenged no longer exist.⁵¹⁰ Moreover, on June 8, 2022, both parties filed an emergency motion to hold the Court’s consideration of the petition in abeyance “pending the outcome of ongoing settlement negotiations.”⁵¹¹

Mr. Hope’s litigation was a success in his individual case; he was released from solitary confinement presumably in part due to the pressure applied on state defendants by his lawsuit.⁵¹² His case provides an example of how appellate litigation, while an uphill battle in terms of developing Eighth Amendment jurisprudence favorable to the incarcerated, can serve a practical role in improving the real-life conditions for individual litigants through settlement and release. However, this case does not achieve the full potential of appellate litigation, which could set a precedent for future challenges to similar conditions of confinement.

Additionally, Mr. Hope’s case illustrates the disparate application of Eighth Amendment protections in U.S. jurisprudence. Courts by and large forgo holding for incarcerated persons,

citing grounds other than the Eighth Amendment preventing plaintiffs' conditions of confinement from violating the Constitution. None of the cases mentioned by Hope's counsel cite international human rights norms, such as the Mandela Rules, which may have been useful in illustrating the ways in which the challenged conditions contradicted the principle of "evolving standards of decency."⁵¹³ Because courts have acknowledged that "there is an increasing awareness in both the legal community and the public at large of the issues concomitant with prolonged solitary confinement,"⁵¹⁴ advocates should be aware of the relatively new developments and make use of the Mandela Rules as part of their advocacy toolkit.

C. Moving Forward: How Blended Arguments Chart a Path for Using International Human Rights Norms in Solitary Confinement Litigation

For advocates working to limit or even end the practice of solitary confinement, an "evolving standards of decency approach" that is informed by international law could help nudge courts closer to identifying solitary confinement as torture and a fundamental human rights violation. Already, *amici* and litigants are presenting these arguments.⁵¹⁵ While the United States has not adopted the Mandela Rules or their predecessors and there is disagreement whether treaties like the CAT are binding on our courts, it is worth examining strategies to blend the principles of these documents into arguments on behalf of those challenging solitary confinement conditions.

1. Blueprints for Advocates to Use International Law in Appellate Arguments

American University's Center for Human Rights and Humanitarian Law has published a useful guide for U.S. litigators working to push back on instances where "U.S. law . . . falls short of providing a 'floor' of minimum protections for these marginalized individuals," as it has tended to do in the solitary confinement space.⁵¹⁶ The handbook includes a wealth of information for legal aid attorneys and others aiming to implement international human rights arguments and principles in litigation, and provides sample arguments for use in both federal and state court settings.⁵¹⁷ The manual points out that "human rights law has particular value for judicial interpretation," and can offer interpretive models more on point than U.S. decisions for certain issues.⁵¹⁸ Further, in the state court context, the manual notes that "courts should interpret United States law as consistent with international law whenever possible," using customary international law as a guide.⁵¹⁹ Finally, the handbook affirms the argument that "state courts should be part of the transnational dialogue on human rights simply because it is a vital conversation that promotes universal values" in the sense that bolstering protections in U.S. law also enhances United States

positions on the world stage.⁵²⁰ These arguments are an excellent resource for advocates working to draw on international human rights principles for arguments in solitary confinement litigation.

Furthermore, in 2016, the Federal Judicial Center created the “International Human Rights Litigation: A Guide for Judges.”⁵²¹ As the Guide notes, it “was written to assist federal judges in managing and resolving federal cases involving international human rights claims, and it provides a comprehensive analysis of all substantive and procedural issues involved.”⁵²² That the book was commissioned by a federal government agency suggests the growing recognition of the importance of adjudicating international human rights claims in U.S. courts.

2. Treaty-Based Arguments

The U.S. government would likely not argue that torture is a viable punishment for crime. Nonetheless, the United States holds thousands of its citizens in solitary confinement conditions that have been recognized to constitute torture.⁵²³ While courts have held that a “determination of whether customary international law” applies in the Eighth Amendment cruel and unusual punishment context “is a question that is reserved to the executive and legislative branches of the United States government,”⁵²⁴ the same does not apply to treaties ratified by the United States, at least at first glance. The extent of the international law debate surrounding the use of treaties in domestic law is beyond the scope of the current discussion. However, the Supremacy Clause of the U.S. Constitution, which states that “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land,”⁵²⁵ could be read to support the proposition that treaties the United States signs must be given binding effect in U.S. courts.

Although the point is debated, at present, U.S. courts only find cognizable rights in treaties that are either considered self-executing or have been enacted into domestic litigation by Congress: “A self-executing treaty automatically becomes a part of U.S. law, while a non-self-executing treaty creates no enforceable right unless Congress passes a law creating such a right.”⁵²⁶ The Convention Against Torture (“CAT”) was ratified by Congress, but “the Senate’s advice and consent was based on the reservation that the United States considered itself bound to Article 16⁵²⁷ to the extent that such cruel, unusual, and inhumane treatment or punishment was prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the U.S. Constitution.”⁵²⁸ This “reservation” means that courts look to extant U.S. jurisprudence, rather than the CAT, when addressing claims of “cruel, unusual, and inhumane treatment or punishment.”

As long as U.S. courts continue to deny claims based on treaties, their use as the principal basis for claims remains challenging. However, for advocates working to advance stronger human rights protections through litigation, it is important to continue folding these arguments into appellate briefing in a way that draws courts' attention to their bearing on evolving standards of decency. A Congressional Research Service annotation of the President's Article II treaty powers notes that "even if courts cannot enforce a treaty provision in domestic courts because it is non-self-executing, that provision may still be binding under international law, and the United States may still have an international legal obligation to comply."⁵²⁹ If the arguments are only viewed as indications of international custom, it is nonetheless beneficial to draw courts' attention to them repeatedly with the hope that they may influence more courts to acknowledge that standards of decency have, and will continue to evolve in a way that protects people from cruel, inhumane, and torturous treatment in the U.S. prison system.

D. Conclusion

Though practically challenging, litigation remains a vital tool for those working to end solitary confinement. In examples ranging from the Mr. Hope's settlement and actual relief from his years-long isolation to the occasions where courts acknowledge the practice's cruelty, litigation and appellate opinions are valuable in the larger effort to end the practice of solitary confinement. Recalling the early example of *Medley*, where the Supreme Court's reliance on shifts in international practices in curtailing the use of solitary confinement informed holding that a U.S. detainee's conditions violated the Constitution, those working to end the practice today should continue to advance arguments drawing on both U.S. and international sources—as well as scientific data about solitary confinement's effects—in defining evolving standards of decency.

The principle of "evolving standards of decency," in turn, is also rooted in a practice of meeting the prevailing global standard for human rights.⁵³⁰ The Mandela Rules provide a framework for this evolution in the context of solitary confinement litigation. Whether they are binding on the United States—an issue about which there may be disagreement—they serve as fodder for legal arguments and guidance for appellate judges to broaden standards for prisoners' rights in challenges to the conditions of solitary confinement.

VII. The End of Solitary Confinement for Juveniles In North Carolina: A Model and Framework for the Future

Beyond the hundreds of thousands of incarcerated adults in the United States, youth under the age of eighteen are also incarcerated in facilities across the country.⁵³¹ Similar challenges of control and safety plague these facilities. Well into the 2000s, juveniles⁵³² were kept in solitary confinement in conditions similar to those of adult solitary units, such as cages, windowless rooms, and filth.⁵³³

However, in the past two decades, progress has been made in limiting the use of solitary confinement against juveniles in both federal and state systems.⁵³⁴ Efforts to limit solitary confinement against juveniles have come from all three branches of government: legislation, judicial review, and executive administration.⁵³⁵ This section tracks the progress (or lack thereof) made in the federal justice system and in the state systems of Florida and Massachusetts; it then analyzes the current state of juvenile solitary confinement in North Carolina and the path toward improvement.

The successful advocacy efforts made in the juvenile justice system provide a guiding precedent for future work against solitary confinement in adult populations. This is not to say that the juvenile justice system is now perfect—in fact, this paper critiques current North Carolina juvenile detention policy. However, reflecting on the successes and failures of a campaign that has already yielded results can provide some guidance in a large field with many possibilities.

A. Federal Developments and the Use of Solitary Confinement in the Juvenile Justice System Across the USA

Almost exactly six months before North Carolina announced it was banning punitive solitary confinement for incarcerated juveniles, then-President Barack Obama announced, in a *Washington Post* editorial, that he would enact Justice Department recommendations including “banning solitary confinement for juveniles and as a response to low-level infractions, expanding treatment for the mentally ill and increasing the amount of time inmates in solitary can spend outside of their cell.”⁵³⁶ Other state systems have followed suit through either executive policies, legislation, or judicial decision.⁵³⁷

Before announcing his executive order limiting solitary confinement, President Obama faced pressure from prisoners’ legal services,⁵³⁸ legal advocacy groups such as the ACLU,⁵³⁹ and

even the U.S. Supreme Court, as evidenced in a 2015 concurrence from Justice Kennedy calling solitary confinement “a terrible price” with which to burden the human psyche.⁵⁴⁰

B. A State-Specific Analysis of the Use of Solitary Confinement Against Juveniles

In recent years, North Carolina has become more reformist than many of its southern counterparts with respect to prisoner rights yet continues to lag behind other progressive states’ emphasis on human rights policy. This section explores the use of solitary confinement in two states, Massachusetts and Florida, to better compare and assess the current state of isolation in North Carolina.

1. Massachusetts

Massachusetts enacted sweeping criminal justice reform with Bill S 2371 (2018), which limited the use of solitary confinement against juveniles, pregnant people, people with serious mental illness, and people with physical disabilities.⁵⁴¹ Although the formal legislation restricting the use of solitary passed almost two years after North Carolina enacted similar reforms via Department policy,⁵⁴² Massachusetts’s history of fighting solitary extends back over a decade.⁵⁴³ The state’s Department of Youth Services (DYS) began seriously enacting reforms in the late 2000’s⁵⁴⁴ and steadily reduced the numbers of youth in custody so that by 2019, only 288 juveniles resided in state detention, correctional, or residential facilities at a rate of forty-six per 100,000 youth– the fourth-lowest rate in the country.⁵⁴⁵

Massachusetts offers important models for change. The state’s DYS shifted its policy model to focus on “positive youth development” rather than punishment.⁵⁴⁶ In response, juvenile detention facilities enacted more programming for youth in detention facilities, resulting in less time spent in isolated room confinement.⁵⁴⁷ Former Commissioner of DYS Ed Dolan credits the attorneys and politicians pushing for reform with driving the change.⁵⁴⁸ “We started with the people who were with us . . . to use a top-down approach to drive the culture shift.”⁵⁴⁹

Mr. Dolan admitted that getting staff on board was challenging, though not insurmountable. “They didn’t want to give up their pepper spray” he explained.⁵⁵⁰ The fears and opinions of correctional officers in response to policy changes should not be discounted; no one should feel unsafe in their workplace, just as the incarcerated youth should not feel unsafe in their place of residence. After time, staff fears were assuaged as experiments with development-centered techniques resulted in lower incident rates.⁵⁵¹ Mr. Dolan spoke about the use of both room confinement and restraints on youth who were exhibiting dangerous or extremely

disruptive behavior.⁵⁵² While the centers and staff previously relied on physical restraints and solitary room confinement as negative consequences of misbehavior, DYS began shifting the locus of control to the individual youths in these situations as well.⁵⁵³

Massachusetts, like North Carolina, shifted its approach to solitary confinement and juvenile offenders through departmental policy changes. Mr. Dolan pointed to the flexibility offered to state departments as a reason he was able to unilaterally shift the State juvenile confinement policies.⁵⁵⁴ The flexibility of administrative policy is a double-edged sword. Where progressives are in power, policies and regulation can be a route to fast-track large-scale reforms, especially in a State or district with an oppositional legislative branch. However, if the party in power promotes opposing policy directions, they are able to use that same degree of flexibility to move the needle further away from progress. Furthermore, without codifying policy into statute, there is every chance that any changes can be rolled back or reversed with the next administration.

2. Florida

In contrast with Massachusetts, as of 2018, Florida was still holding juveniles in solitary confinement.⁵⁵⁵ The Florida legislature is rife with bills filed in the hopes of limiting the use of solitary confinement against juveniles and other vulnerable populations, but in March 2022, bills aiming to limit the use of solitary against juveniles have died in committee.⁵⁵⁶ In the 2022 legislative session, SB 206 attempted to completely prohibit the use of solitary confinement (twenty-two or more hours per day in isolation).⁵⁵⁷ Unsurprisingly, SB 206 died in committee,⁵⁵⁸ and it appears no additional action to address this issue has been taken in the 2023 session.⁵⁵⁹ However, the bill offered an insight into the growing bipartisan support for limiting solitary confinement, as Americans for Prosperity, a historically conservative political advocacy group centered on fiscal pragmatism,⁵⁶⁰ contributed lobbying efforts.⁵⁶¹

According to Florida State University's Juvenile Justice Project, approximately 25% of the youth in Florida's adult jails or prisons are in solitary confinement on any given day.⁵⁶² However, there are efforts attempting to curtail the use of solitary against both juveniles and adults.⁵⁶³ Interestingly, both newspaper articles and FSU's Juvenile Justice Project highlight the breaches of international custom in their arguments against solitary (the Mandela Rules and the *U.N. Covenant on the Rights of the Child*, respectively).⁵⁶⁴

In 2018, juveniles incarcerated in a Palm Beach County adult jail filed a class action suit against the sheriff for his inhumane and unconstitutional use of solitary confinement against juveniles.⁵⁶⁵ The plaintiffs relied on Americans with Disabilities Act (“ADA”), Fourteenth Amendment, and Eighth Amendment arguments.⁵⁶⁶ The government settled, and the sheriff’s office agreed to implement regulations and limitations on solitary of juveniles as well as agreeing to external oversight of its treatment of juveniles in the adult facility.⁵⁶⁷

In 2019, another class action was filed by juveniles against Florida’s Department of Juvenile Justice for the department’s reckless use of solitary confinement against minors despite the known physical, emotional, and developmental risks.⁵⁶⁸ The Plaintiffs’ complaint highlighted the international condemnation of solitary against juveniles, pointing to both the Convention on the Rights of the Child and the Interim Report of the Special Rapporteur on Torture, as well as other U.N. reports and protocols which explicitly decry the use of solitary against incarcerated youth.⁵⁶⁹

Though the case was ultimately unsuccessful,⁵⁷⁰ the arguments raised by the plaintiffs’ counsel, employed by notable groups such as the Florida Justice Institute and the Southern Poverty Law Center,⁵⁷¹ lend support for efficacy of international human rights norms in U.S. legal advocacy. Despite the dismissal, “policies were amended to lower the amount of time children can spending solitary confinement, data is tracked, and the number of children in DJJ custody has declined.”⁵⁷²

C. North Carolina: the State of the State

In June 2016, the Department of Public Safety of North Carolina announced in a press release that beginning in September, juveniles adjudicated as adults serving sentences in adult facilities would no longer be subject to solitary confinement as a punishment.⁵⁷³ Commissioner of Adult and Juvenile Justice David Guice said of the policy change, “[t]he mental health, medical, educational, social, spiritual and emotional needs of these youth are numerous and complex . . . [i]t is important that while these youth are in our care, their unique needs are accurately identified and addressed in the most effective way possible.”⁵⁷⁴

In North Carolina, the classification of juveniles is complicated by statutes that define categories of crime which, in turn, differentiates between how a juvenile might be charged and where a juvenile might be held.⁵⁷⁵ This discussion focuses on juveniles who are subject to

solitary confinement, which is often implemented through a variety of factors and circumstances, making comprehensive oversight difficult.

Juveniles adjudicated delinquent and ordered into the custody of the state may be assigned to room confinement or modified housing.⁵⁷⁶ Use of room confinement is subject to a variety of regulations and administrative oversight, although the oversight is internal.⁵⁷⁷ For example, if a staff member puts a juvenile on room confinement, the staff must notify the Center Director within one hour and place a copy of the recording form in the juvenile's permanent file.⁵⁷⁸

Additionally, any circumstance in which a juvenile must remain on room confinement for over twenty-four hours must be justified in writing by clear and convincing evidence, pursuant to review and written approval by the Center Director, and with notification to the Director of Facility Operations at the Department for Juvenile Justice.⁵⁷⁹ Similar to the Massachusetts policy,⁵⁸⁰ staff must visually observe juveniles on room confinement at least every fifteen minutes,⁵⁸¹ and the same privileges and conditions available to the general population (such as mail, books, and educational services) should be made available to juveniles on room confinement.⁵⁸²

Expansion of new protections afforded to juveniles may be imminent. Advocates in North Carolina are currently looking to extend such protections to incarcerated individuals aged eighteen to twenty-one.⁵⁸³ In support of their efforts, advocates cite modern research showing brain development continues through age twenty-five.⁵⁸⁴ Brains of adults aged between eighteen and twenty-five process stimuli differently than do brains of older adults, and "exposure to solitary confinement during this period . . . causes increased psychological damages much more quickly[.]"⁵⁸⁵

D. Juvenile vs. Adult Solitary Confinement: Applying What We've Learned

In North Carolina, some progress has been made in juvenile justice reform, from legislative efforts like Raise the Age, which affords additional protections to sixteen and seventeen-year-old children accused of criminal activity,⁵⁸⁶ to departmental policy limitations on solitary confinement and other isolation-related practices. The way in which these changes have been made may provide insight into future advocacy efforts to comply with the Mandela Rules, if not end solitary confinement. Although there is rarely one impetus to institutional change, this section examines the subliminal pressures and points which motivated past progress.

Past successes in juvenile justice reform have been aided by the support of the Sheriff's Association and the Conference of District Attorneys.⁵⁸⁷ These somewhat surprising allies are what helped reform laws pass in the legislature. Advocates should explore common ground with parties such as the Sheriffs Association or the Conference of District Attorneys. Advocates should endeavor to open lines of communication with such groups, to explore concerns with data and logic. The economic costs of solitary and the lasting effects on individuals—many of whom are eventually released into the public—should concern those with even the most exacting criticism of efforts to implement the Mandela Rules.⁵⁸⁸

International law has also been used to promote standards for juvenile justice.⁵⁸⁹ In Preliminary Observation 4 of the Mandela Rules, the U.N. recognizes that the Rules do not seek to regulate the management of institutions set aside for youth such as juvenile detention centers but hold that the Rules would nonetheless be applicable in these situations as well.⁵⁹⁰ The United States and South Sudan remain the only two nations who have not yet ratified *the Convention on the Rights of the Child*, (CRC)⁵⁹¹ which holds that “[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.”⁵⁹² Given the widespread acceptance of the social and legal norms of the CRC, even without the U.S. ratification of the treaty, the provisions are applicable in U.S. courts as demonstrated by the plaintiff's complaint in *G.H. v. Depot of Juvenile Justice* which cited the Convention as a source of law.⁵⁹³

Lastly, many of the juvenile justice procedures mentioned in this paper are translatable to adult corrections practices. For example, while most juvenile programs operate on a development-based model, there is no reason why corrections programs should not also attempt to foster positive development in their adult populations; a person does not stop learning or growing on their eighteenth birthday. Indeed, these practices are logically understood as humane and effective when working with persons incarcerated.

E. Conclusion

The same reasoning which led to a decrease in the use of solitary confinement against juveniles should also lead to a decrease in the use of solitary confinement against adults. First, solitary confinement is a cruel means of punishment and fails to achieve any reasonable goals of imprisonment regardless of age. Second, just as criminologists recognize that juveniles are in various stages of physical and mental health development and may be unalterably harmed by

conditions of solitary, so too do adults continue to develop throughout their life. Effective and humane practices require that adults be rehabilitated and supported in reentry efforts—efforts that are undermined by solitary confinement. A positive development model for behavior management—which is fully at odds with the circumstances of solitary—should be implemented at every developmental level. Not only would such implementation improve mental health and prospects for rehabilitation for individuals but would also benefit society as a whole in terms of economic development and public safety. In future campaigns against adult solitary confinement, advocates should utilize these strategies and emphasize the potential benefits in order to increase the likelihood of success.

VIII. Alternatives to Solitary Confinement

Implementation of the Mandela Rules, particularly the limitation on stays in solitary confinement to no more than fifteen consecutive days and eliminating punitive solitary confinement, would reduce a facility's use of restrictive housing and result in respect for human dignity, comportment with international human rights, increases in the physical and mental health of incarcerated persons, and savings in costs which could be reinvested into alternative programs. Fortunately, North Carolina may already have viable alternatives to solitary confinement, expansion of which could further the goals of public safety and rehabilitation much more effectively.

A. Therapeutic Diversion Units

In 2016, the North Carolina Department of Public Safety implemented Therapeutic Diversion Units (“TDUs”) in an effort to mitigate the harms experienced in solitary confinement by individuals with mental health issues.⁵⁹⁴ Unlike in traditional solitary confinement, TDUs employ evidence-based treatments and programs designed to improve mental health and assist individuals in developing coping skills.⁵⁹⁵ This programming is intended to improve incarcerated individuals' chances at successful reintegration into general population and society.⁵⁹⁶

Though TDUs are still relatively new, initial research suggests that they have positive impacts on incarcerated persons' mental health and result in fewer instances of infractions and self-harm.⁵⁹⁷ Individuals housed in solitary confinement committed three times as many infractions as those in TDUs and engaged in self-harm four times as often.⁵⁹⁸ These figures are especially significant considering individuals in TDUs spend more time out of their cells, and presumably have more opportunities to engage in prohibited behavior.⁵⁹⁹

Currently, admittance to TDUs is primarily based on clinicians' perceptions of an individual's needs and their potential for success in the program.⁶⁰⁰ Enrollment is limited to individuals in restrictive housing with current serious mental health illnesses, and an eligible individual may actually become ineligible if their mental health improves.⁶⁰¹

Cost savings realized from the restriction or abolition of solitary confinement could be reinvested into expanding North Carolina's utilization of TDUs. Rather than being used in reaction to psychological issues brought on or aggravated by solitary confinement, TDUs could instead become the default method of secured housing. Individuals with less severe or undiagnosed mental illness could likewise benefit from the therapeutic programming, as would those individuals without a history of mental illness, yet who are still vulnerable to negative psychological impacts brought on by traditional solitary confinement. Expanding TDUs would likely also have societal benefits, mitigating the increased risk of recidivism and preventable death associated with solitary confinement.

B. Mental Health Courts

Cost savings could also be reinvested into the expansion of mental health courts ("MHCs"), which "include the creation of a special docket that is handled by a particular judge, with the primary goal of diverting defendants from the criminal justice system and into treatment."⁶⁰² It is undeniable that a significant percentage of individuals end up incarcerated—and from there, solitarily confined—as a result of insufficiently treated mental health and substance-use disorders. An increased focus on treatment and restorative justice over incarceration, isolation, and decompensation could better serve individuals and their communities, and reduce the collateral economic and societal costs.

While there are already active mental health courts in North Carolina, utilization of this resource is limited. Currently, mental health courts exist in only seven out of North Carolina's 100 counties.⁶⁰³ Notably, there are no mental health courts in Wake County (the second most populated county in the state),⁶⁰⁴ nor in Richmond, Robeson, or Graham counties (the counties with the highest crime rates).⁶⁰⁵ Additionally, diversion to mental health courts requires a previous mental health diagnosis or mental health treatment history,⁶⁰⁶ excluding from eligibility those who may be unable to afford or secure appropriate health care. Adding more mental health courts and eliminating barriers to eligibility may increase an individual's chance to receive much-needed treatment and, as a result, reduce or eliminate recidivism.

North Carolina already has viable alternatives to solitary confinement. Rather than building from the ground up, expanding these existing programs would eliminate substantial start-up costs, such as policy and procedure crafting, and trial-and-error programming. Evolving these programs could aid in furthering penal objectives more humanely and more cost-effectively than solitary confinement.

IV. Conclusion

In the nineteenth century, our predecessors determined that, in addition to creating serious psychological problems, solitary confinement was uneconomical. The practice later reemerged, not as a result of new evidence to the contrary, but in response to fear-mongering propagated by politicians competing for who could be the “toughest” on crime. Modern science has revealed that isolation inflicts extensive, dangerous, and long-lasting physiological harms and psychological trauma. Time and time again, our courts are replete with lawsuits challenging the constitutionality of a practice that amounts to torture.

North Carolina has taken some steps in the right direction with regard to solitary confinement, such as prohibiting its use for most juveniles. However, thousands of individuals in North Carolina, many of whom are in prison for non-violent drug offenses, remain subject to unnecessary and punitive isolation. And although Governor Cooper’s Task Force for Racial Equity in Criminal Justice has recommended restrictive housing reform,⁶⁰⁷ Todd Ishee, the Secretary of NC’s Department of Adult Correction, has unequivocally stated that the prison system could not comply with the Mandela Rules regarding solitary confinement.⁶⁰⁸ To rationalize this stance, Mr. Ishee said the following:

Incorrections, we face some very, very harsh realities. You know, we’re supervising men that have killed employees of ours. And because of that level of dangerous, some [people] need to be in restrictive housing longer than 15 days. There are some [people] that just pose such a serious safety risk that they’ve got to be placed in that more controlled environment for beyond 15 days.⁶⁰⁹

During the same interview, however, Secretary Ishee discussed staff shortages in North Carolina’s prisons,⁶¹⁰ which begs the question: would solitary confinement beyond fifteen days be necessary if prisons were adequately staffed with appropriately trained corrections officers?

In 2023, still emerging from a global pandemic and with a potential recession on the horizon, North Carolina must release its grip on this outdated, uninformed, and unjustifiably expensive method of punishment. Policymakers should invest the resulting cost-savings into

expanding under-utilized, more humane alternatives that may possibly alleviate, rather than compound, problems within our criminal legal system.

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- ¹⁶³ Hayden, *supra* note 162; Sal Rodriguez, *California Prison Hunger Strike Ends After 60 Days*, SOLITARY WATCH (Sep. 5, 2013) <https://solitarywatch.org/2013/09/05/california-prison-hunger-strike-ends-60-days/>.
- ¹⁶⁴ Cloud et al., *"We just needed to open the door": a case study of the quest to end solitary confinement in North Dakota*, 9:28 HEALTH & JUST. 1, 20 (2021); Rodriguez, *supra* note 163.
- ¹⁶⁵ Rodriguez, *supra* note 163.

¹⁶⁶ Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104:3 AM. J. PUB. HEALTH 442-447, 446 (2014).

¹⁶⁷ Brief of Petitioner, *supra* note 53, at 20-21; see Maureen L. O’Keefe et al., *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation*, Report submitted to the National Institute of Justice Oct. 31, 2010 at p 13; Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36:10 CRIM. JUST. BEHAV. 1037, 1039 (2009).

¹⁶⁸ Cheryl Corley, *Outside the Box to Revamp Solitary Confinement*, N.P.R. (July 31, 2018), <https://www.npr.org/2018/07/31/630602624/north-dakota-prison-officials-think-outside-the-box-to-revamp-solitary-confinement#:~:text=Press-.North%20Dakota%20Prison%20Officials%20Think%20Outside%20The%20Box%20To%20Revamp,thinking%20on%20this%20segregated%20housing.>

¹⁶⁹ Brief of Petitioner, *supra* note 53, at p 26; Kaba et al., *supra* note 166, at 445.

¹⁷⁰ Arvind Singhal, Jack Ross & Olena Seminog et al., *Risk of self-harm and suicide in people with specific psychiatric and physical disorders: comparisons between disorders using English national record linkage*, 107:5 J. ROYAL SOC’Y MED. 194, 195-96 (2014).

¹⁷¹ A compulsion to self-harm brought about by mental illness and the compulsion to escape solitary confinement due to its negative psychological effects may be almost impossibly intertwined. For purposes of the current discussion, however, self-harm is analyzed separately due to its prevalence in restricted housing and the unique financial implications that arise.

¹⁷² Kaba et al., *supra* note 166, at 442.

¹⁷³ *Id.* at 445.

¹⁷⁴ *See id.* at 442.

¹⁷⁵ Cloud et al., *supra* note 164, at 22.

¹⁷⁶ Sarah Shourd, *Why the U.S. Won’t Let the U.N. Look Inside Its Prisons*, THE DAILY BEAST (Mar. 16, 2015)

[https://www.thedailybeast.com/why-the-us-wont-let-the-un-look-inside-its-prisons.](https://www.thedailybeast.com/why-the-us-wont-let-the-un-look-inside-its-prisons)

¹⁷⁷ *Id.*

¹⁷⁸ Hayden, *supra* note 162.

¹⁷⁹ *Id.*

¹⁸⁰ Melanie Mason, *Supporters of inmates on hunger strike urge Jerry Brown to act*, THE LA TIMES (July 30, 2013), <https://www.latimes.com/politics/la-xpm-2013-jul-30-la-me-pc-prison-hunger-strike-petition-20130730-story.html> (describing supporters of the hunger strike delivering Jerry Brown three petitions containing 70,000 signatures supporting solitary reform).

¹⁸¹ *See* Robert G. Morris, *Exploring the effect of exposure to short-term solitary confinement among violent prison inmates*, 1 J. QUANTITATIVE CRIMINOL. 1, 1-22 (2016) (finding exposure to short-term solitary confinement did impact future violence); Chad S. Briggs, Jody L. Sundt, & Thomas C. Castellano, *The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence*, 41:4 CRIMINOL. 1341, 1367 (2003) (“[N]o support was found for the hypothesis that the implementation of a supermax prison reduces aggregate levels of inmate-on-inmate assaults.”).

¹⁸² ACLU Briefing Paper, *supra* note 26, at 9; Kupers et al., *supra* note 167, at 1041.

¹⁸³ Bennion, *supra* note 134, at 757.

¹⁸⁴ Mary Murphy Corcoran, *Effects of Solitary Confinement on the Well Being of Prison Inmates*, APPLIED PSYCH. OPUS,

[https://wp.nyu.edu/steinhardt-appsych_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/.](https://wp.nyu.edu/steinhardt-appsych_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/)

¹⁸⁵ *See id.*

¹⁸⁶ *See* Medrano et al., *supra* note 138, at 868.

¹⁸⁷ *See id.* at 878.

¹⁸⁸ Corcoran, *supra* note 184.

¹⁸⁹ Brief of Petitioner, *supra* note 53, at 26.

¹⁹⁰ *Id.* at 22.

¹⁹¹ U.S. BUREAU OF LABOR STATISTICS, *Occupational Employment and Wage Statistics*, (last modified Mar. 31, 2022),

<https://www.bls.gov/oes/current/oes333012.htm>.

¹⁹² U.S. BUREAU OF LABOR STATISTICS, *Occupational Employment and Wage Statistics: May 2021 State Occupational Employment and Wage Estimates*, (last modified Mar. 31, 2022), https://www.bls.gov/oes/current/oes_nc.htm.

¹⁹³ Daniel P. Mears, Vivian Aranda-Hughes, & George B. Pesta, *Managing Prisons Through Extended Solitary Confinement: A Necessary Approach or a Signal of Prison Failure?*, 0:0 INT’L J OFFENDER THERAPY & COMPARATIVE CRIMINOL. 1, 11, (2021).

¹⁹⁴ Joint Committee Report, *supra* note 145, at E 45.

¹⁹⁵ *See* Colette Peters, *Investing in People: Improving Corrections Staff Health and Wellness*, NATIONAL INSTITUTE OF JUSTICE, (Aug. 18, 2018), <https://nij.ojp.gov/topics/articles/investing-people-improving-corrections-staff-health-and-wellness>; Matthew S. Johnston, Rosemary Ricciardelli, & Laura McKendy, *Improving the Mental Health of Correctional Workers*, 49:7 CRIM JUST. & BEHAVIOR 951, 952 (2022).

¹⁹⁶ Cloud et al., *supra* note 164, at 22.

¹⁹⁷ Peters, *supra* note 195.

¹⁹⁸ *Id.*

¹⁹⁹ CENTERS FOR DISEASE CONTROL AND PREVENTION, *Life Expectancy in the U.S. Dropped for the Second Year in a Row in 2021* (Aug. 31, 2022), https://www.cdc.gov/nchs/pressroom/nchs_press_releases/2022/20220831.htm.

²⁰⁰ Peters, *supra* note 195.

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- ²⁰¹ Johnston et al., *supra* note 195, at 952.
- ²⁰² Peters, *supra* note 195.
- ²⁰³ Cloud et al., *supra* note 164, at 22.
- ²⁰⁴ Mears et al., *supra* note 193 at 11.
- ²⁰⁵ *Id.*
- ²⁰⁶ *Id.* at 12-13.
- ²⁰⁷ *Id.*
- ²⁰⁸ Colby Valentine, Carent Oehme & Annelise Martine, *Correctional Officers and Domestic Violence: Experiences and Attitudes*, 27 J. FAM. VIOL. 531, 541-42 (2012) (More than a third of officers reported personally knowing at least one officer who had committed domestic violence that went unreported. Over 32% of correction officers self-reported using verbal abuse with an intimate partner or family member. Ten percent of U.S. families are estimated to be affected by domestic violence).
- ²⁰⁹ Julian Barling & Alan Rosenbaum, *Work Stressors and Wife Abuse*, 71:2 J. APPLIED PSYCH., 346, 347 (1986).
- ²¹⁰ Kupers et al., *supra* note 167, at 1037-1050.
- ²¹¹ Hagan et al, *supra* note 111, at 141.
- ²¹² See Barack Obama, *The President's Role in Advancing Criminal Justice Reform*, 130(3) HARV. L. REV. 811, 818 (2017).
- ²¹³ Haney, *supra* note 156, at 250-51.
- ²¹⁴ Brinkley-Rubinstein et al., *supra* note 116, at 1-11.
- ²¹⁵ *Id.*; Christopher Wildeman & Lars H. Andersen, *Solitary confinement placement and post-release mortality risk among formerly incarcerated individuals: a population-based study*, 5 LANCET PUB. HEALTH e107, e110-12 (2020).
- ²¹⁶ Brinkley-Rubinstein et al., *supra* note 116, at 8.
- ²¹⁷ *Id.* at 1.
- ²¹⁸ Hagan et al, *supra* note 111, at 147.
- ²¹⁹ Judith Cook, *Employment Barriers for Persons with Psychiatric Disabilities: Update of a Report for the President's Commission*, 57:10 PSYCHIATRIC SERVS., 1391, 1394 (2006).
- ²²⁰ James & Vanko, *supra* note 23, at 4-5; Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, 278 Nat'l Inst. Just. J. 1, 2-4 (2017), <https://www.ojp.gov/pdffiles1/nij/250349.pdf>; Lars H. Andersen, *How Children's Educational Outcomes and Criminality Vary by Duration and Frequency of Paternal Incarceration*, 665:1 ANN. AM. ACAD. POL. SOC. SCI. 149, 163-64 (2016).
- ²²¹ James & Vanko, *supra* note 23, at 5.
- ²²² Danielle Haverkate & Kevin Wright, *The differential effects of prison contact on parent-child relationship quality and child behavioral changes*, 5 CORR.: POL'Y, PRAC. & RSCH. 222, 234 (2020).
- ²²³ *Id.*
- ²²⁴ See ACLU Briefing Paper, *supra* note 26, at 3 (“Many [incarcerated individuals] are only allowed one visit per month, if any.”).
- ²²⁵ Alexander C. McFarlane & Clara Bookless, *The effect of PTSD on interpersonal relationships: issues for emergency service workers*, 16:3 SEXUAL & RELATIONSHIP THERAPY 261, 264-65 (2001).
- ²²⁶ *Id.*
- ²²⁷ Federica Coppola, *The brain in solitude: an (other) eighth amendment challenge to solitary confinement*, 6:1 J. L. & BIOSCIENCES, 184, 208 (2019).
- ²²⁸ Susan L. Ray & Meredith Vanstone, *The impact of PTSD on veterans' family relationships: An interpretive phenomenological inquiry*, 46 INT'L J. NURSING STUD., 838, 839 (2009).
- ²²⁹ *The Nelson Mandela Rules*, UNITED NATIONS, https://www.un.org/en/events/mandeladay/mandela_rules.shtml (last visited June 4, 2023); G.A. Res. 70/175, U.N. Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), r 45 (Jan. 8, 2016).
- ²³⁰ Zeb Larson, *South Africa: Twenty-Five Years Since Apartheid*, ORIGINS (Aug. 2019), https://origins.osu.edu/article/south-africa-mandela-apartheid-ramaphosa-zuma-corruption?language_content_entity=en.
- ²³¹ The Nelson Mandela Rules, *supra* note 229.
- ²³² G.A. Res. 663 C (XXIV), *Standard Minimum Rules for the Treatment of Prisoners* (Aug. 30, 1955), <https://www.hrw.org/legacy/advocacy/prisons/un-smrs.htm> (“SMRs”).
- ²³³ Mandela Rules, *supra* note 229, at 1 (acknowledging “that the Standard Minimum Rules for the Treatment of Prisoners have been the universally acknowledged minimum standards for the detention of prisoners and that they have been of significant value and influence, as a guide, in the development of correctional laws, policies and practices since their adoption by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in 1955.”); see also *The Nelson Mandela Rules: The History of the Rules*, U.N. OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/unodc/en/justice-and-prison-reform/nelsonmandelaruleshistory.html> (last visited Nov. 14, 2022) (“History of the Rules”); *United Nations Standard Minimum Rules for the Treatment of Prisoners*, U.S. DEPT. OF JUSTICE, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/united-nations-standard-minimum-rules-treatment-prisoners> (last visited Nov. 14, 2022) (stating that at least six states, at the time of publishing in 1975, had adopted the SMRs).
- ²³⁴ Mandela Rules, *supra* note 229, at 2 (recognizing “the progressive development of international law pertaining to the treatment of prisoners since 1955, including in international instruments such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment and the Optional Protocol.”).

²³⁵ G.A. Res. 65/230 (Dec. 21, 2010), https://www.unodc.org/documents/Cybercrime/General_Assembly_resolution_65-230_E.pdf (creating the establishment of an expert group tasked with reviewing and revising the 1955 SMRs).

²³⁶ *Id.*; see also The History of the Rules, *supra* note 233.

²³⁷ The History of the Rules, *supra* note 233.

²³⁸ See *id.*; see also Mandela Rules, *supra* note 229, at 4.

²³⁹ *Id.*

²⁴⁰ The History of the Rules, *supra* note 233.

²⁴¹ *Report on the meeting of the Expert Group on the Standard Minimum Rules for the Treatment of Prisoners held in Cape Town, South Africa, from 2 to 5 March 2015*, U.N. Doc. E/CN.15/2015/17, ECONOMIC AND SOCIAL COUNCIL 1, 1 (Mar. 9, 2015), https://www.unodc.org/documents/justice-and-prison-reform/4th_Meeting_March_2015/V1501928_-_English.pdf.

²⁴² *Standard Minimum Rules for the Treatment of Prisoners*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings-8.html> (last visited May 28, 2023).

²⁴³ David Fathi, *Victory! UN Crime Commission Approves Mandela Rules on Treatment of Prisoners*, ACLU (May 27, 2015) <https://www.aclu.org/news/prisoners-rights/victory-un-crime-commission-approves-mandela-rules>.

²⁴⁴ *Nelson Mandela International Day: Nelson Mandela Rules*, U.N., https://www.un.org/en/events/mandeladay/mandela_rules.shtml (last visited June 17, 2023).

²⁴⁵ *Id.*

²⁴⁶ *The Nelson Mandela Rules*, UN OFF. ON DRUGS & CRIME, https://www.un.org/en/events/mandeladay/assets/pdf/16-00403_Mandela_rules_infographic.pdf (last visited Nov. 14, 2022).

²⁴⁷ See generally Mandela Rules, *supra* note 229.

²⁴⁸ *Id.*, at Preliminary Observation 1.

²⁴⁹ The History of the Rules, *supra* note 233.

²⁵⁰ *Id.*

²⁵¹ Mandela Rules, *supra* note 229, at r 1; see also Universal Declaration of Human Rights, Dec. 8, 1948 G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) (stating that “[a]ll human beings are born free and equal in dignity and rights.”) (“UDHR”); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988) (writing in the preamble that the rights recognized within the instrument “derive from the inherent dignity of the human person.”).

²⁵² Mandela Rules, *supra* note 229, at r 1.

²⁵³ *Id.*, at r 2.1.

²⁵⁴ *Id.*

²⁵⁵ *Id.*, at r 2.2.

²⁵⁶ *Id.*, at r 4.1.

²⁵⁷ *Id.*, at r 4.2.

²⁵⁸ *Id.*, at r 5.

²⁵⁹ See generally SMRs, *supra* note 232.

²⁶⁰ See, e.g., Metzner & Fellner, *supra* note 78, at 107; White & Leonard, *supra* note 57.

²⁶¹ Mandela Rules, *supra* note 229, at rr 41-46; see also Helen Vera, News & Commentary to *Historic Opportunity to Advance International Norms on Prisoners’ Rights*, ACLU (October 22, 2013), <https://www.aclu.org/news/smart-justice/historic-opportunity-advance-international-norms-prisoners> (describing the negative psychological effects of solitary confinement and the issue of the original SMRs not addressing the practice of solitary confinement).

²⁶² Mandela Rules, *supra* note 229, at r 44.

²⁶³ *Id.* at r 41.

²⁶⁴ *Id.* at r 1.

²⁶⁵ *Id.* at r 43.

²⁶⁶ *Id.* at r 45.

²⁶⁷ *Id.*

²⁶⁸ *Id.* at r 46.

²⁶⁹ “Solitary confinement should be banned in most cases, UN expert says,” UN NEWS (Oct. 18, 2011), <https://news.un.org/en/story/2011/10/392012>.

²⁷⁰ *Id.*

²⁷¹ Andrew Gilmour, *The Nelson Mandela Rules: Protecting the Rights of Persons Deprived of Liberty* Mandela Rules, UN CHRONICLE, <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty#:~:text=to%20sentenced%20prisoners.-,The%20Rules%20are%20based%20on%20an%20obligation%20to%20treat%20all,disciplinary%20measures%20to%20medical%20services.>

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ Mandela Rules, *supra* note 229.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.* at rr 13-14, 19.

²⁷⁸ *Id.* at r 17.

²⁷⁹ See Mr. W, *supra* note 125; Woollard, *supra* note 29.

²⁸⁰ Mandela Rules, *supra* note 229, at rr 15, 18.

²⁸¹ See discussion *supra* Section I.B.4. See also, Kerr News Report, *supra* note 97.

²⁸² *Terrill Thomas death: Family to receive \$6.75m settlement*, BBC News (May 30, 2019), <https://www.bbc.com/news/world-us-canada-48454224> (court documents indicating that water restriction was a “common and widespread” method of punishment in detention facilities).

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ See, e.g. Kerr News Report, *supra* note 97; Ms. S, *supra* note 124.

²⁸⁶ *Id.*

²⁸⁷ Brinkley-Rubinstein et al., *supra* note 116, at 1-11; Wildeman & Andersen, *supra* note 215, at e110-12.

²⁸⁸ Importantly, the Mandela Rules limiting solitary confinement stays to fifteen consecutive days should be regarded as a minimum standard—research suggests significant physiological damage may occur in as little as forty-eight hours. See Michael Bond, *When people are isolated from human contact, their mind can do some truly bizarre things, says Michael Bond. Why does this happen?* BBC FUTURE (May 13, 2014), <https://www.bbc.com/future/article/20140514-how-extreme-isolation-warps-minds>.

²⁸⁹ UDHR, *supra* note 251, Art. 7.

²⁹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984), <https://www.ohchr.org/sites/default/files/cat.pdf> (“CAT”).

²⁹¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 (1967) (“ICCPR”).

²⁹² See generally, *Treaties in Force*, U.S. DEPT. OF STATE, <https://www.state.gov/treaties-in-force/> (last visited Nov. 14, 2022) (listing “treaties and other international agreements of the United States on record in the Department of State.”).

²⁹³ See Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 AM. U. INT’L L. REV. 71, 79-80 (2005) (“A number of international treaties and declarations establish the scope of prisoner rights. Signatories to such documents are expected to not only respect the established rules of law created therein, but also to encourage systems of dignity and respect for human life. In essence, by signing international treaties, especially those of a self-executing nature, governments explicitly agree to regulation of their actions and balancing of government interests with that of individual liberties. Currently, the United States is a signatory to numerous treaties, which incorporate international human rights standards that originated from non-binding legal principles; these non-binding principles provided legitimacy in form rather than substance.”).

²⁹⁴ *Universal Declaration of Human Rights: History of the Declaration*, U.N., <https://www.un.org/en/about-us/udhr/history-of-the-declaration>, (last visited Nov. 14, 2022) (“History of the Declaration”).

²⁹⁵ Vasiliades, *supra* note 293, at 80-81.

²⁹⁶ History of the Declaration, *supra* note 294.

²⁹⁷ Lan Cao, *Weaponizing Culture to Undermine International Women’s Rights*, 73 HASTINGS L.J. 233, 243 (2022).

²⁹⁸ See Amanda Ploch, *Why Dignity Matters: Dignity and the Right (or Not) to Rehabilitation from International and National Perspectives*, 44 N.Y.U. J. INT’L L. & POL. 887, 906 (2012) (“While the document addresses prisoner concerns by, for example, prohibiting torture, mandating the right to trial, and condemning arbitrary arrest, it does not mention prisoner rehabilitation.”); see generally Mandela Rules, *supra* note 229.

²⁹⁹ UDHR, *supra* note 251, Art. 5 (the American Declaration preceded the UDHR, however the UDHR was the first global treaty, covering more countries than the American Declaration, that implemented such a prohibition on torture).

³⁰⁰ See, e.g., CAT, *supra* note 290, Arts. 1-2; ICCPR, *supra* note 291, Art. 7; U.N. American Convention on Human Rights, Art. 5 (Nov. 22, 1969), [https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm#:~:text=Article%205.&text=No%20one%20shall%20be%20subjected,dignity%20of%20the%20human%20person.](https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm#:~:text=Article%205.&text=No%20one%20shall%20be%20subjected,dignity%20of%20the%20human%20person.;); Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, 213 U.N.T.S. 221; Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Rome Statute of the International Criminal Court arts. 5, 7-8, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002); Banjul Charter on Human and Peoples’ Rights art. 5, adopted June 1, 1981, 21 I.L.M. 58 (1982).

³⁰¹ UDHR, *supra* note 251, Art. 7.

³⁰² *Id.* at Art. 18.

³⁰³ *Id.* at Art. 26.

³⁰⁴ *Id.* at Art. 27.

³⁰⁵ *Id.* at Art. 25.

³⁰⁶ See Meg Smith, *Policy Paper: Solitary Confinement in American Prisons*, UNIV. OF NORTH CAROLINA AT PEMBROKE (Apr. 20, 2021), <https://www.uncp.edu/sites/default/files/2021-04/Smith%2C%20Megan.pdf> (finding that “[e]ducational, religious, and physical outlets are severely limited for inmates experiencing solitary confinement.”).

³⁰⁷ CAT, *supra* note 290.

³⁰⁸ Samuel Fuller, *Torture As A Management Practice: The Convention Against Torture and Non-Disciplinary Solitary Confinement*, 19 CHI. J. INT’L L. 102, 104 (2018).

³⁰⁹ CAT, *supra* note 290, Art. 1.

³¹⁰ CAT, *supra* note 290, Art. 2.2.

³¹¹ See Juan E. Méndez (Special Rapporteur of the Human Rights Council on Torture), *Interim Report of the Special Rapporteur of the Human Rights Council on Torture*, U.N. Doc. A/66/268, Summary (Aug. 5, 2011) (“[W]here the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture. In addition, the use of solitary confinement increases the risk that acts of torture and other cruel, inhuman or degrading treatment or punishment will go undetected and unchallenged.”).

³¹² *Id.*

³¹³ *Id.*

³¹⁴ See The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, T.I.A.S. No. 94-1120.1 (entered into force Nov. 20, 1994); see also *Status of Ratification*, U.N. OHCHR, <https://indicators.ohchr.org/> (last updated Nov. 3, 2022) (selecting convention against torture from the menu, which shows the U.S. as a state party to the treaty).

³¹⁵ Vasiliades, *supra* note 293, at 85.

³¹⁶ Press Release, *United States: Prolonged Solitary Confinement Amounts to Psychological Torture, Says UN Expert*, OHCHR (Feb. 28, 2020) (scrutinizing as an example the Connecticut Department of Corrections and describing the state’s practices surrounding solitary confinement as “deliberate infliction of severe mental pain or suffering [that] may well amount to psychological torture.”).

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *International Covenant on Civil and Political Rights*, OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>, (last visited Nov. 14, 2022).

³²⁰ See generally ICCPR, *supra* note 291.

³²¹ ICCPR, *supra* note 291, Art. 7.

³²² U.S. Reservations, Declarations, and Understandings, *International Covenant on Civil and Political Rights*, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992); see also Daniella Johner, “*One Is the Loneliest Number*”: *A Comparison of Solitary Confinement Practices in the United States and the United Kingdom*, 7 PENN ST. J.L. & INT’L AFF. 229, 231-32 (2019) (describing that the reservation allows the U.S. to hold itself to lower standard than that required by CAT and the ICCPR despite the fact that “the U.S. is under particular global scrutiny because it has signed and ratified [these] two treaties . . . which both arguably prohibit the solitary confinement practices that the U.S. currently uses.”).

³²³ ICCPR, *supra* note 291, Art. 10.

³²⁴ *Id.*

³²⁵ Mandela Rules, *supra* note 229, at r 1.

³²⁶ *Id.* at r 3.

³²⁷ Horych v. Poland, 13621/08 Eur. Ct. H.R. at 93, 95-103 (2012); Achutan and Amnesty International v. Malawi, Communication 64/92, 68/92, and 78/92, African Commission on Human and Peoples’ Rights (1995); Hilaire v. Trinidad, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 94, §156 (June 21, 2002); see also Merel Pontier, *Cruel but Not Unusual the Automatic Use of Indefinite Solitary Confinement on Death Row: A Comparison of the Housing Policies of Death-Sentenced Prisoners and Other Prisoners Throughout the United States*, 26 TEX. J. C.L. & C.R. 117, 126 (2021).

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³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.* (citing Mandela Rules 36-44, 47-49, 82, and 95).

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³⁶¹ *Id.*

³⁶² *Id.*

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³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*

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³⁸⁴ Vera, *supra* note 261 (describing the negative psychological effects of solitary confinement and the issue of the original SMRs not addressing the practice of solitary confinement).

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³⁹² See e.g., ICRA, *supra* note 390.

³⁹³ See e.g., *id.*; L.B. 686, 2019 Reg. Sess. (Neb. 2019) (“Neb. L.B. 686”); H.B. 36, (N.M.) (“N.M. H.B. 36”); H.B. 345, 2019 Reg. Sess. (Ga. 2019) (“Ga H.B. 345”); H.B. 650, 86th Reg. Sess. (Tex. 2019).

³⁹⁴ See e.g., ICRA, *supra* note 390; HALT Act, *supra* note 390; Ga. H.B. 345, *supra* note 393.

³⁹⁵ See e.g., Neb. L.B. 686, *supra* note 393.

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³⁹⁷ See e.g. ICRA, *supra* note 390.

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³⁹⁹ See e.g., ICRA, *supra* note 390.

⁴⁰⁰ See e.g. Conn. S.B. 459, *supra* note 389 (“No person may be held in isolated confinement for protective custody, except that isolated confinement may be used while the department is determining whether protective custody status is appropriate”).

⁴⁰¹ See discussion *infra* Section V.A.

⁴⁰² See *infra*; Conn. S.B. 459, *supra* note 389; HALT Act, *supra* note 390; ICRA, *supra* note 390.

⁴⁰³ See Conn. S.B. 459, *supra* note 389; ICRA, *supra* note 390.

⁴⁰⁴ See HALT Act, *supra* note 390; Victoria Law, *These Labor Unions are Fighting to Keep Solitary Confinement*, SOLITARY WATCH (Aug. 16, 2022), <https://solitarywatch.org/2022/08/16/these-labor-unions-are-fighting-to-keep-solitary-confinement>.

⁴⁰⁵ See *infra*.

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- ⁴³³ Casella & Tree Interview, *supra* note 422.
- ⁴³⁴ *Id.*
- ⁴³⁵ ICRA, *supra* note 390 (New Jersey first passed legislation to end long-term solitary confinement in 2016, but then-Governor Chris Christie vetoed the bill). See S.B. 51, Reg. Sess. 2016-1027 (N.J.).
- ⁴³⁶ Catherine Kim, *Solitary Confinement isn’t effective. That’s why New Jersey passed a law to restrict it.*, VOX (July 11, 2019), <https://www.vox.com/policy-and-politics/2019/7/10/20681343/solitary-confinement-new-jersey>.
- ⁴³⁷ Stacey Barchenger, *Is NJ following the law that limits isolated confinement in prisons? Advocates want answers*, NORTHJERSEY.COM, (Apr. 8, 2021 4:00 AM), <https://www.northjersey.com/story/news/new-jersey/2021/04/08/nj-following-law-limits-isolated-confinement-prisons/7091089002/>.
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⁴⁴⁶ *Id.*

⁴⁴⁷ CA: AB 280, *supra* note 407; AB 280 Holden, *supra* note 407.

⁴⁴⁸ Rick Raemisch, *Why We Ended Long-Term Solitary Confinement in Colorado*, N.Y. TIMES (Oct. 12, 2017), <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

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⁴⁵¹ Herrick, *supra* note 449.

⁴⁵² *Colo. Rev. Stat. § 17-26-303*, CASETEXT, <https://casetext.com/statute/colorado-revised-statutes/title-17-corrections/correctional-facilities-and-programs/facilities/article-26-jails/part-3-effective-712023-restrictive-housing-in-jails/section-17-26-303-effective-712023-placement-in-restrictive-housing-in-a-local-jail> (last visited June 10, 2023).

⁴⁵³ *Id.*

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⁴⁵⁶ *See*, *Short Term Restrictive Housing*, IDAHO DEP'T OF CORR. (July 11, 2018), <http://forms.idoc.idaho.gov/WebLink/0/doc/281014/Page13.aspx>.

⁴⁵⁷ *See generally*, *Idaho Statutes; Title 20 State Prison and County Jails*, IDAHO LEGISLATURE, <https://legislature.idaho.gov/statutesrules/idstat/Title20/T20CH1/> (last visited June 17, 2023).

⁴⁵⁸ Short Term Restrictive Housing, *supra* note 456, at 4.

⁴⁵⁹ *Id.* at 3.

⁴⁶⁰ Casella & Tree Interview, *supra* note 422.

⁴⁶¹ *See, e.g.*, *In re Medley*, 134 U.S. 160 (1890).

⁴⁶² *About the U.S. Courts of Appeals*, U.S. COURTS, <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-courts-appeals> (last visited May 27, 2023).

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⁴⁶⁴ *See id.*

⁴⁶⁵ *Id.* at 288.

⁴⁶⁶ *See id.* at 257.

⁴⁶⁷ *See* Medley, *supra* note 461.

⁴⁶⁸ *See id.* at 168 (“[A] 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.”).

⁴⁶⁹ *Id.* at 171.

⁴⁷⁰ Medley, *supra* note 461, at 170 (“In Great Britain, as in other countries, public sentiment revolted against this severity, and by the statute of 6 & 7 Wm. IV. c. 30, the additional punishment of solitary confinement was repealed.”).

⁴⁷¹ Trop, *supra* note 25 at 100-01.

⁴⁷² *Id.* at 102.

⁴⁷³ Holt v. Sarver, 309 F. Supp. 362, 372–73 (E.D. Ark. 1970), *aff'd and remanded*, 442 F.2d 304 (8th Cir. 1971).

⁴⁷⁴ *See id.* at 384–85.

⁴⁷⁵ Hutto v. Finney, 437 U.S. 678, 685–86 (1978) (quoting Finney v. Hutto, 410 F. Supp. 251, 275 (E.D. Ark. 1976), *aff'd*, 548 F.2d 740 (8th Cir. 1977), *aff'd*, 437 U.S. 678, 98 S. Ct. 2565, 57 L. Ed. 2d 522 (1978)).

⁴⁷⁶ Estelle v. Gamble, 429 U.S. 97, 104 (1976).

⁴⁷⁷ Wilson v. Seiter, 501 U.S. 294, 302 (1991)

⁴⁷⁸ Porter v. Pennsylvania Dep’t of Corr., 974 F.3d 431, 441 (3d Cir. 2020) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)).

⁴⁷⁹ *Solitary Confinement Facts*, AMERICAN FRIENDS SERVICE COMMITTEE, <https://www.afsc.org/resource/solitary-confinement-facts> (last visited May 27, 2023).

⁴⁸⁰ See Medley, *supra* note 461; Trop, *supra* note 25.

⁴⁸¹ Mandela Rules, *supra* note 229.

⁴⁸² *Id.*

⁴⁸³ *U.N. Standard Minimum Rules for the Treatment of Prisoners* (1955),

https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf (“The Standard Minimum Rules for the Treatment of Prisoners, originally adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners.”).

⁴⁸⁴ See *Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010) (holding that the Mandela Rules’ pre-revision predecessor, the Standard Minimum Rules for the Treatment of Prisoners, “is not a treaty, and it is not binding on the United States.”).

⁴⁸⁵ See *Bells v. Von Blanckensee*, No. CV 19-00530-TUC-JAS (DTF), 2019 U.S. Dist. LEXIS 197659, at *3 n.1 (D. Ariz. Nov. 13, 2019) (“Petitioner appears to be referring to a United Nations General Assembly resolution known as the ‘United Nations Standard Minimum Rules for the Treatment of Prisoners’ or the ‘Mandela Rules.’”); *Wainwright v. Medical Dep’t Cuyahoga County Corr. Ctr.*, No. 1:17-CV-1621, 2018 U.S. Dist. LEXIS 75836, at *8 n.41 (N.D. Ohio May 4, 2018) (citing *Serra*, 600 F.3d at 1197) (Petitioner’s claims related to the Rules fails because “[t]he United Nations Standard Minimum Rules for the Treatment of Prisoners, or the Nelson Mandela rules, are not a source of justiciable rights.”); *Conley v. Hutchinson*, No. 4:22-cv-353-DPM-ERE, 2022 WL 2913787, at *1 n.1 (E.D. Ark. Jun. 10, 2022) (dismissing complaint without prejudice and cautioning plaintiff “that this lawsuit is *not* a forum for him to pursue every claim he can think of”); *Gawlik v. Quiros*, No. 3:21CV01549(SALM), 2022 WL 2065042, at *2 n.4 (D. Conn. June 8, 2022); *Wright v. S. Health Partners, Inc.*, No. 1:18CV63, 2019 WL 1129319, at *2 (M.D.N.C. Mar. 12, 2019) (rejecting plaintiff’s assertion that “the United Nations General Assembly’s Standard Minimum Rules for the Treatment of Prisoners . . . suggest the presence of some international norm against placing prisoners in solitary confinement.”); *Smith v. Cline*, No. 18-3022-SAC, 2018 WL 928823, at *1 (D. Kan. Feb. 16, 2018).

⁴⁸⁶ See *Davis v. Baldwin*, No. 3:16-CV-600-MAB, 2021 WL 2414640, at *14 (S.D. Ill. June 14, 2021) (“the United Nations Standard Minimum Rules for the Treatment of Prisoners—known as the Nelson Mandela Rules—requires at least one [for recreation] hour *every day*”).

⁴⁸⁷ See *Wilson v. Dunn*, No. 4:21-CV-00352-KOB, 2022 WL 3007599, at *1 (N.D. Ala. July 28, 2022) (quoting Nelson Mandela via the preamble to the Mandela Rules and noting that an incarcerated plaintiff’s “injuries . . . and the conditions he alleges . . . paint a troubling picture of that facility and—if Mr. Mandela is to be believed—of this nation, or at least the State of Alabama.”).

⁴⁸⁸ *Santos v. Holland*, No. 112CV01651LJOEPGHC, 2017 WL 111627, at *14 (E.D. Cal. Jan. 10, 2017), *aff’d*, 761 F. App’x 707 (9th Cir. 2019) (citing, in a footnote following the above-quoted language, the Mandela Rules).

⁴⁸⁹ *Id.* at *14 n.11.

⁴⁹⁰ See, e.g., Brief of *Amici Curiae* Professors and Practitioners of Psychiatry, Psychology, and Medicine in Support of Petitioner, *Hamner v. Burls*, 141 S. Ct. 611 (2020) (No. 19-1291) (“Hamner Professors and Practitioners Brief”); Brief of *Amici Curiae* Corrections Experts in Support of Petitioner, *Woodfox v. Cain*, 2016 WL 424802 (U.S. Feb. 3, 2016) (No. 15-851); Brief of *Amici Curiae* Current and Former Prosecutors and Department of Justice Officials in Support of Petitioner, *Hope v. Harris*, No. 21-1065 (U.S. Feb. 15, 2022) (“Hope v. Harris Brief”); See Brief of *Amici Curiae* Human Rights Clinics, Law Professors, and Non-Profit Organizations in Support of Petitioner, *Hamner v. Burls*, 141 S. Ct. 611 (2020) (No. 19-1291) (“Hamner NPO Brief”); Brief of *Amici Curiae* Human Rights Clinics, Law Professors, and Non-Profit Organizations in Support of Plaintiff-Appellant’s Petition for Rehearing by Panel and Rehearing *En Banc*, *Hamner v. Burls*, 937 F.3d 1171 (8th Cir. 2019) (No. 18-2181); *Bailey-Snyder Brief*, *supra* note 132.

⁴⁹¹ See Hamner Professors and Practitioners Brief, *supra* note 490 (citing U.N. Human Rights Council, *U.N. Special Rapporteur, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, at 9, U.N. Doc. A/66/268 (Aug. 5, 2011) (Explicitly stating that the revised rules “should also prohibit prolonged solitary confinement and frequently renewed measures that amount to prolonged solitary confinement. The Rules should establish a maximum term of days beyond which solitary confinement is considered prolonged.”).

⁴⁹² See *id.*

⁴⁹³ See *Bailey-Snyder Brief*, *supra* note 132.

⁴⁹⁴ *Id.*

⁴⁹⁵ Brief of *Amici Curiae* Corrections Experts in Support of Petitioner, *Woodfox v. Cain*, 2016 WL 424802, at *16–17 (U.S. Feb. 3, 2016) (No. 15-851).

⁴⁹⁶ See, e.g., Hamner Professors and Practitioners Brief, *supra* note 490, at 3.

⁴⁹⁷ *Hope v. Harris Brief*, *supra* note 490, at 18.

⁴⁹⁸ *Id.* (internal quotations omitted).

⁴⁹⁹ *Id.* at 18–20.

⁵⁰⁰ *Id.*

⁵⁰¹ Hamner NPO Brief, *supra* note 490, at 4 (citing Sharon Shalev & Klimmet Edgar, *Deep Custody: Segregation Unites and Close Supervision Centres in England and Wales* 148 (2015); Affleck & Barrison LLP, *Recent Stats Show Marked Appellate Case: 18-2181 Page: 10 Date Filed: 10/23/2019 Entry ID: 4844919 28 of 40 5 Drop in Use of Solitary Confinement Across Canada* (Aug. 8, 2017), <http://criminallawoshawa.com/recent-stats-show-marked-drop-in-use-of-solitaryconfinement-across-canada/>; Council of Europe, *Rapport au Gouvernement de la République française relative à la visite effectuée en France par le*

Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants, ¶ 70, CPT/Inf (2012) 13 (Apr. 19, 2012); Irish Penal Reform Trust, *The Facts*, (Apr. 2019), <https://www.iprt.ie/prison-facts/>)

⁵⁰² Hamner NPO Brief, *supra* note 490, at 5.

⁵⁰³ CAT, *supra* note 290

⁵⁰⁴ CAT, *supra* note 290, at 11.

⁵⁰⁵ *Hope v. Harris*, 861 F. App'x 571, 582 (5th Cir. 2021) (quoting *Gates v. Collier*, 501 F.2d 1291, 1304 (5th Cir. 1974), *petition for cert. docketed*, No. 21-1065, Feb. 1, 2022).

⁵⁰⁶ In *Hope v. Harris*, the Fifth Circuit held Mr. Hope failed to state an Eighth Amendment claim based purely on the conditions and duration of his solitary confinement. 861 F. App'x at 582–85. While he plausibly alleged that a particular prison official had violated his Eighth Amendment rights by creating unsanitary and physically harmful conditions during his time in solitary confinement, the court did not find his lengthy solitary confinement to be cruel and unusual on its own.

⁵⁰⁷ Petition for a Writ of Certiorari, *Hope v. Harris*, No. 21-1065 (U.S. Jan. 28, 2022).

⁵⁰⁸ *Id.*

⁵⁰⁹ See Letter from Counsel for Respondents, *Hope v. Harris*, No. 21-1065 (U.S. Jun. 8, 2022).

⁵¹⁰ See Suggestion of Mootness and Brief in Opposition at 1, *Hope v. Harris*, No. 21-1065 (U.S. May 4, 2022) (“Hope was transferred out of restrictive housing. He is presently completing a four month educational program to ease his transition to the general population.”) (“Hope Suggestion”).

⁵¹¹ Joint Motion to Hold Petition for a Writ of Certiorari in Abeyance, *Hope v. Harris*, No. 21-1065 (U.S. Jun. 8, 2022).

⁵¹² *Hope Suggestion*, *supra* note 510, at 1.

⁵¹³ See *Porter v. Penn. Dep't of Corr.*, 974 F.3d 431 (3d Cir. 2020); *Gonzalez v. Hasty*, 802 F.3d 212 (2d Cir. 2015); *Porter v. Clarke*, 923 F.3d 348 (4th Cir. 2019), *as amended* (May 6, 2019).

⁵¹⁴ Santos, *supra* note 488 (citing the Mandela Rules).

⁵¹⁵ See generally Briefs of *Amici Curiae*, *supra* notes 490 & 495; Brief of Appellant, DeWalt, *supra* note 93.

⁵¹⁶ *Human Rights in the United States: A Handbook for Legal Aid Attorneys*, CENTER FOR HUMAN RIGHTS AND HUMANITARIAN LAW AT AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, (Apr. 22, 2013), <https://www.wcl.american.edu/index.cfm?LinkServID=B1E62E62-A5A0-D585-2D87C971D50AAE18>.

⁵¹⁷ See *id.* at 38–44.

⁵¹⁸ *Id.* at 38–39.

⁵¹⁹ *Id.* at 40.

⁵²⁰ See *id.*

⁵²¹ David Nersessian, *INTERNATIONAL HUMAN RIGHTS LITIGATION: A GUIDE FOR JUDGES* (Federal Judicial Center 2016)

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2978170.

⁵²² *Id.* (author's note, cover page).

⁵²³ Casella & Gullapalli, *supra* note 3.

⁵²⁴ *Montgomery v. United States*, No. 05-06002-CR-SJ-GAF, 2015 WL 13893079, at *31 (W.D. Mo. Dec. 21, 2015); see also *Buell v. Mitchell*, 274 F.3d 337, 376 (6th Cir. 2001) (holding that a “determination of whether customary international law prevents” the use of the death penalty as a cruel and unusual punishment “is a question that is reserved to the executive and legislative branches of the United States government, as it their constitutional role to determine the extent of this country’s international obligations.”).

⁵²⁵ U.S. Const. art. VI.

⁵²⁶ *United States v. Reyes-Montano*, No. 19-PO-3592 SMV-1, 2020 WL 733041, at *2 (D.N.M. Feb. 13, 2020).

⁵²⁷ A CAT, *supra* note 290, art. 16 (prohibiting “acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.”).

⁵²⁸ Michael John Garcia, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*, CONG. RSCH. SERV. (Apr. 4, 2006), <https://trac.syr.edu/immigration/library/P1339.pdf>.

⁵²⁹ *The Constitution Annotated, Art II.S2.C2.1.4 Self-Executing and Non-Self-Executing Treaties*, CONG. RSCH. SERV., https://constitution.congress.gov/browse/essay/artII-S2-C2-1-4/ALDE_00012955/#ALDF_00016276 (last visited May 27, 2023).

⁵³⁰ Trop, 356 U.S. at 102 (“[t]he civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime”) (emphasis added).

⁵³¹ *America’s Addition to Juvenile Incarceration: State by State*, ACLU, <https://www.aclu.org/issues/juvenile-justice/youth-incarceration/americas-addiction-juvenile-incarceration-state-state> (last visited June 17, 2023).

⁵³² A note on definitions: Throughout this paper, both “youth” and “juveniles” are used to refer to people under the age of 18. Legally, ‘juvenile’ refers to people under the age of majority; throughout the US, this means anyone under 18. ‘Youth’ has a broader definition and can refer to young people of any age, although some states, such as Florida, do define “youth” as individuals under 18 in legislation. Youth is a subjective term, and although there are concerted efforts among some organizations such as the ACLU and Disability Rights NC to further restrict the use of solitary in “youth” under the age of 21, in this paper, consider in this paper the terms “youth” and “juveniles” are used interchangeably to refer to persons under 18 years of age.

⁵³³ See Trey Bundy & Daffodil Altan, *Rikers Island is Eliminating Juvenile Solitary Confinement. Now What?*, JUV. JUST. INFO. EXCH., (Oct. 7, 2014), <https://jjie.org/2014/10/07/rikers-island-is-eliminating-juvenile-solitary-confinement-now-what/>.

⁵³⁴ See *infra* section VII.A.

⁵³⁵ See discussion *infra* at Sections A-D.

⁵³⁶ Obama, *supra* note 388.

⁵³⁷ *Infra*, sections VII.B. & VII.C.

⁵³⁸ See *Ashker v. Gov. of Cal.*, Settlement Agreement, C 09-05796 CW (N.D. Cal. Sept. 1, 2015) (legal action part of a larger movement to reform conditions in SHUs in California’s prisons that was sparked by hunger strikes by thousands of SHU prisoners in 2011 and 2013), https://ccrjustice.org/sites/default/files/attach/2015/09/2015-09-01-ashker-Settlement_Agreement.pdf.

⁵³⁹ See generally, the *ACLU National Prison Project*, which seeks to ensure “prisons, jails, and other places of detention comply with the Constitution, domestic law, and international human rights principles, and to ending the policies that have given the United States the highest incarceration rate in the world.”

⁵⁴⁰ Davis, *supra* note 463 at 289 (2015).

⁵⁴¹ See discussion *infra* at VII.B.

⁵⁴² Bill S.2371, 190th Sess., at 1315 (Mass. 2018).

⁵⁴³ *Id.*

⁵⁴⁴ *The Impressive Top-to-Bottom Makeover of the Massachusetts Juvenile Justice System*, NATIONSWELL.COM, <https://nationswell.com/massachusetts-juvenile-criminal-justice-makeover/#ixzz4awQ4jQdc> (last visited Nov. 18 2022).

⁵⁴⁵ See *State and Local Action*, STOP SOLITARY FOR KIDS, <https://stopsolitaryforkids.org/state-or-local-policies-and-bans/> (last visited Nov. 11 2022) (listing judicial, executive, and legislative restraints on solitary confinement in states’ juvenile justice systems).

⁵⁴⁶ See generally, *Positive Youth Development Resource Guide: A Multimediam Resource Guide for Youth-Serving Providers*, OFFICE OF SEXUAL HEALTH AND YOUTH DEVELOPMENT, MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH, (August 2020), <https://www.mass.gov/doc/oshyd-resource-guide/download> (“Resource Guide”).

⁵⁴⁷ State and Local Action, *supra* note 545.

⁵⁴⁸ Interview with Ed Dolan, Oct. 25, 2022, at 22 (on file with author).

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.* at 28.

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ See *id.* at 19.

⁵⁵⁵ See *H.C. at al v. PBSO et al.*, Civil Action No.: 9:18-CV-80810 (a Palm Beach County sheriff was sued for the unconstitutional solitary confinement conditions to which juveniles under his care were subjected).

⁵⁵⁶ SB 1934, Solitary Confinement of Incarcerated Youths, Fla. Senate 2022 Sess.

⁵⁵⁷ SB 206, Inmate Confinement, lines 61-62, Fla. Senate 2022 Sess.

⁵⁵⁸ *Id.*

⁵⁵⁹ *SB 1934 (2022)- Solitary Confinement of Incarcerated youths*, FLA. HOUSE OF REPRESENTATIVES, <https://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=76438&> (last visited June 10, 2023); *Search Results*, LEGISCAN, <https://legiscan.com/gaits/search?sort=desc&order=State&state=FL&keyword=solitary%20confinement> (last visited June 10, 2023).

⁵⁶⁰ See, e.g. AMERICANS FOR PROSPERITY, https://americansforprosperity.org/?utm_source=google&utm_medium=paid-search&utm_campaign=AFP-2023-1-brand-txt-br--AFP-Brand-Campaign-a-&gclid=Cj0K̄CQjw98ujBhCgARIsAD7QeAgdaLhuxis6cpRkHFYQPEsUB0DIYmji3hcBCVdQsJQcyDSRVW4rSz8aAtLmEA Lw_wcB (last visited May 28, 2023); *Americans for Prosperity*, BALLOTPEdia, https://ballotpedia.org/Americans_for_Prosperty (last visited May 28, 2023) (historically endorsing Republican political candidates).

⁵⁶¹ *Lobbyist Disclosure & Information*, MYFLORIDAHOUSE.GOV, <https://www.myfloridahouse.gov/LD/default.aspx?bn=0206&lyi=9&search=1#search> (last visited Nov. 18, 2022).

⁵⁶² *Juvenile Solitary Confinement Project*, FLA. STATE U. COLLEGE OF LAW, <https://law.fsu.edu/academics/clinical-programs/public-interest-law-center/juvenile-solitary-confinement-project>; Natalie Weber, *Roughly 1 in 8 Florida prisoners is in solitary confinement, advocates say*, TAMPA BAY TIMES, (Jan. 14 2022), <https://www.tampabay.com/news/florida/2022/01/14/roughly-1-in-8-prisoners-is-in-florida-solitary-confinement-according-to-advocates/>.

⁵⁶³ See *Juvenile Solitary Confinement Project*, FLA. STATE U. COLLEGE OF LAW, <https://law.fsu.edu/academics/clinical-programs/public-interest-law-center/juvenile-solitary-confinement-project> (last visited May 27, 2023).

⁵⁶⁴ *Id.*

⁵⁶⁵ See *H.C. et al v. PBSO et al.*, Civil Action No.: 9:18-CV-80810, Settlement Agreement, (S.D. Fla. 2019); *Solitary Confinement: Inhumane, Ineffective, and Wasteful*, S. POVERTY L. CTR., (April 4, 2019), <https://www.splcenter.org/20190404/solitary-confinement-inhumane-ineffective-and-wasteful>.

⁵⁶⁶ Settlement Agreement, *supra* note 565, at 2.

⁵⁶⁷ *Id.* at 6-10.

⁵⁶⁸ *G.H. v. Marsteller*, Civil Action No. 4:19-CV-431, Complaint, at 7, (N.D. Fla. 2019), https://www.splcenter.org/sites/default/files/doc._2_-_complaint.pdf.

⁵⁶⁹ *Id.* at 76, see *id.* at footnote 22.

⁵⁷⁰ G.H. v. Dep’t of Juvenile Justice, Civil Action No. 4:19-CV-431, Order Denying Summary Judgment and Decertifying the Class and Subclass, Doc. 286 (N.D. Fla. 2022), <https://www.floridajusticeinstitute.org/wp-content/uploads/2020/12/ORDER-DENYING-SUMMARY-JUDGMENT-AND-DECERTIFYING-THE-CLASS-AND-SUBCLASS.pdf>.

⁵⁷¹ Complaint, *supra* note 568 at 58-60;

⁵⁷² G.H. v. Marsteller, FLORIDA JUSTICE INSTITUTE (Oct. 11, 2022), <https://www.floridajusticeinstitute.org/cases/g-h-et-al-v-marsteller-et-al/>

⁵⁷³ Press Release, W. David Guice, Comm’r Adult & Juv. Just., N.C. DEPT. OF PUB. SAFETY (June 15, 2016), <https://www.dac.nc.gov/press-release/state-prison-system-announces-end-solitary-confinement-inmates-under-18>.

⁵⁷⁴ Anne Blythe, *NC prisons halt solitary confinement for inmates 17 and younger*, NEWS & OBSERVER (June 15 2016), <https://newsobserver.newspapers.com/image/652674168/?terms=NC%20prisons%20halt%20solitary%20confinement%20for%20inmates%2017%20and%20younger&match=1>.

⁵⁷⁵ See 520.1 *Juvenile Disposition*, NC PROSECUTORS’ RESOURCE ONLINE, <https://ncpro.sog.unc.edu/manual/520-1> (last visited June 17, 2023).

⁵⁷⁶ See *Juvenile Justice Facility Operations, Youth Development Centers: YC 4.1 Behavior Expectations*, 4.2(K), N.C. DEPT. PUB. SAFETY (July 2020) (on file with author); *Youthful Offender Program*, N.C. DEPT. PUB. SAFETY, 5 (June 15, 2016).

⁵⁷⁷ *Id.*

⁵⁷⁸ JDC Policy 2.3.8(1)(3).

⁵⁷⁹ *Id.* at 2.3.8(2).

⁵⁸⁰ See generally, Resource Guide, *supra* note 546.

⁵⁸¹ JDC Policy, *supra* note 578 at 2.3.8(3)(a).

⁵⁸² *Id.* at 2.3.8(3)(d).

⁵⁸³ Susan Pollitt, *Young Adults in Solitary Confinement*, DISABILITY RIGHTS N.C. (Mar. 12, 2023), <https://disabilityrightsncc.org/prisons-and-jails/young-adults-in-solitary-confinement/>.

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.*

⁵⁸⁶ *Raise the Age – NC*, N.C. DEPT. PUB. SAFETY, <https://www.ncdps.gov/our-organization/juvenile-justice/key-initiatives/raise-age-nc#WhataresomemythsaboutRaisetheAge-1668> (last visited May 28, 2023).

⁵⁸⁷ *Another Important Step for Raising the Age*, CAROLINA JUST. POL. CTR. (Nov. 23, 2016), <https://www.cjpcenter.org/another-important-step-for-raising-the-age/>.

⁵⁸⁸ For information and data on the cost of solitary, see *infra* discussion at Section ___ (“Costs”). For information on the mental and physical effects of solitary on individuals, see *infra* discussion at Section (“Effects”).

⁵⁸⁹ See *supra* note 569, see also *DeWalt v. Hooks*, Plaintiff-Appellant’s Brief, 19 CVS 14089, ¶ 14 (N.C. 2019)

⁵⁹⁰ Mandela Rules, *supra* note 229, at 2, Preliminary Observation 4.

⁵⁹¹ *UN lauds Somalia as country ratifies landmark children’s rights treaty*, U.N. NEWS, (Jan. 20, 2015), <https://news.un.org/en/story/2015/01/488692>.

⁵⁹² Convention on the Rights of the Child, Art. 37(c), G.A. Res. 44/25 (November 20 1989).

⁵⁹³ See *H.C. at al v. PBSO et al.*, Civil Action No.: 9:18-CV-80810, Settlement Agreement, (S.D. Fla. 2019) for more information, see *Solitary Confinement: Inhumane, Ineffective, and Wasteful*, S. POVERTY L. CTR., (April 4, 2019) <https://www.splcenter.org/20190404/solitary-confinement-inhumane-ineffective-and-wasteful>

⁵⁹⁴ Molly Remch, et al., *Impact of a Prison Therapeutic Diversion Unit on Mental and Behavioral Health Outcomes*, 61(5) AM. J. PREV. MED. 619, 620 (2021).

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.* at 625-26.

⁵⁹⁸ *Id.* at 625.

⁵⁹⁹ *Id.* at 625-26.

⁶⁰⁰ Jason DeBruyn, *Inmates with mental health diagnoses perform better when given therapy, a new study finds*, N.C. PUB. RADIO (Oct. 4, 2021 4:05 PM), <https://www.wunc.org/health/2021-10-04/inmates-with-mental-health-diagnoses-perform-better-when-given-therapy-a-new-study-finds>.

⁶⁰¹ Remch, et al., *supra* note 594, at 621.

⁶⁰² Naomi Weinstein & Michael L. Perlin, *Who’s Pretending to Care for Him? How the Endless Jail-to-Hospital-to-Street-Repeat Cycle Deprives Persons with Mental Disabilities the Right to Continuity of Care*, 8:2 WAKE FOREST J. L. & POL’Y 455, 488 (2018)

⁶⁰³ *Mental Health Courts*, N.C. JUDICIAL BRANCH, [https://www.nccourts.gov/courts/recovery-courts/mental-health-court#:~:text=Mental%20health%20courts%20are%20operational,Forsyth%20\(District%2021\)](https://www.nccourts.gov/courts/recovery-courts/mental-health-court#:~:text=Mental%20health%20courts%20are%20operational,Forsyth%20(District%2021)) (last visited Oct. 19, 2022); *NC County Formation*, STATE LIBRARY OF N.C., <https://statelibrary.ncdcr.gov/research/genealogy-and-family-history/family-records/nc-county-formation#north-carolina-county-formation> (last visited Oct. 19, 2022).

⁶⁰⁴ *North Carolina Counties by Population*, N.C. DEMOGRAPHICS, https://www.northcarolina-demographics.com/counties_by_population (last visited Nov. 9, 2022).

⁶⁰⁵ *Crime in North Carolina – 2021, August 2022*, N.C. STATE BUREAU OF INVESTIGATION, 1, 4-5, <https://www.ncsbi.gov/Services/Crime-Statistics/Crime-in-North-Carolina-Annual-Summaries/2021-Annual-Summary.aspx> (last visited Nov. 11, 2022).

⁶⁰⁶ Mental Health Courts, *supra* note 603.

⁶⁰⁷ TASK FORCE FOR RACIAL EQUITY IN CRIMINAL JUSTICE, *Report 2020*, 1, 118, https://ncdoj.gov/wp-content/uploads/2021/02/TRECReportFinal_02262021.pdf.

⁶⁰⁸ Kelan Lyons, *Rehabilitation, solitary confinement, staff vacancies in focus at confirmation hearing for new corrections chief*, NC NEWSLINE (Feb. 1, 2023 6:00 AM), <https://ncnewsline.com/2023/02/01/rehabilitation-solitary-confinement-staff-vacancies-in-focus-at-confirmation-hearing-for-new-corrections-chief/#:~:text=As%20much%20as%20Ishee%20plugged%20rehabilitation%20for%20the,restrictive%20housing%20for%20more%20than%2015%20consecutive%20days>.

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*