UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

V.W., a minor, by and through his parent and natural guardian DERECK WILLIAMS, et al., on behalf of themselves and all others similarly situated, Plaintiffs, v. EUGENE CONWAY, Onondaga County Sheriff, in his official capacity, et al. Defendants.	16-CV-1150 (DNH) (DEP)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

The plaintiffs are 16- and 17-year-old teenagers—many with mental illnesses—who are routinely being placed in solitary confinement at the Onondaga County Justice Center, where they are locked in small cells for 23 or more hours a day for weeks and even months on end with minimal human contact and where they receive no meaningful educational services. This extreme isolation seriously harms juveniles, with several having threatened to kill themselves rather than suffer another day in solitary confinement. In light of this dire situation, the plaintiffs seek a preliminary injunction to end the defendants' dangerous use of solitary confinement and to assure that plaintiffs receive the educational services to which they are entitled.

While the Supreme Court and the Courts of Appeals have not addressed solitary confinement for juveniles, the Supreme Court has recognized that juveniles in the criminal justice system are entitled to special protections given their developmental state. Consistent with this, over the last 45 years nearly every district court that has ruled on a constitutional challenge to solitary confinement of juveniles has found that even a short period of isolation is cruel and unusual punishment. And policy makers have banned solitary confinement for juveniles in Rikers Island, Los Angeles County, the federal Bureau of Prisons, and in juvenile detention facilities in 21 states—a wave of reform that stems from widespread recognition that children are particularly vulnerable to the harmful effects of isolation.

Justice Center officials have been sued twice, repeatedly warned, and even shown direct evidence of the risk of harm for juveniles, but they continue to place juveniles in solitary without regard for their health. Moreover, both they and the defendant Syracuse City School District has done nothing to assure the provision of educational services to the plaintiffs. Absent a

preliminary injunction, the plaintiffs will continue to suffer irreparable harm in the form of mental illnesses, significant risks of suicide, and long-term educational setbacks.

STATEMENT OF FACTS

In support of their motion, the named plaintiffs and the putative class (collectively "plaintiffs") submit declarations from thirteen juveniles who have been or are at the Justice Center (including each of the named plaintiffs),[1] from three mothers,[2] from a local advocate who has been urging the Sheriff's Office to end the solitary confinement of juveniles,[3] from an analyst who has examined data obtained from the defendants,[4] and from a paralegal summarizing data and disciplinary records;[5] rely on documents obtained through discovery and otherwise;[6] and rely on declarations from three experts, each of whom visited the Justice Center, interviewed

[1] Named plaintiffs declarations include Decl. of V.W. ("V.W. Decl.") (Sept. 13, 2016) attached as Exhibit A to Decl. of Philip Desgranges Supp. Pls.' Mot. for Prelim. Inj. ("Desgranges Decl.") (Dec. 21, 2016); Decl. of R.C. ("R.C. Decl.") (Sept. 13, 2016), Desgranges Decl. Ex. B; Decl. of C.I. ("C.I. Decl.") (Sept. 13, 2016), Desgranges Decl. Ex. C; Decl. of M.R. ("M.R. Decl.") (Sept. 13, 2016), Desgranges Decl. Ex. D; Decl. of F.K. ("F.K. Decl.") (Sept. 13, 2016), Desgranges Decl. Ex. E; Decl. of J.P. ("J.P. Decl.") (Sept. 13, 2016), Desgranges Decl. Ex. F; Suppl. Decl. of C.I. ("C.I. Suppl. Decl.") (Dec.12, 2016), Desgranges Decl. Ex. G; Suppl. Decl. of R.C. ("R.C. Suppl. Decl.") (Dec. 12, 2016), Desgranges Decl. Ex. H; Suppl. Decl. of V.W. (V.W. Suppl. Decl.) (Dec. 8, 2016), Desgranges Decl. Ex. I; Declarations of other individuals include Decl. of D.D. ("D.D. Decl.") (Nov. 30, 2016), Desgranges Decl. Ex. J; Decl. of C.B. ("C.B. Decl.") (Nov. 18, 2016), Desgranges Decl. Exhibit K; Decl. of M.S. ("M.S. Decl.") (Nov. 18, 2016), Desgranges Decl. Ex. L; Decl. of C.C. ("C.C. Decl.") (Nov. 17, 2016), Desgranges Decl. Ex. M; Decl. of J.S. ("J.S. Decl.") (Nov. 15, 2016), Desgranges Decl. Ex. N; Decl. of D.P. ("D.P. Decl.") (Dec. 12, 2016), Desgranges Decl. Ex. O; Decl. of J.C.P. ("J.C.P. Decl.") (Dec. 12, 2016), Desgranges Decl. Exhibit P.

[2] Decl. of Lorenda Brown ("Brown Decl.") (Dec. 1, 2016), Desgranges Decl. Ex. Q; Decl. Nashieka Lomack ("Lomack Decl.") (Nov. 17, 2016), Desgranges Decl. Ex. R; Decl. of Alissa Quiñones ("Quiñones Decl.") (Dec. 7, 2016), Desgranges Decl. Ex. S.

[3] Decl. of Emily NaPier Supp. Pls.' Mot. for Prelim. Inj. ("NaPier Decl.") (Dec. 6, 2016).

[4] Decl. of Michelle Shames Supp. Pls.' Mot. for Prelim. Inj. ("Shames Decl.") (Dec. 20, 2016).

[5] Decl. of Maria Rafael Supp. Pls.' Mot. for Prelim. Inj. ("Rafael Decl.") (Dec. 20, 2016).

[6] *See* Desgranges Decl.

juveniles there, and reviewed disciplinary policies and other relevant documents.[7] Because the preliminary injunction procedure is less formal than trial, this Court may consider hearsay evidence in granting plaintiffs' relief. *See Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010).

I. THE SHERIFF'S OFFICE ROUTINELY PUNISHES JUVENILES WITH SOLITARY CONFINEMENT.

On any given day, approximately twenty-three 16- and 17-year-old juveniles—many with mental illnesses—are being detained at the Onondaga County Justice Center, a 671-bed correctional facility in Syracuse that primarily houses adults and that is run by defendants Sheriff Eugene Conway, Chief Custody Deputy Esteban Gonzalez, and Assistant Chief Custody Deputy Kevin Brisson of the Onondaga County Sheriff's Office.[8] Close to 90% of these juveniles are pretrial detainees who have not been convicted and sentenced on their pending charges, and most are Black and Latino.[9]

Between October 19, 2015, and October 19, 2016, the Sheriff's Office punished 79 juveniles—60 percent of the 131 juveniles held past an initial 5-day reception period—with over

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[7] Suppl. Decl. of Dr. Louis Kraus Supp. Pls.' Mot. for Prelim. Inj. ("Kraus Suppl. Decl.") (Dec. 14, 2016); Decl. of Dr. Louis Kraus Supp. Pls.' Mot. for Class Cert. ("Kraus Decl.") (Sept. 19, 2016), Kraus Suppl. Decl. Ex. 1; Decl. of Dr. Barry Krisberg Supp. Pls.' Mot. for Prelim. Inj. ("Krisberg Decl.") (Dec. 6, 2016); Decl. of Warden Leander Parker Supp. Pls.' Mot. for Prelim. Inj. ("Parker Decl.") (Dec. 14, 2016).

[8] Rafael Decl. ¶ 8; Kraus Decl. ¶ 35; Lomack Decl. ¶¶ 4-6; Brown Decl. ¶¶ 4-9; Quiñones Decl. ¶ 3; V.W. Decl. ¶ 3; R.C. Decl. ¶ 6; C.I. Decl. ¶ 4; M.R. Decl. ¶¶ 4-5, 19; F.K. Decl. ¶¶ 13-14; J.P. Decl. ¶ 4; C.B. Decl. ¶¶ 3-7; M.S. Decl. ¶¶ 5-7; D.P. Decl. ¶¶ 4-7; C.C. Decl. ¶ 3. *See* Onondaga County Sheriff's Office Description of the Custody Department, http://sheriff.ongov.net/custody/, Desgranges Decl. Ex. T (describing the managerial responsibilities of Chief Gonzalez and Asst. Chief Brisson); Segregation Housing ("SHU Directive") (Jan. 13, 2016), Desgranges Decl. Ex. W; Education and Vocational Programs Directive ("Education Directive") (Dec. 4, 2015), Desgranges Decl. Ex. X; Organizational Chart of the Sheriff's Office, Sheriff's Office website, http://sheriff.ongov.net/organizational-chart/, Desgranges Decl. Ex. Y (depicting the managers of the of the Custody Department).

[9] Shames Decl. ¶¶ 7, 9; Inmate Handbook 13-15, 25 (Feb. 2016), Desgranges Decl. Ex. U ("Inmate Handbook").

250 sanctions of solitary confinement.[10] Those who stayed past this reception period had an average length-of-stay of 59 days, and of the juveniles who spent 59 days or more at the jail, 96 percent were punished with solitary confinement.[11]

That so many juveniles are being placed in solitary is no surprise given the Sheriff's Office's disciplinary policies, which draw no distinction between adults and juveniles,[12] and which warn all inmates that "[t]here is a low threshold for unacceptable behavior" and those "who do not behave, in accordance with the rules, will be locked in 23 hours a day."[13] The Inmate Handbook's "Inmate Discipline" section describes several forms of disciplinary isolation or solitary confinement that can be imposed for *any* rule violation:[14] "lock-in," when juveniles are locked in their cell on the pod where they reside,[15] or the jail's "Segregation Housing Unit" ("SHU" or the "Box");[16] "administrative segregation," which is administrative in name but disciplinary in effect as it is used to confine juveniles in their cells or in the SHU in response to alleged misbehavior for up to 15 business days (i.e., 3 weeks) pending a disciplinary hearing;"[17] and "punitive segregation," which refers to the sentence of additional lock-in or SHU time

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[10] Shames Decl. ¶ 10.
[11] *Id*. ¶¶ 9, 13.
[12] *See* Inmate Handbook 13-15, 25; Written Directive No. CUS-023: Inmate Discipline ("Discipline Directive") (Nov. 8, 2010), Desgranges Decl. Ex. V. The defendants in this action are Sheriff Eugene Conway, Chief Custody Deputy Esteban Gonzalez, and Assistant Chief Custody Deputy Kevin Brisson, who either issue directives establishing the policies at the Justice Center or manage the facility. *See, e.g.*, SHU Directive; Education Directive; *see also* Custody Department; Organizational Chart of the Sheriff's Office.
[13] Inmate Management, Sheriff's Office website, http://sheriff.ongov.net/custody/inmate-management/, Desgranges Decl. Ex. Z.
[14] Inmate Handbook 3, 13, 14.
[15] Inmate Handbook 13, 25. *See* V.W. Decl. ¶ ¶ 5, 14-15; C.I. Decl. ¶ 8; J.P. Decl. ¶ 6. D.D. Decl. ¶ 4; C.C. Decl. ¶ 11.
[16] Inmate Handbook 25. *See* V.W. Decl. ¶ 5; C.I. Decl. ¶ 7-8; F.K. Decl. ¶ 5; J.P. Decl. ¶ 6; C.C. Decl. ¶ 19.
[17] Discipline Directive 4, 7; SHU Directive 1, 3; Inmate Handbook 13. *See* V.W. Decl. ¶ 17; C.I. Decl. ¶ 6; M.R. Decl. ¶¶ 7-8; F.K. Decl. ¶¶ 4, 17-18; J.P. Decl. ¶¶14-15; C.C. Decl. ¶¶ 11-12, 29-32; C.B. Decl. ¶ 13; *see also* D.P. Decl. ¶ 22; J.C.P. Decl. ¶¶ 14-15.

imposed after a disciplinary hearing.[18] The Sheriff's Office appears to rely only on these solitary confinement sanctions for discipline.[19]

Whatever the label the Sheriff's Office uses to describe the sanction and regardless of whether served in the SHU or in their own cells, solitary confinement of juveniles at the Justice Center amounts to being locked in a cell that is approximately 7' or 8' by 9' or 10', with minimal furnishings, for approximately 23 hours a day.[20] While in solitary, juveniles are denied meaningful human contact: they eat alone in their cells,[21] and by rule they are not permitted to talk to each other through the doors or in passing or else they risk more time in isolation.[22] They are denied programming and their recreation is limited to one hour out of their cells per day, although many do not even get that much.[23] They are denied mental stimulus: they have no access to the radio or television and limited access to reading materials.[24] And they are denied meaningful mental health treatment: treatment is often limited to mental health staff occasionally asking youth whether they are feeling homicidal or suicidal,[25] and if juveniles are feeling

[18] *See* Inmate Handbook 13-14, 26; SHU Directive 2.
[19] A review of the disciplinary histories of 10 juveniles, including the 6 named plaintiffs, which were produced as a result of expedited discovery, reveals that no sanction independent of disciplinary isolation was ever imposed on juveniles. Rafael Decl. ¶¶ 4, 5. Lesser sanctions were used in addition to, not as an alternative to, solitary confinement. *See id.*
[20] Kraus Decl. ¶¶ 20, 22; V.W. Decl. ¶ 5; R.C. Decl. ¶ 5; C.I. Decl. ¶ 8; M.R. Decl. ¶ 10; F.K. Decl. ¶ 5; J.P. Decl. ¶ 6.
[21] C.I. Decl. ¶ 8; C.C. Decl. ¶ 20; F.K. Decl. ¶ 5; J.P. Decl. ¶ 7; M.R. Decl. ¶ 11.
[22] Inmate Handbook 26. *See* Kraus Decl. ¶ 24; R.C. Decl. ¶ 5; C.I. Decl. ¶¶ 10, 19-20; M.R. Decl. ¶¶ 12, 23; F.K. Decl. ¶ 6; J.P. ¶¶ 8, 14; J.S. Decl. ¶ 10.
[23] *See* Inmate Handbook 26 (stating that "your bed must be fully made" otherwise "you will not receive recreation for that day."); Kraus Decl. ¶ 23; V.W. Decl. ¶ 6; D.P. Decl. ¶ 20; C.I. Decl. ¶ 19; M.S. Decl. ¶ 11; J.S. Decl. ¶ 14.
[24] *See* Inmate Handbook 26-27 (stating juveniles in solitary shall receive no educational services other than cell packets); C.I. Decl. ¶ 8; M.R. Decl. ¶ 10; F.K. Decl. ¶ 5; J.P. Decl. ¶ 6; D.D. Decl. ¶ 8; D.P. Decl. ¶ 16; R.C. Decl. ¶ 5; C.B. Decl. ¶ 10; M.S. Decl. ¶ 10; C.C. Decl. ¶ 20.
[25] C.C. Decl. ¶¶ 14, 26; C.I. Decl. ¶ 12; C.B. Decl. ¶ 15; J.S. Decl. ¶¶ 17-18; D.D. Decl. ¶ 15.

suicidal, they are placed in isolation in a different cell under suicide watch without any meaningful therapeutic services.[26]

Solitary confinement appears to be the only sanction that the Sheriff's Office is using for discipline, with a review of the disciplinary histories of 10 juveniles, including the 6 named plaintiffs, revealing that no sanction independent of disciplinary isolation was ever imposed.[27] The Sheriff's Office imposes the sanctions on juveniles regardless of their mental health history,[28] and even for minor misbehavior such as squirting water on a deputy (which staff chalked up to "teenage angst") or on another juvenile;[29] refusing to stop talking;[30] yelling;[31] calling a deputy "baldhead";[32] not buttoning up a jumper fast enough;[33] and talking while in solitary.[34]

As a matter of policy, juveniles in solitary confinement are also denied educational instruction, including special educational services, without any notice or an opportunity to be heard about the denial.[35] The Syracuse City School District ("School District"), which has contracted to provide educational services at the Justice Center,[36] acquiesces with this policy and

[26] M.R. Decl. ¶ 19; C.I. Suppl. Decl. ¶¶ 9-10; F.K. Decl. ¶ 19; R.C. Suppl. Decl. ¶¶ 7-12; Brown Decl. ¶¶ 15-19; M.S. Decl. ¶¶ 14-15; *see also* Kraus Suppl. Decl. ¶¶ 15, 21.
[27] Rafael Decl. ¶¶ 4, 5. Lesser sanctions were used in addition to, not as an alternative to, solitary confinement. *See id.*
[28] Kraus Suppl. Decl. ¶¶ 12-13, 23. *See* Brown Decl. ¶¶ 14-19; D.P. Decl. ¶¶ 8-10, 15.
[29] Incident Report for C.I. (May 18, 2016) and Hearing Results for C.I. (June 7, 2016), Desgranges Decl. Ex. AA; V.W. Decl. ¶ 14.
[30] Inmate Misbehavior Report/Hearing Notice for C.C. (Aug. 3, 2016), Incident Report for C.C. (Aug. 3, 2016), and Hearing Results for C.C. (Aug. 22, 2016), Desgranges Decl. Ex. AP.
[31] J.S. Decl. ¶ 11; C.I. Decl. ¶ 20; V.W. Decl. ¶ 15.
[32] D.D. Decl. ¶ 4.
[33] J.C.P. Decl. ¶¶ 9-10.
[34] V.W. Decl. ¶ 14; J.P. Decl. ¶ 14; Inmate Misbehavior Report for J.P. (Aug. 29, 2016) and Hearing Results for J.P. (Sep. 19, 2016), Desgranges Decl. Ex. AB.
[35] Inmate Handbook 13; R.C. Suppl. Decl. ¶ 15; C.I. Suppl. Decl. ¶ 5.
[36] Memorandum of Understanding between the Syracuse City School District and the Onondaga County Sheriff's Office (Aug. 2016), Desgranges Decl. Ex. AC.

instead merely gives every juvenile in solitary confinement a "cell packets" of newspaper clippings, crossword puzzles, and GED-related worksheets.[37] The School District does not tailor the packets to the individual juvenile's needs, fails to provide any instruction or follow-up about the packets, and fails even to collect the packets most of the time.[38]

Compounding the isolation and educational deprivation are the horrific conditions that juveniles face in the SHU. Plaintiffs' experts Leander Parker, who is the warden of the Youthful Offender Unit in the Mississippi Department of Corrections and who has three decades of correctional experience, and Dr. Barry Krisberg, a correctional expert with experience monitoring reforms to end disciplinary isolation of juveniles, both report the conditions at the Justice Center are amongst the worst that they have seen.[39] The SHU reeks of human waste and approaches bedlam with yelling from adults in the unit, who often make it impossible for the juveniles to sleep by shouting their plans to rape and attack the juveniles through the night, who masturbate in view of the juveniles, and who flash their penises at the juveniles.[40] SHU cells are dimly lit, unhygienic, and covered in graffiti or, in some cells, scratch marks from previous occupants.[41] Recreation in the SHU takes place in filthy chain-linked indoor cages, only a little

[37] *See* Answer of Defendant Syracuse City School District ("District Answer") ¶¶ 60, 64; R.C. Cell Packet, R.C. Suppl. Decl. Ex. 3; V.W. Cell Packet, V.W. Suppl. Decl. Ex. 1; V.W. Decl. ¶ 7; R.C. Decl. ¶ 7; R.C. Suppl. Decl. ¶ 6; C.I. Decl. ¶ 11; M.R. Decl. ¶ 14; F.K. Decl. ¶ 8; J.P. Decl. ¶ 9; C.B. Decl. ¶¶ 10, 14; J.S. Decl. ¶ 15; M.S. Decl. ¶ 10.
[38] District Answer ¶¶ 60, 64; V.W. Decl. ¶ 7; R.C. Decl. ¶ 7; R.C. Suppl. Decl. ¶ 6; C.I. Decl. ¶ 11; M.R. Decl. ¶ 14; F.K. Decl. ¶ 8; J.P. Decl. ¶ 9; C.B. Decl. ¶¶ 10, 14; J.S. Decl. ¶ 15; M.S. Decl. ¶ 10.
[39] Parker Decl. ¶ 42; Krisberg Decl. ¶ 47.
[40] Krisberg Decl. ¶¶ 47, 50; Kraus Decl. ¶ 26; J.C.P. Decl. ¶ 12; D.D. Decl. ¶ 11; D.P. Decl. ¶19; C.C. Decl ¶ 21; J.S. Decl. ¶ 16; M.S. Decl. ¶¶ 11, 13-14; C.I. Decl. ¶ 13; R.C. Decl. ¶ 8; R.C. Suppl. Decl. ¶ 3-4; C.B. Decl. ¶ 11.
[41] Krisberg Decl. ¶¶ 47-48 (attaching photos); Parker Decl. ¶ 42; R.C. Decl. ¶ 9; C.B. Decl. ¶ 10; C.I. Decl. ¶ 10.

bigger than a SHU cell, where there is nothing to do.[42] Some juveniles refuse to shower or go to recreation because some adults take advantage of that time by throwing their feces and urine on them.[43]

Juveniles at the Justice Center spend weeks and even months in these forms of disciplinary isolation. The 79 juveniles served an average of 26 days in solitary confinement.[44] Nearly half (44%) of these juveniles—including all of the named plaintiffs—served 20 or more days in solitary.[45] Named plaintiff V.W. has served over 150 days in solitary.[46] Another teenager was sentenced to 400 consecutive days in isolation, and another to 104 days.[47]

II. SOLITARY CONFINEMENT IS INFLICTING SERIOUS HARM AND SUBSTANTIALLY RISKS SERIOUS HARM ON JUVENILES.

As described by plaintiffs' expert Dr. Louis Kraus, a child and adolescent psychiatrist, the Sheriff's Office's use of solitary confinement inflicts serious harm and substantially risks serious harm on juveniles.[48] As Dr. Kraus explains, the scientific consensus is that juveniles are especially susceptible to psychological harm from isolation because they are still developing socially, psychologically, and neurologically.[49] Disciplinary isolation perpetuates, worsens, or precipitates mental health concerns in juveniles.[50] It can lead to long-term mental health conditions and can induce trauma, which has a high likelihood of causing permanent changes in adolescent brain development and creating a higher risk of permanent psychiatric aftereffects.[51]

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[42] Kraus Decl. ¶ 49 (attaching photos); V.W. Decl. ¶ 6; R.C. Decl. ¶ 5; C.I. Decl. ¶¶ 9, 13; M.R. Decl. ¶¶ 11, 16; F.K. Decl. ¶ 5; J.P. Decl. ¶ 7; F.K. Decl. ¶ 10; D.D. Decl. ¶ 9; M.S. Decl. ¶ 10.
[43] M.S. Decl. ¶¶ 11-12, 14; D.D. Decl. ¶ 10; R.C. Suppl. Decl. ¶¶ 3-4; J.C.P. Decl. ¶¶ 12-14.
[44] Shames Decl. ¶ 10.
[45] *Id*. ¶¶ 11, 18-23.
[46] *Id*. ¶ 23.
[47] *Id.* ¶ 8.
[48] Kraus Decl. ¶¶ 49, 51.
[49] *Id*. ¶ 30.
[50] *Id*. ¶¶ 30-32.
[51] *Id.* ¶¶ 32-34.

Disciplinary isolation also creates risks of suicide—almost all suicides in juvenile correctional settings occur when juveniles are in some type of isolation and solitary confinement also increases the long-term risk of suicide substantially when compared to the general population.[52] Because juveniles with mental illnesses—expected to be over 60% of juveniles in correctional settings—already have weakened defensive mechanisms due to cognitive deficits in their brain structure or biochemistry, they are at an even higher risk for further mental health complications and more susceptible to significant trauma of social isolation.[53]

After conducting clinical assessments of 10 juveniles and examining mental health records of 11 juveniles received in expedited discovery, Dr. Kraus found that these expected risks of serious harm are indeed being inflicted on the juveniles at the Justice Center and that the Sheriff's Office is failing to address the substantial risks of serious harm. Dr. Kraus found that juveniles at the Justice Center, including the named plaintiffs, are exhibiting symptoms that directly correlate with the experience of solitary confinement, including suicidal ideations, major depression, a disconnect from reality, post-traumatic symptoms, agitation, and worsening symptoms of Attention Deficit Hyperactivity Disorder ("ADHD") and Disruptive Mood Dysregulation Disorder ("DMDD").[54] Mental health records showed that eight out of eleven juveniles reported suicidal ideation or intent to staff but were simply moved to suicide watch and isolated in a strip cell until they recanted.[55] Dr. Kraus also found that all but one of the eleven juveniles whose mental health records he reviewed, including all named plaintiffs, had pre-existing mental illnesses that the Sheriff's Office knew about, yet the Sheriff's Office placed these juveniles in solitary confinement even knowing that two of the juveniles had a prior history

[52] *Id.* ¶¶ 31-32.
[53] *Id.* ¶¶ 35-36.
[54] *Id.* ¶¶ 38-44.
[55] Kraus Suppl. Decl. ¶ 21.

of self harm or suicidal ideation.[56] The juveniles at the Justice Center are at an even greater risk of harm to their mental health from solitary confinement because many of them have pre-existing mental illnesses, and also because many of them are exposed to threats and sexual harassment from adults, which can "worsen anxiety, stress, depressive symptoms, and suicidal ideations for the children" and result in "other forms of psychic harm like post-traumatic stress disorder."[57]

Beyond Dr. Kraus's observations and opinions, the harm to juveniles is described further in declarations submitted by the juveniles and their parents:

- F.K., a 17-year-old boy, who Dr. Kraus diagnosed as having major depression, wanted to hurt himself because of solitary and other stress;[58]
- C.C., a 16-year-old girl, wrote a letter to her mother expressing her suicidal thoughts after spending weeks in solitary;[59]
- T.S., a 16-year old boy, was taken from solitary to suicide watch and then back to solitary after a few days;[60]
- C.B., a 17-year-old boy, who has Fetal Alcohol Syndrome, ADHD, and an anxiety disorder, felt so depressed and anxious in isolation that he suffered from repeated headaches;[61]
- R.C., a 17-year-old boy, reported being dizzy, being light-headed, losing weight, and losing hair while in solitary confinement;[62]
- M.S., a 17-year-old boy with bipolar disorder, was so stressed and anxious in solitary that at least once a week he'd throw up in his cell and since his release from the Justice Center, prefers not to be in a room with a closed door and has trouble sleeping at night;[63]

[56] *Id*. ¶¶ 12-13, 23.
[57] Kraus Decl. ¶ 44.
[58] F.K. Decl. ¶ 19.
[59] C.C. Decl. ¶ 25.
[60] Lomack Decl. ¶¶ 11-13.
[61] C.B. Decl. ¶ 14.
[62] R.C. Decl. ¶ 2.
[63] M.S. Decl. ¶¶ 15-16.

- D.P., a 17-year-old boy, who receives anti-depressants because of a history of self-harm, was placed in solitary where he heard imaginary voices.[64]

III. SOLITARY CONFINEMENT IS NOT MAKING THE FACILITY SAFE.

All three of the plaintiffs' experts agree that the Sheriff's Office's use of solitary confinement is not making the facility safe. Disciplinary isolation does nothing to deter bad behavior, encourage better behavior, or to rehabilitate misbehaving youths.[65] To the contrary, it inhibits juveniles' ability to cope with stressful situations and leaves them angrier and more disturbed, and therefore leads to more misbehavior and rule infractions.[66] As explained in greater detail in the declarations of Dr. Krisberg and Warden Parker, the Sheriff's Office is making the facility less safe by routinely imposing isolation for minor misbehavior that would be more effectively managed with lesser sanctions and, even for more serious misbehavior, continuing the isolation past the time necessary to secure safety.[67]

ARGUMENT

Plaintiffs seek an injunction ordering the Sheriff's Office to stop using disciplinary isolation for juveniles, ordering all defendants to afford eligible juveniles who are denied educational instruction with notice and an opportunity to be heard, and ordering all defendants to afford juveniles with qualifying disabilities under the IDEA with a free and appropriate public education and mandated process. Plaintiffs meet the requirements for such relief because they have a "clear or substantial" likelihood of success on the merits, make a "strong showing" of irreparable harm in the absence of preliminary relief, the balance of equities tips in their favor, and such an injunction is in the public interest. *See N.Y. ex rel. Schneiderman v. Actavis PLC*,

[64] D.P. Decl. ¶¶ 7, 10-11, 17.
[65] Krisberg Decl. ¶ 23; Parker Decl. ¶¶ 16, 38-39, 44, 47.
[66] Kraus Decl. ¶ 56; *see also* C.I. Suppl. Decl. ¶¶ 9-13.
[67] Krisberg Decl. ¶ 44; Parker Decl. ¶ 14 *et seq*.

787 F.3d 638, 650 (2d Cir. 2015) (setting forth standard for mandatory relief) (citations and internal quotation marks omitted). To the extent the class is not certified at the time the Court rules on the motion for preliminary injunction, it "may conditionally certify the class or otherwise award a broad preliminary injunction, without a formal class ruling, under its general equity powers." *Strouchler v. Shah*, 891 F. Supp. 2d 504, 517 (S.D.N.Y. 2012) (citation and internal quotations omitted).

I. THE PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THEIR EIGHTH AND FOURTEENTH AMENDMENT CHALLENGE TO THE SOLITARY CONFINEMENT OF JUVENILES.

For the nearly 90 percent of plaintiffs' class that consist of pre-trial detainees, *see supra* p. 3, the Fourteenth Amendment protects them against any form of punishment and thus provides broader protections than the Eighth Amendment provides to post-conviction detainees. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475 (2015) (so holding in an excessive force case). Nonetheless, for this motion, the plaintiffs focus on the Eighth Amendment standard because, by establishing an Eighth Amendment violation, as plaintiffs do here, plaintiffs establish a constitutional violation for both pre-trial and post-conviction juveniles.[68]

Neither the Supreme Court nor the Courts of Appeals have addressed whether the Eighth Amendment bars solitary confinement of juveniles. But the Supreme Court has held in a series of recent cases that juveniles enjoy greater constitutional protections under the Eighth Amendment. *See Graham v. Florida*, 560 U.S. 48, 68-69 (2010) (recognizing that "developments in psychology and brain science continue to show fundamental differences between juveniles and adult minds," and holding that juveniles cannot be sentenced to life without parole ("LWOP")

[68] Plaintiffs contend that *Kingsley* overruled the Second Circuit decision in *Caiozzo v. Koreman*, which held that the same deliberate indifference standard under the Eighth and Fourteenth Amendments apply to pretrial and post-conviction detainees, 581 F.3d 63, 69-70 (2d Cir. 2009), but the circuit has not ruled post-*Kingsley* on the standard that should apply to conditions of pre-trial confinement.

for non-homicide offenses); *Miller v. Alabama,* 132 S. Ct. 2455, 2464 (2012) (recognizing that "children are constitutionally different from adults for sentencing purposes" and striking down mandatory LWOP sentences for juveniles convicted of homicide); *Roper v. Simmons,* 543 U.S. 551, 573-74 (2005) (holding that the death penalty cannot be imposed on juveniles in light of juveniles' vulnerabilities and differences with adults). And nearly every district court that has confronted the issue over the last 45 years has found that even short periods of solitary confinement violate juveniles' Fourteenth and Eighth Amendment rights. *See infra* pp. 15-16.

Under the Eighth Amendment, correctional facility discipline that results in the "unnecessary and wanton infliction of pain" constitutes cruel and unusual punishment. *Hope v. Pelzer,* 536 U.S. 730, 737 (2002) (citation omitted). In *Hope*, a case in which a prisoner was tied to a hitching post for seven hours without regular access to water or any bathroom break as punishment for fighting with a guard, the Court explained that the infliction of pain for disciplinary purposes is "unnecessary and wanton" when officials act with "deliberate indifference" to an inmate's health or safety. *Id.* at 737-38. The Court held that Hope established deliberate indifference because he was subjected to a "substantial risk of physical harm" that was obvious to the guards and because "any safety concerns had long . . . abated" given that the guards had subdued, restrained, and transported him back to the prison. *Id.* at 738.

In following *Hope*'s guidance, the Second Circuit has held that in cases challenging correctional facility discipline, deliberate indifference requires both a showing that defendants caused a risk of harm that is "objectively sufficiently serious," *Trammell v. Keane*, 338 F.3d 155, 161 (2d Cir. 2003), and that defendants subjectively "kn[e]w[] of and disregard[ed]" the risk. *Id.* at 164 (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). In addition, facility discipline that is not "reasonably calculated to restore prison discipline and security" is evidence of cruel and

unusual punishment. *Id.* at 163. The plaintiffs address each of these three elements of an Eighth Amendment claim.

A. Solitary Confinement Poses an Objectively Sufficiently Serious Harm on Juveniles.

Solitary confinement of juveniles at the Justice Center inflicts "objectively sufficiently serious" harm. *Trammell*, 338 F.3d at 161 (internal quotations omitted). The Supreme Court has explained that this objective prong of the Eighth Amendment requires "a scientific and statistical inquiry into the seriousness of the potential harm" and its likelihood, as well as an assessment of whether that harm is sufficiently serious, which is measured by "whether society considers the risk . . . to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Helling v. McKinney*, 509 U.S. 25, 36 (1993) (emphasis in original). The plaintiffs satisfy both parts of this analysis.

i. Solitary Confinement Poses a Serious Harm on Juveniles Because of Their Heightened Vulnerability.

The Supreme Court has held that harm is serious for Eighth Amendment purposes where, as here, there is a scientific showing of "substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (describing the harm test set forth by *Helling*); *see also Peoples v. Fischer*, No. 11-CV-2694 (SAS), 2012 WL 1575302, at *8 & n.107 (S.D.N.Y. May 3, 2012) (allowing a challenge to solitary confinement to proceed relying upon *Farmer*'s "substantial risk of serious harm" standard). Given the evidence summarized above, *supra* pp. 8-11, and described in more detail in the declarations of Dr. Kraus and of the 13 juveniles and 3 parents, the Court should hold that juveniles at the Justice Center are as a class at a substantial risk of serious harm from the Sheriff's Office's solitary confinement practices.

First, as described above, a significant percentage of the juveniles at the Justice Center, including all of the named plaintiffs, are at a substantial risk of serious harm because they have

pre-existing mental illnesses, and courts around the country have consistently held that the Eighth Amendment prohibits placing adults with mental health conditions in solitary confinement. *See, e.g., Madrid v. Gomez,* 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).[69] As one court found, "[f]or these inmates, placing them in the SHU is the mental equivalent of putting an asthmatic in a place with little air to breathe." *Id.* Given that this case involves *juveniles* with pre-existing illnesses, the risk of serious harm is even greater. *See* Kraus Decl. ¶¶ 36-38.

Second, just as courts around the country have found that those with mental illnesses are at a substantial risk of serious harm from solitary confinement because they are a vulnerable class, this Court should find that juveniles are at a substantial risk of serious harm because they likewise are a vulnerable class. *See supra* pp. 8-9; Kraus Decl. ¶ 30. District courts have already repeatedly recognized this principle over the last 45 years and held that solitary confinement of juveniles, even for very short periods of time, poses a substantial risk of serious harm. *See Lollis*

[69] *See also e.g.*, *Cmty. Legal Aid Soc'y. v. Coupe*, No. 15-CV-688 (GMS), 2016 WL 1055741, at *4 (D. Del. Mar. 16, 2016) (holding that plaintiff stated an Eighth Amendment claim by alleging that defendants placed individuals with serious mental illness in solitary confinement); *Ind. Protection & Advocacy Servs. Comm'n v. Comm'r,* 1:08-cv-01317, 2012 WL 6738517, at *23 (S.D. Ind., Dec. 31, 2012) (holding that the practice of placing prisoners with serious mental illness in segregation without providing them adequate mental health treatment violated the Eighth Amendment); *Jones 'El v. Berge,* 164 F. Supp. 2d 1096, 1117 (W.D. Wis. 2001) (granting injunctive relief to prisoners with serious mental illness housed in a supermax prison where they were in almost complete isolation); *Ruiz v. Johnson,* 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999) (holding unconstitutional the solitary confinement of mentally-ill prisoners), *rev'd on other grounds*, 243 F.3d 941 (5th Cir.2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995) ("[D]efendants' present policies and practices with respect to housing of [prisoners with serious mental disorders] in administrative segregation and in segregated housing units violate the Eighth Amendment rights of class members."); *Casey v. Lewis*, 834 F. Supp. 1477, 1549-50 (D. Ariz. 1993) (finding an Eighth Amendment violation when "[d]espite their knowledge of the harm to seriously mentally ill inmates, ADOC routinely assigns or transfers seriously mentally ill inmates to [segregation units]"); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1989) (holding that prison officials' failure to screen out from SHU "those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" plausibly rises to cruel and unusual punishment).

v. N.Y. State Dep't of Soc. Servs., 322 F. Supp. 473, 482-83 (S.D.N.Y. 1970) (finding the solitary confinement of two juveniles in a barren room for six days and two weeks respectively as punishment for fighting to be cruel and unusual punishment and issuing a preliminary injunction to stop their continued confinement based on the declarations of psychiatrists, psychologists and educators who were "unanimous in their condemnation" of the practice); *Morgan v. Sproat*, 432 F. Supp. 1130, 1138-40 (D. Miss. 1977) (relying on expert testimony of harm and evidence of a suicidal attempt and finding that confining delinquent teenage boys for an average of 11 days in a barren room, where they were prohibited from talking to others and were allowed out only during recreation and twice-daily showers, violated the Eighth Amendment); *Inmates of Boys' Training Sch. v. Affleck*, 346 F. Supp. 1354, 1360, 1366-67 (D.R.I. 1972) (finding that isolation of juveniles for 3 to 7 days "in a dark and stripped confinement cell with inadequate warmth and no human contact can only lead to [their] destruction" and amounted to cruel and unusual punishment); *Doe v. Hommrich, et al.*, No. 3:16-cv-00799 (AAT), Temporary Restraining Order ¶ 3, 6, 8, ECF No. 9 (M.D. Tenn. April 25, 2016) (issuing a temporary restraining order preventing further isolation of a juvenile who had been in solitary for 6 days and concluding that the "solitary confinement of juveniles for punitive or disciplinary reasons, especially for the length of time that Defendants have confined Plaintiff and especially for youth who may suffer from mental illness, violates the Eighth Amendment's prohibitions against inhumane treatment of detainees"), Desgranges Decl. Ex. AD.[70]

[70] Though not employing the deliberate indifference standard, other district courts have found the use of solitary confinement for juveniles to be so excessive as to constitute punishment of pre-trial detainees in violation of substantive due process under the Fourteenth Amendment. *See, e.g.*, *D.B. v. Tewksbury*, 545 F. Supp. 896, 905 (D. Or. 1982) (finding that placing younger children in isolation cells to protect them from older youth is punishment and violates the Fourteenth Amendment); *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1155-56 (D. Haw. 2006) (granting preliminary injunction on, inter alia, policy of placing youth in long-term isolation "to

Third, juveniles in solitary confinement at the Justice Center are particularly vulnerable to the risk of harm because the threats and sexual harassment they face from adults compounds the risk of psychiatric harm. *See* Kraus Decl. ¶ 44; *Villante v. Dep't of Corr.*, 786 F.2d 516, 522 (2d Cir. 1986) (holding that "proof that [sexual] threats and abuse were a condition of confinement" for an adult inmate and proof that defendants were deliberately indifferent to the pervasive risk of harm would establish an Eighth Amendment violation); *see also Walker v. Schult*, 717 F.3d 119, 125 (2d Cir. 2013) (holding that an inmate may show that a "combination" of conditions posed "an unreasonable risk of serious damage to his health").

ii. The Harm Posed By Solitary Confinement Is Sufficiently Serious Because It Violates Contemporary Standards of Decency.

The harm described above is sufficiently serious under "contemporary standards of decency." *Helling*, 509 U.S. at 36. Federal and state practices "are an important part of the Court's inquiry" into contemporary standards, *see Graham*, 560 U.S. at 62, and a consensus is emerging rejecting disciplinary isolation for juveniles. In 2016, the federal government ended the use of solitary confinement for juveniles in its prisons.[71] At least 21 states, including New York, have prohibited juvenile detention facilities from using disciplinary isolation for juveniles.[72] New York and North Carolina, the only two states that automatically prosecute 16-year-olds as

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separate LGBT wards from their abusers."). Plaintiffs are aware of only one case challenging solitary confinement for juveniles, *Hughes v. Judd*, where the court did not find a constitutional violation, but that case is readily distinguishable because the court there found that defendants instituted policy changes and had not used 24-hour isolation in two years. 108 F. Supp. 3d 1167, 1257 (M.D. Fla. 2015). By contrast, here, defendants continue to routinely place juveniles in 23-hour, and in some cases 24-hour, isolation.

[71] *See* Fact Sheet: Department of Justice Review of Solitary Confinement, whitehouse.gov (Jan. 25, 2016), Desgranges Decl. Ex. AE.

[72] *See* Lowenstein Sandler LLP & Lowenstein Center for the Public Interest, *51-Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems* (Oct. 2015), Desgranges Decl. Ex. AH.

adults, have banned solitary confinement for juveniles in their respective state prison systems.[73] Finally, in the Los Angeles juvenile justice system and Rikers Island—the largest adult jail in New York and second largest in the country—solitary confinement for juveniles has also been banned.[74]

Courts also rely on psychiatric and professional studies to evaluate contemporary standards of decency, *see Hall v. Florida*, 134 S. Ct. 1986, 1993 (2014) (consulting "psychiatric and professional studies" to determine whether there is a consensus that "instructs how to decide" the Eighth Amendment claim), and there is a clear consensus among studies that disciplinary isolation should never be used for juveniles. Noting their "developmental vulnerability" and noting that most suicides in juvenile correctional facilities occur when the juvenile is in isolation, the American Academy of Child & Adolescent Psychiatry and the American Medical Association, as well as other medical professional organizations, opposes the use of solitary confinement for juveniles.[75] There is also an emerging consensus among the

[73] Press Release, Office of Governor Andrew Cuomo, Governor Cuomo Announces Dramatic Reform in Use of Special Housing for Inmate Discipline, Desgranges Decl. Exhibit AW; *see also* Press Release, N.C. Dep't of Public Safety (Dec. 16, 2015), State Prison System Announces End to Solitary for Inmates Under 18 (Jun. 15, 2016), Desgranges Decl. Ex. AI.

[74] *See* "Juvenile Solitary Confinement has been Banned in L.A. County" (May 3, 2016), Desgranges Decl. Ex. AJ; *see also* "NYC Declares an End to Solitary for Inmates Under 21" (Jan. 14, 2015), Desgranges Decl. Ex. AK. International standards also condemn the practice. *See* General Comment No. 10 of Comm. on the Rights of the Child on its Forty-Fifth Session, ¶ 89, U.N. Doc. CRC/C/GC/10, (Apr. 25, 2007) (prohibiting the use of solitary confinement on juveniles), Desgranges Decl. Ex. AF; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc A/RES/70/175 (Dec. 17, 2015) (same), Decl. Ex. AG.

[75] *See* Solitary Confinement of Juvenile Offenders, Am. Acad. of Child & Adolescent Psychiatry (April 2012), Desgranges Decl. Ex. AL; *see also* Press Release, Am. Med. Assoc., AMA Adopts New Policies to Improve Health of Nation at Interim Meeting (Nov. 11, 2014), Desgranges Decl. Ex. AM (calling on correctional facilities to halt the isolation of juveniles in solitary confinement for disciplinary purposes); Policy Statement of Am. Public Health Assoc., Solitary Confinement as a Public Health Issue (Nov. 5, 2013), Desgranges Decl. Ex. AN (juveniles should be categorically excluded from solitary confinement).

corrections field, including from the agency that accredits the Justice Center, that solitary confinement should not be used on juveniles.[76]

Finally, the Prison Rape Elimination Act establishes a national consensus that juveniles should be protected from adults: it prohibits placing inmates under age 18 in a housing unit where they have "sight, sound, or physical contact with an adult inmate through the use of a shared . . . common space, shower area, or sleeping quarters." 28 C.F.R. § 115.14; *see also Graham*, 560 U.S. at 62 ("[T]he 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'") (citation omitted).

B. The Sheriff's Office Knew of and Disregarded the Risk of Harm Inflicted on Juveniles by Its Solitary Confinement Policies and Practices.

The subjective element of Eighth Amendment liability is met here because the Sheriff's Office has been acting with deliberate indifference—it has known of and disregarded an excessive risk to the juveniles' health and safety. *Farmer*, 511 U.S. at 837. *Farmer* holds that plaintiffs may rely on "developments that postdate the pleadings and pretrial motions," such as continued conduct in the face of allegations and evidence of "an objectively intolerable risk of serious injury," to establish deliberate indifference to an excessive risk of harm. *Id.* at 846 & n.9. Here, since the plaintiffs detailed the serious harms and risk of harm inflicted on juveniles in solitary confinement in their complaint and class certification papers, *see* Compl., ECF No. 1, and Kraus Decl. (and supporting exhibits), the defendants have continued to place juveniles in solitary and had placed at least 23 more juveniles in solitary confinement as of the filing of this memorandum. Shames Decl. ¶ 14. The Court need look no further than the post-filing behavior of defendants to conclude that the subjective element of deliberate indifference is met.

[76] Position Statement of Nat'l Comm'n on Corr. Health Care, Solitary Confinement (Isolation) (Apr. 10 2016), Desgranges Decl. Ex. AO ("[J]uveniles . . . should be excluded from solitary confinement for any duration."); Krisberg Decl ¶ 26; Kraus Decl. ¶ 51.

But the defendants in this case have not just ignored evidence presented to them since this case was filed in September 2016. Between December 2015 and the filing of this case, the defendants were repeatedly warned about the risk of solitary at the Justice Center through personal meetings,[77] correspondence with advocates,[78] prior litigation,[79] their own observations,[80] and complaints from parents and juveniles.[81] This type of blind perpetuation of harmful policies and practices despite warnings and observations is prototypical deliberate indifference. *See Walker v. Schult*, 717 F.3d 119, 129-30 (2d Cir. 2013) (holding plaintiff adequately pled that defendants knew of, and disregarded, risk of harm because conditions of confinement did not change after plaintiff made repeated complaints about those conditions); *Johnson v. Wright*, 412 F.3d 398, 404 (2d Cir. 2005) (finding that defendants' failure to "investigate—let alone verify—whether it would be medically appropriate to ignore the unanimous advice of Johnson's treating physicians" was evidence of deliberate indifference).

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[77] *See* NaPier Decl. ¶¶ 5-15 (discussing in-person meetings and correspondence where she and other advocates spelled out the dangers, including mental health risks like depression and suicide, that are associated with the disciplinary isolation of juveniles).

[78] Letter from Joshua T. Cotter, Staff Attorney, Legal Services of Central New York, to Esteban Gonzalez, Chief Custody Deputy, Onondaga County Justice Center (Nov. 23, 2015), Desgranges Decl. Ex. AQ.

[79] Verified Pet. & Compl. & Supporting Papers, *T.S. v. Conway*, ¶ 19 (Dec. 15, 2015), Desgranges Decl. Ex. AR (stating that putting the juvenile in solitary confinement "has the very real likelihood to cause him severe developmental and psychological harm.").

[80] Kraus Decl. ¶ 20 (noting 8 juveniles who expressed suicidal ideation to jail staff); *see also* F.K. Decl. ¶ 19; V.W. Decl. ¶ 15; Mental Health Services Directive ("Mental Health Directive") 2 (Jun. 18, 2014), Desgranges Decl. Ex. AV ("Staff members will report and document in the log book any inmates who appear to them, or any other staff member, to be in need of mental health services, without delay, through the chain of command."); R.C. Suppl. Decl. ¶¶ 3-5 (noting that jail staff observed adult harassment and made it worse).

[81] Appeal of Administrative Segregation Designation from V.W. to Chief Gonzalez (Aug. 31, 2016), Desgranges Decl. Ex. AS (formal complaint of a juvenile); Appeal of Administrative Segregation Designation from J.P. to Chief Gonzalez (Aug. 31, 2016), Desgranges Decl. Ex. AT (same); Appeal of Disciplinary Hearing Decision from R.C. to Chief Gonzalez (undated), Desgranges Decl. Ex. AU (same); C.C. Decl. ¶ 26, 29, 31; Brown Decl. ¶¶ 11, 15-20 (describing complaint of a juvenile's mother).

C. The Sheriff's Office's Use of Solitary Confinement Is Not Reasonably Calculated to Restore Prison Discipline and Safety.

The Second Circuit has held that evidence that discipline is not "reasonably calculated to restore prison discipline and security" supports a finding of deliberate indifference. *Trammell*, 338 F.3d at 163-64 (considering the context of the discipline in determining deliberate indifference); *see also Hope*, 536 U.S. at 737 (holding that inflicting pain without penological justification—there, hitching an inmate to a post after safety concerns had abated—violates the Eighth Amendment).

In this case, Dr. Krisberg and Warden Parker opine that the Sheriff's Office's use of solitary confinement is indeed not reasonably calculated to restore facility discipline and security. *See* Kraus Decl. ¶¶ 41-44; Krisberg Decl. ¶¶ 23-25; Parker Decl. ¶¶ 14, 16, 28, 39-40, 44-48; *see also supra* p. 11. The experiences of other jurisdictions and the professional consensus on the subject, as described by both experts, further confirm their opinions. Facilities that have implemented reforms to reduce isolation of youths, including in Mississippi, California, Illinois, Ohio, and Louisiana, have done so without compromising security; the Department of Youth Services in Ohio, which eliminated disciplinary isolation, has reported that its reforms have led to a 22% decrease in rate of violent acts in its facilities in comparing 2014 and 2015.[82] The Sheriff's Office can safely eliminate its use of disciplinary isolation, as outlined further in the affidavits of the two experts.

Even if the Sheriff's Office claims some penological justification is served by placing juveniles in solitary confinement, that cannot relieve the Sheriff's Office of liability. Since its solitary confinement practices are "sufficiently harmful . . . or otherwise reprehensible to civilized society," they do not pass constitutional muster even if defendants can provide "some

[82] Krisberg Decl. ¶ 41; Ohio Dep't of Youth Services, *Extraordinary Reform in Ohio's Juvenile Justice System,* Krisberg Decl. Ex. D; *see also* Parker Decl. ¶ 37.

penological justification" for those practices. *Madrid*, 889 F. Supp. 1262 (finding the use of solitary confinement against adults with mental illnesses to be cruel and unusual even though the facility provided some justification); *see supra* pp. 14-19.

II. THE PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THEIR FOURTEENTH AMENDMENT AND IDEA CLAIMS FOR DENIAL OF EDUCATIONAL SERVICES.

The plaintiffs further seek preliminary injunctive relief on their federal constitutional and statutory claims arising out of the defendants' systemic denial of educational services. As a matter of policy, the defendants deprive all youths placed in disciplinary isolation of educational instruction. *See* Inmate Handbook 13; District Answer ¶¶ 1, 8, 60, 64. Instead of instruction, defendants merely provide "cell packets" to juveniles who are in solitary, but these cell packets are entirely inadequate. *See* Kraus Suppl. Decl. ¶¶ 31-38; *see also supra* p. 7. Defendants' policies have denied children hundreds of days of classroom instruction.[83]

The plaintiffs first claim that the Sheriff's Office and School District are denying them educational instruction in violation of procedural due process protections of the Fourteenth Amendment. New York statutes and regulations create a property interest by entitling juveniles in correctional facilities to at least three hours of instruction, five days a week. N.Y. Educ. L. § 3202(7); N.Y. Comp. Code R. & Regs. tit. 8, § 118.4; *id*. tit. 9 §§ 7070.1-7070.2; *see also Handberry v. Thompson*, 92 F. Supp. 2d 244, 248 (2000) (finding constitutionally protected property interest in education for incarcerated youth under New York's Education Law). The Second Circuit has found this particular entitlement protected by due process. *Handberry v. Thompson*, 446 F.3d 335, 356 (2d Cir. 2006) ("We also affirm the judgment insofar as it [orders a minimum of 15 hours of instruction per week] *on the basis of the due process clause of the*

[83] Sixty-eight juveniles admitted to the Justice Center between October 19, 2015 and October 19, 2016 were eligible for 3,220 days of education. Because of isolation sanctions, these juveniles were denied, at minimum, 897 days of educational instruction. Shames Decl. ¶¶ 15-17.

Fourteenth Amendment." (emphasis added)). Juveniles' procedural due process rights are being violated because they are being deprived of this entitlement without any notice or an opportunity to be heard. *See Goss v. Lopez*, 419 U.S. 565, 579 (1975) (holding that students facing deprivation of a protected property interest through suspension "must be given some kind of notice and afforded some kind of hearing").

The plaintiffs further claim that the defendants are denying them procedural protections and special educational services that juveniles with qualifying disabilities are entitled to under the Individuals with Disabilities Education Act ("IDEA"). During the previous school year, at least 48 juveniles detained at the Justice Center had qualifying disabilities under the IDEA. N.Y. State Ed. Dep't Office of Student Support Servs., Education of Incarcerated Youth Program Plan for Onondaga County Justice Center ("Education Program Plan") (May 2016), Desgranges Decl. Ex. AX. The IDEA protects students with qualifying disabilities from being excluded from educational instruction for more than ten school days by requiring a hearing to determine whether the juvenile's misconduct was a manifestation of their disability. 20 U.S.C. § 1415(k); 34 C.F.R. § 300.536.[84] Juveniles whose misconduct was a manifestation of their disabilities are still entitled to a free appropriate public education ("FAPE") in an alternative educational setting. *See* 20 U.S.C. § 1412 (a)(1)(A); 34 C.F.R. § 300.530(d)(1)(i). The School District concedes it does not provide manifestation hearings at the Justice Center. District Answer ¶ 67; *see also* V.W. Decl. ¶ 8; R.C. Decl. ¶ 7; F.K. Decl. ¶¶ 15-16.

Moreover, defendants violate the IDEA by failing to provide a FAPE, tailored with special education and related services, that meets the needs of juveniles in solitary confinement

[84] *See also* Statement of Interest of the United States of America, *G.F. v. Contra Costa Cnty.*, No. 3:13-cv-3667, 2014 WL 6471703, at *11 (N.D. Cal. Feb. 13, 2014); Melody Musgrove & Michael K. Yudin, "*Dear Colleague*" Letter, U.S. Dep't of Educ. at 16 (Dec. 5, 2014), *available at*: https://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf.

at the Justice Center who have qualifying disabilities. 20 U.S.C. § 1400(d)(1)(a); 34 C.F.R. § 300.2(b)(1). Under the IDEA, the defendants share the obligation to provide juveniles with disabilities a FAPE. *See* 20 U.S.C. §§ 1401(9), 1412(a)(12), 1414(d); *see also* N.Y. Comp. Code R. & Regs., tit. 9 § 7070.3 (placing obligation on chief administrative officer of each local correctional facility to coordinate with the LEA to provide appropriate educational services). Instead of providing an individualized FAPE, however, defendants merely provide photocopied cell packets to juveniles with IEPs who are disciplined with solitary confinement. Simply giving a child with disabilities a packet of rote worksheets, without any direct instruction, cannot possibly satisfy the requirements of individualized education under the IDEA. Kraus Suppl. Decl. ¶¶ 27-28; 30-38; *Handberry v. Thompson*, 219 F. Supp. 2d 525, 545 (S.D.N.Y. 2002) (finding that the provision of cell packets with minimal instruction by phone is inadequate and a "pathetic level of educational services"); Kraus Decl. ¶ 63; District Answer ¶¶ 60, 67; Response in Support of District's Motion for Sum. J. at 5, ECF. No. 45.

III. PLAINTIFFS SATISFY THE REMAINING ELEMENTS FOR A PRELIMINARY INJUNCTION.

The irreparable harm suffered by plaintiffs, as a result of their unconstitutional conditions of confinement, justifies the issuance of a preliminary injunction. *See Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (affirming irreparable injury flowing from Eighth Amendment allegations where plaintiff was kept in medical isolation at prison); *see also Johnson v. Wetzel*, No. 16 Civ. 863, 2016 WL 5118149, at *11 (M.D. Penn. Sept. 20, 2016) (finding irreparable harm where inmate demonstrated escalating symptoms of mental degradation due to solitary confinement). Loss of education and special education services also constitutes irreparable harm justifying issuance of a preliminary injunction because these violations increase juveniles' isolation and risk of mental harm and also result in "significant setbacks," including reducing the

chances of graduation. *Cosgrove v. Bd. of Educ. of Niskayuna Cent. Sch. Dist.*, 175 F. Supp. 2d 375, 392-93 (N.D.N.Y. 2001) (collecting cases where a denial of special education services was found to be irreparable harm); *Coleman v. Newburgh Enlarged City Sch. Dist.*, 319 F. Supp.2d 446, 453 (S.D.N.Y. 2004) (in a case challenging a suspension on procedural and substantive grounds, finding irreparable harm in part because of jeopardy to "the quantity and quality of the Plaintiff's education" and "the Plaintiff's chance to graduate from high school"); *see* Kraus Suppl. Decl. ¶ 39.

The balance of equities and public interest are also decidedly in plaintiffs' favor. Any interest that the defendants have is outweighed by the ongoing irreparable harm plaintiffs are suffering as a result of defendants' constitutional and statutory violations. *See Step By Step Inc., v. City of Ogdensburg*, 176 F. Supp. 3d 112, 135 (N.D.N.Y. 2016) (Hurd, J.) (concluding defendant "cannot assert an equitable interest in perpetuating discriminatory actions" in violation of federal statutes). Moreover, as there is no penological justification for defendants' policy and practices, *see supra* pp. 21-22, they do not serve the public interest. *Cf. Ligon v. City of New York*, 925 F. Supp. 2d. 478, 541 (S.D.N.Y. 2013) (granting injunction to protect the public's constitutional rights and finding the "lack of rational justification" for unconstitutional stops makes them "presumably of less value to public safety").

CONCLUSION

For the foregoing reasons, the plaintiffs respectfully request that the Court grant their motion for a preliminary injunction.

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Respectfully submitted,

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