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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

ASHOOR RASHO, et al.,	)	
	)	
Plaintiffs,	)	No. 1:07-CV-1298-MMM-JEH
	)	
v.	)	Judge Michael M. Mihm
	)	
ROB JEFFREYS, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR RELIEF FROM ONOING VIOLATIONS OF THE FEDERAL RIGHTS OF SMI CLASS MEMBERS AT DIXON AND PONTIAC IN NEED OF RESIDENTIAL TREATMENT LEVEL OF CARE

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INTRODUCTION

After months of attempting to work with Defendants to resolve the acknowledged and undisputable failures at Pontiac and Dixon to provide the Residential Treatment Unit (RTU) level of care for seriously mentally ill Class Members, Plaintiffs must ask this Court to provide critical relief. At issue here is the Settlement Agreement's minimum requirements of 10 hours of structured and 10 hours of unstructured out-of-cell time weekly in the RTUs. Within the simple framework of these two minimum requirements, the Settlement Agreement gives wide discretion to the Illinois Department of Corrections (IDOC) on how it provides that higher level of care to the Class Members whose serious mental illness includes significant functional impairments that require them to be housed in a residential treatment setting.

Defendants have long acknowledged that prisoners who have such serious mental illnesses that they need this higher level of care must have significant treatment and other out-of-cell activity, not as a privilege but as a necessity for their mental health conditions. The failure to meet the minimum requirements will worsen symptoms of their mental illnesses. In fact, the violations at issue here, in the context of the RTUs, also mean violations of the treatment and out-of-cell requirements that this Court found were necessary to prevent further decompensation for those in segregation status and crisis watch when the permanent injunction was entered.

At Pontiac, prisoners designated by Defendants as needing an RTU level of care are instead being held in their cells for 22-24 hours per day for months. They are not being provided the recreation, activity, or mental health treatment that is vital to their mental health. This extreme isolation has caused significant harm and deterioration often resulting in worsening of symptoms and a significant increase in self-harm and behavioral acting out. At Dixon, recent increases in dayroom (unstructured) time have provided some improvement, but Defendants are

still failing to provide even the bare minimum requirement of structured out-of-cell time (which includes the provision of mental health treatment). In some units at Dixon this means a near total absence of meaningful mental health treatment.

More than five years into the *Rasho* Settlement, Defendants still have not established a sustainable and functional system for providing the RTU level of care at these facilities. By doing so, Defendants have violated, and continue to violate, the terms of the Settlement Agreement and the rights of these SMI Class Members under the Eighth Amendment and the Americans with Disabilities Act.

I. FACTUAL BACKGROUND

A. The Minimum Requirements of Care in the RTUs

The IDOC's Residential Treatment Units (RTUs) house individuals who have been clinically determined to have serious mental illness (meaning a diagnosed mental condition and a significant functional impairment) and who need more treatment and activity than is provided in general population. The Agreement defines a Residential Treatment Unit as:

> A housing unit within the prison system for offenders with mental illness who do not need inpatient treatment … but who do ***require*** the therapeutic milieu and full range of services and variable security available in the RTU, as required by IDOC Administrative Directive 04.04.100, § II(E)(2) and "IDOC Mental Health Units," in the IDOC Mental Health Protocol Manual (incorporated by reference into IDOC Administrative Directive 04.04.101, § II(E)(2)). The Behavioral Management Unit (BMU) is a specialized treatment program that functions within the RTU level of care.

Settlement Agreement, § II(q)(emphasis added).

Similarly, the IDOC Administrative Directive 04.04.100, § II(E)(2) incorporated into the foregoing paragraph defines the RTU Level of Care, as:

> [A] level of care for offenders who, based on clear clinical evidence, have a serious mental illness associated with significant functional impairments, rendering the offender unable to successfully reside in a general population housing unit. An RTU level of care includes placement in an RTU setting …

> provides enhanced mental health treatment including a minimal amount of out-of-cell time per week, either as defined in established administrative directives, or as considered clinically necessary by the offender's treatment team. The out-of-cell time ***shall*** consist of both structured therapeutic activities, generally in a group setting, and unstructured recreational time equal to or greater than what is offered to offenders with the same custody classification.

The IDOC operates RTUs at four facilities: Dixon, Pontiac, Logan, and Joliet Treatment Center (JTC). For all RTUs, the Settlement Agreement, §X(d) requires "a minimum of ten (10) hours of structured therapeutic activities per week and a minimum of ten (10) hours of unstructured out of cell activities per week." Within each of the RTUs are segregation and crisis units for which additional requirements of the Settlement Agreement and Court Order apply.

B. From Partial Compliance to Pandemic Collapse

Prior to the pandemic, the Monitor's Fourth Annual Report found that Department was meeting or exceeding the minimal RTU out-of-cell time requirements at JTC, Logan and Dixon's Special Treatment Center.[1] ECF No. 3038 at 36-37. Dixon STC, the largest RTU in the system,[2] was providing 48.5 hours of unstructured and 12-13 hours of structured out-of-cell time each week. *Id.* Pontiac and Dixon X-house, on the other hand, were only providing three and five hours of weekly structured out-of-cell time respectively while meeting the unstructured requirement (by providing dayrooms and yard at Dixon and yard at Pontiac). *Id.*

All progress to achieve full compliance in the RTUs was lost with the pandemic. In November 2020, the Monitor found Defendants out of compliance with the minimum

[1] Dixon's RTU is divided into two separate programs based on security classifications—the Special Treatment Center (or STC) for general population and the X-house (or DXP) for maximum-security general population, restrictive housing and crisis watch.

[2] According to IDOC's August reports, Dixon has an RTU population of 435; JTC has 172; Logan has 67; Pontiac has 77; and Menard has 5.

requirements of Sect. X(d). ECF No. 3207 at 38. The Monitor described the disastrous impact of lockdowns on the Class:

> [The pandemic] has resulted in a drastic decrease in mental health and psychiatric services being offered to mentally ill offenders as units are quarantined, movement is restricted within and between institutions, group sizes are reduced, and other precautions are taken. Simultaneously, the demand for mental health and psychiatric services has increased. The psychiatric literature reports that individuals with and without a pre-existing psychiatric condition are at an increased risk for further decompensation due to the stress of the Covid pandemic. **This means that the mentally ill offenders of IDOC require more and not less treatment at this time.**

ECF No. 3207, Midyear Report, at 9 (emphasis added).

IDOC admitted in its Quarterly Reports that in its implementation of COVID-19 restrictions, the RTUs had stopped providing even the minimum required out-of-cell hours and asserted *force majeure.* ECF No. 3177 (October 22, 2020) at 12; ECF No. 3238 (January 25, 2021) at 17; ECF No. 3258 at 14 (April 23, 2021). Defendants asserted *force majeure* for more than a year after the pandemic began but offered no plan to mitigate or remedy their noncompliance.[3]

As a result, on April 26, 2021, Plaintiffs filed motion for relief with this Court for violations of the minimum requirements for the RTU facilities, where IDOC continued administrative lockdowns without accommodating the needs of SMI Class Members. ECF No. 3288. On June 22, after briefing and discovery, that motion was scheduled for mediation and an evidentiary hearing was set to begin September 2, 2021.

[3] In the meantime, on March 10, 2021, the parties agreed to this Court's continued jurisdiction over these and other terms of the settlement agreement for which substantial compliance had not been reached pursuant to Sect. XXIX(e). *See* ECF No. 3266. On April 23, 2021, this Court also extended the Injunction Order for the duration of the appeal in the Seventh Circuit, while also continuing the stay of proceedings on Plaintiffs' motion for contempt. ECF No. 3284.

With the approaching hearing, Defendants took steps to increase the out-of-cell time in the RTUs. Despite improvements at other facilities, violations persisted at Pontiac and Dixon. In an effort to resolve the violations without litigation, the parties agreed to identify facility-specific barriers and create plans to overcome those barriers to achieve the required minimums for RTU care. Notably, while COVID-19 safety measures are a consideration in the provision of out-of-cell activities, they are no longer the barrier to RTU care and cannot excuse the ongoing violations. Exhibit B is the agreement reached by the parties on July 29, 2021.

C. The Failed Plan to Remedy the Deprivations in RTU Level of Care

The parties' July 29 agreement created a two-step process. First, IDOC would take targeted actions at Pontiac and Dixon to address the identified, facility-specific barriers to provide RTU level of care and out-of-cell time. Second, a period of assessment followed with a requirement that on September 30th IDOC report its progress and adjust the facility plans as needed to cure the violations. *See* Ex. A, July 29 agreement. As explained below, not only did the facilities fail to achieve the minimum requirements under the plans, but Defendants' Sept. 30th report gave no plan to achieve compliance anytime in the foreseeable future.

a) PONTIAC

After more than five months of total lockdown at Pontiac due to COVID-19, by May 2021, Pontiac finally began running yard and mental health groups. But both were frequently cancelled due to daily shortages of correctional staff. Because Pontiac does not have dayrooms, when movement to program space outside the housing unit is cancelled, it means that Class Members are locked in their cells for the day. Defendants acknowledged the violations at Pontiac

and identified the source of the problem as frequent shortages of security staff needed to facilitate the movement and activity.

The core of Pontiac's plan (in the July 29th agreement) was meant to increase the ratio of staff to individuals in custody. Ex. A at 4-5. This was to be done in two ways. First, through the hiring of new correctional officers from the upcoming cadet classes. The first recruits from the new classes were scheduled to start at Pontiac in August. *Id.* Second, Defendants planned to close two large general population housing units in September 2021. The plan was to transfer hundreds of individuals housed in those two units to another correctional center that is being transitioned to a maximum-security facility. *Id.*

Under this plan (adding new officers and reducing the population), the facility's ratio of security staff to individuals in custody was supposed to significantly increase. This would provide the officers needed to escort Class Members to and from out-of-cell activities. With an increase in security staff, the facility could then also use additional space to provide more structured and unstructured out-of-cell time.

By agreement, progress under this plan was to be measured in September, but when Plaintiffs' counsel toured the units on September 2, RTU class members reported being near continuously locked down in their cells, for 22-24 hours a day. *See, e.g.,* Group Exhibit C (declarations from 19 RTU Class Members at Pontiac regarding conditions throughout August and September). Groups are routinely cancelled. *Id.* Yards are cancelled more often than they are run. *Id.* The dining halls are not being used. *Id.* The plan to resume movie groups in a large program space never happened. *Id.* Many Class Members were—and are—only seeing their mental health providers at cell front without any confidentiality. *Id.* The only consistent out-of-cell time they are even offered is to shower a few times a week. *Id.*

These deprivations are not disputed. Defendants' own data analysis and report demonstrates the failure to provide RTU Class Members with the care or activity they require.

PONTIAC				
WEEK/DATES	STRUCTURED		UNSTRUCTURED	
	BMU	MTC	BMU	MTC
1 8/1/2021-8/7/2021	2 hours (4 groups)	2 hours (3 groups ran)	0 hours (no yard)	0 hours (no yard)
2 8/8/2021-8/14/2021	2.3 hours (7 groups)	2 hours (5 groups ran)	4 hours (4 yards)	2.5 hours (1 yard)
3 8/15/2021-8/21/2021	8 hours (16 groups)	2.5 hours (5 groups)	0 hours (no yard)	2.5 hours (1 yard)
4 8/22/2021-8/28/2021	5.5 hours (11 groups)	3 hours (6 groups)	2.5 hours (1 yard)	2.5 hours (2 yards)
5 8/29/2021-9/4/2021	3.5 hours (7 groups)	2.5 hours (5 groups)	4 hours (2 yards)	2.5 hours (1 yard)
6 9/5/2021-9/11/2021	2 hours (4 groups)	2.5 hours (5 groups)	4 hours (5 Yards)	2 hours (2 yards)
7 9/12/2021-9/18/2021	0 Hours (0 Groups)	.23 Hours (2 Groups)	0 Hours (0 Yards)	1.33 hours (1 Yard)
8 9/19/2021-9/25/2021	0 Hours (0 Groups)	.23 Hours (2 Groups)	0 Hours (0 Yards)	1.33 hours (1 Yard)

Ex. B. at 2.[4] Even prior Defendants' September 30th Report, the parties held an expedited meeting at Plaintiffs' request regarding Pontiac. The plan to close two housing units had not happened, and Defendants provided no timetable or even a reasonable expectation of when it would happen. The new classes of correctional officers anticipated to increase the staffing levels was a mirage. Of the 20 new cadets requested for Pontiac in August, only 9 arrived. Moreover, even if all 20 had arrived, it would not have made a dent in the problem, as Pontiac was and remains short *hundreds* of correctional staff.

The harm caused to these Class Members has been devastating. Each of the declarants described the impact of being locked down in their cells for so long, including the following:

[4] As of its August census, Pontiac had a mental health caseload of 685, the vast majority of whom are outpatient level of care. Only 77 are RTU level of care. Those 77 RTU Class Members are divided into two programs at Pontiac, either the Behavioral Modification Unit (BMU) or the Modified Treatment Center (MTC).

I've become more anxious when I'm supposed to have group or yard the next day I will spend the night anticipating getting to leave my cell only to have it cancelled. I suffer from anxiety, racing thoughts, and boredom. I have no chance to interact with others or have a community. I am anxious about going back to general population because I have forgotten how to interact with people after spending so much time in my cell. I have nothing to do but I still feel exhausted and overwhelmed.

Ex. C at 14-17, Davis Decl.

I feel that my mental illness is deteriorating and causes me to self-harm just to get out of my cell. There is no opportunity to use the coping skills I have learned to deal with my mental illness because I'm alone in my cell all the time.

Ex. C at 18-21, Evans Decl.

I don't have anything to keep me busy and my thoughts occupied so I get stuck in my own head which increases my anxiety and stress; both cause me to act out or self-harm as a means to get help and exert some control. The isolation causes me to become emotionally numb. Coping with the hopelessness is difficult especially since it seems like no one at Pontiac cares.

Ex. C at 26-28, Holloway Decl.

I'm getting worse and different mental illness. The walls are closing in on me. Sometimes I hit the wall or hurt myself. It is making me worse. It is all building up in me.

Ex. C at 36-37, McTizic Decl.

I feel trapped, like the walls are caving in on me. Between the chaos around me and being surrounded by my thoughts, I feel hopeless and doomed. They only way to stretch my legs and talk to mental health is by calling a crisis team.

Ex. C at 38-41, Murray Decl.

It's a struggle to be so isolated. I need help to handle a lot of the issues that were caused by a the long time I've spent in segregation. I think about hurting myself and others everyday. I am increasingly more angry. I suffer physical pain in my chest and more headaches.

I am more frustrated since I can't get out. My anxiety has increased and I pace my cell a lot. I am more impulsive and angry which makes it more likely that I will act out ……Inside my cell, I set a fire on my leg. I now have serious burns on my leg and am on crisis watch in the healthcare unit. I feel like I hit bottom. This place is making me do things I don't want to do.

Ex. C at 50-52, Scaggs Decl.

> *I feel trapped. I get paranoid. It makes me act out to make something happen. I feel very agitated. On September 27, 2021, I got tickets for staff assaults and I overdosed on pills because of this. I have hardly been out of my cell in 5 weeks.*

Ex. C at 53-56, Walker Decl.

These significant harms to Class Members will continue as Defendants fail to change course from the failed approach. The July 29 parties' agreement gave Defendants the opportunity to re-assess and formulate an updated plan to provide the required care. *See* Ex. A at 7. Instead, on September 30th, Defendants put forward plan—a page and half of bullet points—consisting entirely of (1) continuation of the same failed or grossly inadequate approaches; or (2) possible steps that, even if taken, will not result in any significant change for those being harmed in the near future. Ex. B at 5. For example, Defendants list a plan to divide a large yard into several smaller yards to allow more individuals out at the same time. *Id.* at 5. But the facility does not have the materials to even start the construction of the fences. Defendants are aware that the steps listed in their report will not provide the RTU Class Members at Pontiac the care and activity they require—and are legally entitled to—anytime in the foreseeable future. As discussed below, giving a plan for steps known to be ineffective in the face of ongoing harms is the definition of deliberate indifference.

b) DIXON

Over the course of the parties' agreement, Dixon did significantly increase unstructured out-of-cell time (dayroom and yard) back to pre-pandemic levels that exceed the 10-hour minimum of the settlement agreement. But little to no progress has been made on structured out-of-cell time, which includes the mental health treatment that is critical for RTU level of care. The Special Treatment Center (STC), with around 300 RTU Class Members, is operating at only

around half of the required structured time weekly by Defendants' own admission. *See* Ex. B, Sept. 30 report at 2 (showing 5-6 hours structured time weekly in the STC).

In X-house, the maximum security RTU at Dixon, the picture is bleak. In the vast majority of X-House, Class Members have no mental health groups. Instead, they have daily "community meetings" that are scheduled for 30 minutes five days a week, but even those are frequently cut short. In the RTU's segregation unit, only those there for more than 60 days get mental health treatment groups. The rest of the unit—RTU Class Members who have been in segregation for less than 60 days—get no structured groups at all, not even community meetings.

The schedules produced by Defendants as the data underlying their September 30th Report show that the vast majority of these Class Members in X-house are only scheduled to receive 2.5 hours of structured out-of-cell time weekly, consisting entirely of "community meetings" without any substantive mental health treatment groups. While Defendants' report claims 3-4 hours in August and 4-5 hours in September (Ex. B at 2), those numbers are misleading. As shown below, very few individuals receive even 3 hours.

Scheduled of Structured Hours Out-of-Cell For Dixon's X-House Mental Health Caseload		
Hours Structured OCT Scheduled for Week 3	# of Class Members Scheduled for these Structured Activities	Scheduled Activity
0 hours	21	n/a
1 hour	1	1 one-hour weekly transgender group
2.5 hours	115	2.5 hours community meeting
3.5 hours	12	1 one-hour mental health group and 2.5 hours community meeting
8-9 hours	8	4-5 mental health groups, one to two hours each
10 hours	4	5 two-hour groups

Of the 159 RTU Class Members in X-house, only 12 are getting substantive mental health groups at or near the minimum RTU hours that are required for everyone in the unit. Another 12 were scheduled for one (1) substantive mental health group weekly, in addition to the community meetings, to get them to a total of 3.5 hours weekly structured time.

Although Defendants reported an increase from 3-4 hours in August to 4-5 hours in September of structured out-of-cell time in X-house (Ex. B at 2), the underlying materials show that this is not the result of the expanding programming offered. The schedule did not change in September from what had been offered in August (either the number of participants in groups or the number of groups held). Despite that groups are the primary form of mental health treatment (other than medication) provided at Dixon, the vast majority of RTU Class Members in X-house have none.

Again, the July 29 parties' agreement was for Defendants to assess the progress made under that plan; to report on that progress and any obstacles; and to re-assess the plan as needed to get to the required minimum of both 10 hours of unstructured and 10 hours of structured out-of-cell time. Defendants report significant expansion of unstructured out-of-cell time (19-26 hours weekly) while admitting to violations of the structured time requirements, but the plan does the reverse. Instead of a plan to cure violations, it continues to focus on unstructured out-of-cell time. The only plan for structured programming is to improve the provision of community meetings, which would help to provide 2.5 hours of structured activity weekly for X-house residents but will not increase substantive mental health treatment. No plan is offered to provide substantive mental health treatment in X-house or to expand the hours to the 10-hour minimum in the STC.

II. ARGUMENT

A. A PRELIMINARY INJUNCTION SHOULD ISSUE TO PROTECT THE FEDERAL RIGHTS OF CLASS MEMBERS AND PREVENT FURTHER HARM

The Settlement Agreement provides that where violations of its terms also result in violations of federal law, Plaintiffs may petition for relief and the Court "may enter an order consistent with equitable and legal principles, but not an order of contempt, that is designed to achieve compliance." Settlement Agreement at XXIX (f) and (g). Any such order must comply with the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626(a)(2)

To obtain a preliminary injunction, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As to the first factor, the moving party need "only show that his chances to succeed on his claims are 'better than negligible.'" *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1046 (7th Cir. 2017) (citing *Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir. 1999)). In addition, "the more likely a plaintiff's success on the merits, the less the balance of harms needs to favor its side to justify relief, while a greater showing that the balance of harms favors the plaintiff may offset a lower probability of success." *Aon Risk Servs. Cos. v. Alliant Ins. Servs., Inc.*, 415 F. Supp. 3d 843, 847 (N.D. Ill. 2019); *see also Hoosier Energy Rural Elec. Co-op., Inc. v. John Hancock Life Ins. Co.*, 582 F.3d 721, 725 (7th Cir. 2009) ("How strong a claim on the merits is enough depends on the balance of harms: the more net harm an injunction can prevent, the weaker the plaintiff's claim on the merits can be while still supporting some preliminary relief.").

Plaintiffs have a strong likelihood of demonstrating violations of their federal rights. The failure to provide the "enhanced treatment" needed by class members with such serious mental illnesses that they require RTU level of care leaves them without the mental health treatment that Defendants have determined that they require. This failure violates their right to adequate mental health treatment under the Eighth Amendment. At Pontiac, the RTU class members are instead held in solitary confinement without the activity and out-of-cell time that they require to prevent decompensation. This violates their Eighth Amendment rights and the protections of the Americans with Disabilities Act.

B. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR EIGHTH AMENDMENT CLAIMS

1. The Denial of Adequate Mental Health Treatment at the Pontiac and Dixon RTUs Violates the Eighth Amendment

It cannot be disputed that as a group the Class Members who are the subject of this motion required enhanced treatment and activity beyond that which is provided at the outpatient level of care in the prison system. Each has been determined by the IDOC's mental health clinicians to require RTU level of care and their need for that higher level of care is reviewed regularly. Defendants are failing to provide the level of care that they proport to offer through placement in the Pontiac and Dixon RTU settings.

Moreover, this Court already found that similar deprivations as these—denials of treatment and out-of-cell time to prevent decompensation—to violate the Eighth Amendment in the contact of segregation and crisis watch, both of which also exist within the RTUs. ECF No. 2633 (April 23, 2019) at 43, 55-58. Because each of these RTUs include segregation and crisis watch units, the failure to provide the out-of-cell treatment activities in violation of the RTU level of care requirements also violates the Court's order to provide the out-of-cell time needed

to protect against decompensation in the segregation units and to stabilize those on crisis watch at both Pontiac and Dixon also violate this Court's permanent injunction order. *Id.* at 55.[5]

To evaluate whether a claim for denial of medical or mental health treatment rises to the level of an Eighth Amendment violation, courts use a two-part test, looking both at the seriousness of the need and the conduct of the officials. This test contains both "an objective and a subjective component." *Greeno v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005). The medical need meets the objective component as "sufficiently serious" where the "condition 'has been diagnosed by a physician as mandating treatment or is so obvious that even a lay person would perceive the need for a doctor's attention.'" *Roe v. Elyea*, 631 F.3d 843, 857 (7th Cir. 2011). Plaintiffs' psychiatric illnesses meet this test, having been clinically diagnosed as SMI and requiring the RTU level of care. *See, e.g., Wellman v. Faulkner*, 715 F.2d 269, 272 (7th Cir. 1983).

"The subjective component of deliberate indifference is met only where the official knows of and disregards an excessive risk to inmate health and safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).) Deliberate indifference may be found where "a prison official, having knowledge of a significant risk to inmate health or safety, administers 'blatantly inappropriate' medical treatment, acts in a manner contrary to the recommendation of specialists, or delays a prisoner's treatment for non-medical reasons, thereby exacerbating his pain and suffering." *Perez v. Fenoglio*, 792 F.2d 768, 777 (7th Cir. 2015).

[5] Specifically, as to treatment in segregation, paragraph 2(b) of the Order requires "treatment to stabilize symptoms to protect against decompensation" and 2(g) requires out of cell confidential counseling, groups, psychiatric care and therapeutic activities). As to care on crisis watch, paragraphs 3(d) and (e) require structured and unstructured out of cell time treatment activities to stabilize and protect against decompensation.

There can be no debate that Defendants are aware of the treatment needs of the SMI Class Members at issue here. By virtue of their placement in the RTU level of care, IDOC has already made the determination that these individuals have "a serious mental illness associated with significant functional impairments, rendering the offender unable to successfully reside in a general population housing unit." *See* IDOC AD 04.04.100, § II(E)(2). As a result, IDOC has determined that they "**require** the therapeutic milieu and full range of services" of a Residential Treatment Unit, which "provides enhanced mental health treatment including a minimal amount of out-of-cell time per week including structured therapeutic activities, generally in a group setting, and unstructured recreational time equal to or greater than what is offered to offenders with the same custody classification." Settlement Agreement, § II(q); A.D. 04.04.100, § II(E)(2).

Defendants have failed to meet these critical treatment needs even after being given every opportunity to develop their own plan, implement that plan, and then assess for needed improvements. Defendants are well aware of the harms being done. SMI RTU Class Members overwhelmingly report (including in the attached affidavits and pleadings filed with the Court), and will testify to this Court if needed, that they are struggling with increased symptoms, including debilitating levels of anxiety, depression, distress, paranoia, and psychosis. While this deterioration often happens silently within the confines of their cells, the predictable consequences include increased levels of self-harm and behavioral acting out.

In the face of widespread harm among IDOC's most seriously mentally ill prisoners, Defendants have failed to change their course. They have offered no measures that can be expected to improve the treatment provided to these Class Members, let alone bring Defendants into compliance with the Settlement Agreement and Injunction This is deliberate indifference in violation of the Eight Amendment. *Berry v. Peterman,* 604 F.3d 435, 440 (7th Cir. 2010).

("Deliberate indifference occurs when a defendant realizes that a substantial risk of serious harm to the prisoner exists, but the defendant disregards that risk.") *citing Farmer,* 511 U.S. at 837. While Defendants have not expressly declared, "I knew this would probably harm you, and I did it anyway!" (*see Petties v. Carter*, 836 F.3d 722, 728 (7th Cir. 2016)), the effect is the same. They are aware of the urgent need and have failed to take requisite action. *Wharton v. Donberg*, 854 F.3d 234, 244 (3rd Cir. 2017) ("We look to see whether the gap between the officials' actions or inaction and the problem they were trying to solve was so large that those actions display deliberate indifference."); *see also Gray v. Hardy*, 826 F.3d 1000, 1009 (7th Cir. 2016) ("Knowingly persisting in an approach that does not make a dent in the problem is evidence from which a jury could infer deliberate indifference.").

2. The Conditions of Solitary Confinement at Pontiac Violate the Eighth Amendment

Plaintiffs are likely to succeed on the merits of their Eighth Amendment claim based on the duration and severity of the conditions Class Members have been made to endure in the face of feasible alternatives. The Eighth Amendment prohibits punishments that "involve unnecessary and wanton infliction of pain, are grossly disproportionate to the severity of the crime for which an inmate was imprisoned, or are totally without penological justification." *Caldwell v. Miller*, 790 F.2d 589, 600 (7th Cir. 1986).

The Seventh Circuit has recognized that "prolonged confinement in administrative segregation may constitute a violation of the Eighth Amendment ... depending on the duration and nature of the segregation and whether there were feasible alternatives to that confinement." *Rice ex rel. Rice v. Corr. Med. Servs.*, 675 F.3d 650, 666 (7th Cir. 2012) (citing *Walker v. Shansky*, 28 F.3d 666, 673 (7th Cir. 1994)); *see also Meriwether v. Faulkner*, 821 F.2d 408, 416 (7th Cir. 1987).

Here, the duration and nature of the conditions are such that Class Members have been deprived any opportunity for activity that is essential to their mental and physical well-being. *See Delaney v. DeTella,* 256 F.3d 679, 683 (7th Cir. 2001) ("Given current norms, exercise is no longer considered an optional form of recreation, but is instead a necessary requirement for physical and mental well-being."). *See also Wilson v. Seiter*, 501 U.S. 294, 307-308 (1991) (recognizing that 24-hour confinement in small cells requires access to regular outdoor exercise); *Davenport v. DeRobertis,* 844 F.2d 1310, 1315 (7th Cir. 1988) (upholding finding that the Constitution *requires* even maximum-security prisoners to receive at least five hours per week of outdoor exercise if kept in segregation for over 90 days).

These RTU Class Members have been locked in their cell for up to 24 hours per day for months at time. For many, these continual lockdowns follow on more than a year of lockdown due to the pandemic. They received only a brief reprieve when yards and groups were briefly run in the spring of 2021, following Plaintiffs' motion to enforce for IDOC's failure to balance the treatment needs in the RTUs with the COVID-19 precautions. These RTU Class Members are enduring conditions as harmful as those that this Court previously found to violate the Eighth Amendment in 2018 and 2019 (for those in segregation). ECF No. 2633 (April 23, 2019) at 34 ("In the record it is generally accepted that out-of-cell time for mentally ill inmates in segregation is necessary to avoid a rapid decline in mental health."). Indeed, for the RTU Class Members in segregation at Pontiac, the violations at issue in this motion also violate this Court's order requiring "structured and unstructured out of cell time sufficient to protect against decompensation." *Id. a*t 57 (paragraph 3(d)(vi) and 3(d).

In terms of in-cell confinement, the current conditions at Pontiac are more severe than the conditions of segregation that this Court found to be causing significant harm two years ago—

and they are combined with even less mental health treatment. But, here, to be clear, they are not limited to those in segregation as a result of disciplinary cases. The entire RTU population at Pontiac are subjected to these conditions of isolation. As a result, this Court can easily find that Plaintiffs are reasonably likely to demonstrate violations of the Eighth Amendment both for the denial of adequate mental health treatment throughout the RTUs and for the continued infliction of cruel and unusual punishment due to the excessive isolation.

These conditions are present throughout the Pontiac RTUs, on patients who have been clinically determined to need intensive mental health treatment and significant out-of-cell recreation time. While Defendants offer a "plan" at Pontiac, they cannot deny that none of the items listed will achieve meaningful changes for these Class Members anytime in the foreseeable future. Pontiac is not and cannot provide RTU level of care for even this small caseload of 77. In a system that has reduced its overall population by 40% in the last decade, Defendants fail to consider measures that don't require waiting—potentially years—for Pontiac to be staffed at a level to provide for the movement and activity needed for RTU level of care. Even if the facility does increase the number of physical spaces used for yard space or larger groups, without increases in staff they have acknowledged that Pontiac cannot provide the movement or activity for these Class Members.

The lack of penological justification for these restrictions immediately raises Eighth Amendment concerns. *See Anderson v. Romero*, 72 F.3d 518, 527 (7th Cir. 1995) ("To deny a prisoner all opportunity for exercise outside his cell would, the cases suggest, violate the Eighth Amendment unless the prisoner posed an acute security risk if allowed out of his cell for even a short time."); *Delaney*, 256 F.3d 684 ("Nor can the defendants argue that the 6-month denial was brought on by [plaintiff's] misconduct or propensity to escape.").

C. Plaintiffs Are Likely To Succeed On The Merits Of Their ADA Claim for the Violations at Pontiac

The failure of public entities to consider the needs of people with disabilities in their policies and practices all too often results in the significant harm for people with disabilities. As a result, the Americans with Disabilities Act (ADA) mandates the protection people with disabilities, including serious mental illness, from what has referred to as "benign neglect." *Alexander v. Choate*, 469 U.S. 287, 295 (1985). The Supreme Court explained "[d]iscrimination against the handicapped was perceived by Congress to be most often the product, not of invidious animus, but rather of thoughtlessness and indifference—of benign neglect." *Id.*at 295.

Title II of the Americans with Disabilities Act (ADA) provides:

> No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

The ADA does not require findings of subjective intent. *Washington v. Indiana High Sch. Athletic Ass'n, Inc.*, 181 F.3d 840, 846–47 (7th Cir. 1999). Instead, to achieve the ADA's mandate of eliminating discrimination, the ADA requires public entities to make modifications necessary to protect people with disabilities. *Id.* The implementing regulations require:

> A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

28 C.F.R. § 35.130(b)(7). *See also Wisconsin Cmty. Servs., Inc., Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 753 (7th Cir. 2006) ("By requiring measures that are necessary to avoid discrimination on the basis of disability, … the regulation clearly contemplates that prophylactic steps must be taken to avoid discrimination.").

Here, IDOC is holding 77 Class Members who require a modification in their conditions of confinement (*i.e.,* the out-of-cell activity) in a facility that simply cannot provide it. While the continual and ongoing cancellations of out-of-cell activity at Pontiac is facility-wide and not limited to the RTU, the impact is known to be disparate on this population and therefore requires an immediate modification to prevent further harm.

1. Plaintiffs are Individuals with Disabilities within the Meaning of the ADA

The first element in the ADA analysis, whether Plaintiffs are individuals with disabilities within the meaning of the law, is easily met here by virtue of their SMI diagnosis and RTU level of care designation. The ADA defines disability as having a physical or mental impairment that substantially limits "major life activities." 42 U.S.C. § 12102(2). The regulations give examples of "major life activities" including "but are not limited to, caring for oneself, performing manual tasks, … eating, sleeping, … learning, reading, concentrating, thinking, communicating, and working," in addition to major bodily functions such as, relevant here, brain activity. *Id.* … Psychological conditions such as "major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia" can "easily be concluded" to meet this requirement because they substantially limit brain function. Notes to 29 CFR § 1630.2 As the term is used in the IDOC, the classification of an individual as "seriously mental illness," or SMI, requires clinical findings that they currently have a significant mental disorder and diagnosis as well as impairments in functioning (Settlement Agreement, § II(s)) thereby meeting the criteria for disability under the ADA.

2. Plaintiffs are "Otherwise Qualified" for the Benefits of the IDOC Programs, Activities and Services

The term "otherwise qualified individual" is defined in the statute as "an individual with a disability who, with or without reasonable modifications … meets the essential eligibility

requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). A "program or activity" under Title II "applies to anything a public entity does." *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*, 300 F.3d 775, 782 (7th Cir. 2002); *see also Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002) (cautioning against "needless hair-splitting arguments" and holding that Title II of the ADA applies to "anything a public entity does").

As people incarcerated in the State of Illinois, Plaintiffs are eligible for all the services, programs, and activities inherent in their IDOC custody, including in their housing and conditions of confinement. In the language of the ADA, all aspects of their conditions (including their privileges, movement and programming) and how they are administrated by the state are considered "programs, services and activities" from which people with disabilities may benefit (or be excluded). *See, generally, Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 210 (1998). IDOC's own mission statement includes that it fulfills its function of providing custody for Illinois prisoners through a program of "safe, secure, and humane correctional facilities" in which "[s]afety is at the forefront of agency operations with an emphasis on frontline staff to protect and control inmates."[6]

3. IDOC's Use of Isolation through Cell Confinement Has A Disparate Impact on Plaintiffs Because of their Disabilities

Disparate impact exists when defendants have adopted a facially neutral policy or practice that, when put into effect, falls more harshly on a protected group than on others and cannot be justified by a nondiscriminatory purpose. *Swan v. Bd. of Educ. of City of Chi.*, 2013 WL 3872799, at *5 (N.D. Ill. July 25, 2013) (citing *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52 (2003)). To make a *prima facie* showing of a disparate impact claim, a plaintiff must identify

[6] IDOC Overview, https://www2.illinois.gov/idoc/aboutus/Pages/IDOCOverview.aspx

specific practices or policies that create the alleged disparity and demonstrate that the practice caused a disparity. *See, e.g.*, *O'Brien v. Caterpillar Inc*., 900 F.3d 923, 928 (7th Cir. 2018). The analysis "borrow[s] from [its] approach to the respective analog under Title VII." *Miranda v. Wis. Power & Light Co*., 91 F.3d 1011, 1017 (7th Cir. 1996). In the context of the ADA, the operation of a system that does not accommodate or adapt to the needs of people with disabilities can give rise to a disparate impact claim. *See, e.g. Martin v. Emmanuel*, No. 19 CV 1708, 2019 WL 4034506, at *4 (N.D. Ill. Aug. 27, 2019) (finding that a plaintiff with a physical disability plausibly alleged a disparate impact claim against the City of Chicago's homeless shelter system after she attempted to access two different shelters that required her to climb stairs and carry her own luggage); *United States v. Los Angeles County*, No. CV 15-05903, 2016 WL 2885855, at *5 (C.D. Cal. May 17, 2016) (holding that detainees with disabilities were entitled to more discharge planning assistance than non-disabled detainees, without which the discharge policy and practices would have a disparate impact on detainees with disabilities as they faced far more barriers to re-entry than nondisabled detainees).

Pontiac's current operations restrict prisoners to their cells for 22 to 24 hours a day have a disparate impact on individuals with serious mental illness in the RTUs. By definition, these individuals require a level of treatment and out-of-cell activity that is denied by these ongoing lockdowns.

As discussed further below as to irreparable harm, the harm from isolation to persons with mental illness has been well established in science, case law and in this case. *See e.g.,* ECF No. 1373, Monitor's First Annual Report at 63 ("segregation itself imposes psychic stress, which can exacerbate depression and other potentially lethal psychiatric symptoms as well as creating psychiatric disorders de novo in offenders without pre-existing mental illness."). At the 2018

trial, it was admitted that isolation is contra-indicated for most mental illnesses (ECF No. 2406 ¶ 186) and, without needed treatment and out-of-cell time, those in segregation will "across the board" get worse. ECF No. 1758 at 349-51. Although the reason for the isolation was different—disciplinary segregation there, lockdowns and cancellations here—the underlying issue is the same: the detrimental impact of isolation on the mental health of people confined to their cells for 22 or more hours per day. ECF No. 2406 ¶ 180. Isolated or restrictive housing settings are known to exacerbate symptoms of mental illness: if someone has schizophrenia, for example, their schizophrenia will get worse in segregation. *Id.* 182-83. The conditions of segregation will also cause cognitive harms to people with mental illness that degrade their coping mechanisms and result in behavioral issues, which frequently include self-harm, throwing bodily fluids, and smearing feces, which in turn can lead to more segregation time. *Id.* ¶¶ 182-84.

As a district court explained in the seminal case on solitary confinement, *Madrid v. Gomez,* placing a person with mental illness in segregation is akin to "putting an asthmatic in a place with little air to breathe." 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995). More than two decades later, the Third Circuit reached the same conclusion finding that people with mental illness are likely to be harmed by isolation, including that it can cause "cause severe and traumatic psychological damage, including anxiety, panic, paranoia, depression, post-traumatic stress disorder, psychosis, and even a disintegration of the basic sense of self identity" as well as lead to maladaptive behaviors and physical harm. *Palakovic v. Wetzel*, 854 F.3d 209, 225 (3d Cir. 2017).

4. IDOC's Denial of Reasonable Modifications to Prevent the Disparate Harm to Class Members Violates the ADA.

The ADA regulations require the affirmative provision of "reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability." 28 C.F.R. § 35.1 30(b)(7). Reasonable modifications are not only required to cure the disparate impact of Pontiac's lockdown procedures (requiring cell confinement for weeks at a time), but the failure to provide a reasonable modification is also an independent basis for liability. *See, e.g., Wisconsin Cmty. Servs., Inc.*, 465 F.3d at 753.

The ADA and other disability rights laws "require that a government entity do more than provide a program on equal terms to those with and without disabilities; they require 'affirmative accommodations to ensure that facially neutral rules do not in practice discriminate against individuals with disabilities.'" *Id.* (citing *Henrietta D. v. Bloomberg,* 331 F.3d 261, 275 (2d Cir. 2003)). *See also Brooklyn Ctr. for Indep. of Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 597 (S.D.N.Y. 2013) (finding that the city's emergency preparedness program, while not intentionally discriminating, failed to provide the modifications needed to protect people with disabilities during emergencies and disasters, including for evacuation and shelter during emergency and information regarding emergency services in advance).

The ADA requires reasonable modifications of policies or practices when "necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7). Examining the modifications requirement set forth in the regulation, the Seventh Circuit has explained that "the plain language of the regulation also makes clear that an accommodation only is required when necessary to avoid discrimination on

the basis of a disability … [and] that any accommodation must be a reasonable one." *Wisconsin Cmty. Servs., Inc*, 465 F.3d at 751.

Because of their disabilities, SMI RTU Class Members are disparately impacted by the cell confinement practices that are now the status quo at Pontiac. Defendants have long recognized their need for "modification" of correctional operations that can result in exactly this type of cell-confinement. In other words, it is the RTUs themselves with the minimum requirements for structured and unstructured out-of-cell activity that is a "reasonable modification" to prevent disparate-impact discrimination and protect their health and wellbeing from further decompensation. The reasonableness of this modification is demonstrated by IDOC's own policies and the *Rasho* settlement agreement. If Pontiac cannot provide the out-of-cell activity necessary for an RTU, then the IDOC must relocate them to a facility that can meet their needs.

In assessing the reasonableness of a modification, the Seventh Circuit has explained:

> In this regard, we think it is important to note that, in undertaking this highly fact-specific assessment, it is necessary that the court take into consideration *all* of the costs to *both* parties. Some of these costs may be objective and easily ascertainable. Others may be more subjective and require that the court demonstrate a good deal of wisdom in appreciating the intangible but very real human costs associated with the disability in question.

Wisconsin Cmty. Servs., Inc., 465 F.3d at 752. *See Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 609-611 (7th Cir. 2004) (explaining that Title II of the ADA "may well require the State to make reasonable modifications to the form of existing services" but that "a State is not obliged to create entirely new services" or fundamentally alter the substance of the services it provides).

Knowing that SMI RTU Class Members will decompensate—and are in fact decompensating—under the current cell confinement practices, accounting for their mental

health needs in their placement and provision of out-of-cell activity is a necessary modification to the current operations. The ADA requires prisons to take into account and provide for the needs and safety of people with disabilities, even when that means taking different approaches in the custody of people with disabilities. For example, in *United States v. Georgia*, 546 U.S. 151 (2006), a prisoner with paraplegia did not receive much-needed accommodations for his physical needs and was left to physically deteriorate alone in his cell. The Court stated:

> In fact, it is quite plausible that the alleged deliberate refusal of prison officials to accommodate Goodman's disability-related needs in such fundamentals as mobility, hygiene, medical care, and virtually all other prison programs constituted "exclu[sion] from participation in or ... deni[al of] the benefits of" the prison's "services, programs, or activities.

546 U.S. at 157. *See also McCoy v. Tex. Dep't Crim. Justice*, 2006 WL 2331055, at *7 and n. 6 (S.D. Tex. Aug. 9, 2006) ("failure to make reasonable accommodations to the needs of a disabled prisoner may have the effect of discriminating against that prisoner because the lack of an accommodation may cause the disabled prisoner to suffer more pain and punishment than non-disabled prisoners.").

D. RTU CLASS MEMBERS ARE SUFFERING IRREPARABLE HARM

Plaintiffs must demonstrate that they are likely to suffer irreparable harm absent obtaining preliminary injunctive relief. *See Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044–45 (7th Cir. 2017). This requires more than a mere possibility of harm, but the harm need not actually occur before injunctive relief can be issued. *Id.*; *Girl Scouts of Manitou Council, Inc., Inc.*, 549 F.3d 1079, 1090 (7th Cir. 2008) (irreparable harm means that the plaintiff cannot be "prevented or fully rectified by the final judgment after trial"); *see also Orr v. Shicker*, 953 F.3d 490, 502 (7th Cir. 2020) (irreparable harm is that which "cannot be repaired and for which money compensation is inadequate" (internal quotations omitted)).

SMI RTU Class Members have endured and are continuing to experience irreparable harm from denial of mental health treatment and ongoing isolation (through cell confinement). These Class Members all have pre-existing conditions that are worsening due to lack of treatment and activity inherent in Defendants' current operational protocols. The harm being done to these Class Members cannot be repaired or compensated.

Mental health treatment including for those few at the higher level of care is not a privilege—it is a necessity that must be provided. The denials of adequate treatment have led to decompensation with physical and mental injuries resulting. Numerous SMI RTU Class Members have had to be hospitalized due to the significant increase in self-harm.

As for the conditions at Pontiac in particular, scientific research has demonstrated "strikingly consistent" results showing that the deprivation of meaningful social contact and environmental stimulation arising from solitary confinement imposes grave psychological and physiological harms. *See* Craig Haney, The Psychological Effects of Solitary Confinement: A Systematic Critique, 47 Crime & Justice 365, 367-68, 370-75 (2018) (collecting studies); *see also* Stuart Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U. J. L. & Pol'y 325, 335-38 (2006). Indeed, experts have recognized that the chronic stress imposed by such isolation "can be as clinically distressing as physical torture." Jeffrey L. Metzner & Jamie Fellner, Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics, 38 J. Am. Acad. Psychiatry & L. 104, 104 (2010); United Nations, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment ¶ 76 (Aug. 2011) ("Special Rapporteur reiterates that, in his view, any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment

or punishment ….");[7] Richard Kozar, John McCain (Overcoming Adversity) 53 (2002) (Senator McCain described his solitary confinement in Vietnam as "crush[ing] your spirit and weaken[ing] your resistance more effectively than any other form of mistreatment.").

Psychological injuries from solitary confinement include cognitive dysfunction, severe depression, memory loss, anxiety, paranoia, panic, hallucinations, and stimuli hypersensitivity. *See* Craig W. Haney, Mental Health Issues in Long-Term Solitary and "Supermax" Confinement, 49 Crime & Delinquency 124, 130-31, 134 (2003) (collecting studies); Terry A. Kupers, Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?, in Routledge Handbook of International Crime and Justice Studies 213, 216 (Bruce Arrigo & Heather Bersot eds., 2013); Peter Scharff Smith, The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the literature, 34 Crime & Just. 441, 488–90 (2006). Self-injurious behavior, such as self-mutilation and suicidal behavior is also prevalent among prisoners in solitary confinement. Stuart Grassian, Psychopathological Effects of Solitary Confinement, 140 Am. J. Psychiatry 1450, 1453 (2006); Grassian, Psychiatric Effects, supra, 22 Wash. U. J. L. & Pol'y at 334.

Courts similarly have long recognized that prolonged solitary confinement inflicts great harm on prisoners, and particularly upon prisoners with a serious mental illness. More than 100 years ago, the Supreme Court first called attention to the injurious effects of solitary confinement. *In re Medley*, 134 U.S. 160, 168 (1890). More recently, Justice Kennedy described solitary confinement as a "regime that will bring you to the edge of madness, perhaps to madness itself." *Davis v. Ayala*, 135 S. Ct. 2187, 2209 (2015) (Kennedy, J., concurring). Justice Breyer

[7] Available at http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf

has emphasized the psychological and physical injury inflicted by prolonged solitary confinement. *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting).

The U.S. Court of Appeals for the Seventh Circuit has consistently contributed to this chorus of concern. *E.g.*, *Kervin v. Barnes*, 787 F.3d 833, 837 (7th Cir. 2015) (emphasizing the "serious psychological consequences of quasi-solitary imprisonment" and collecting sources); *Pearson v. Ramos*, 237 F.3d 881, 884 (7th Cir. 2001) (prolonged solitary confinement "can have serious adverse effects on prisoners' psychological wellbeing"); *Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988) ("pretty obvious that isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage, even if the isolation is not total").

The Seventh Circuit has also recognized that solitary confinement is particularly injurious to mentally ill prisoners. *E.g.*, *Scarver v. Litscher*, 403 F.3d 972, 975-76 (7th Cir. 2006) (solitary confinement "create[s] a substantial risk of causing . . . serious physical and mental suffering" and citing "extensive literature on the effect" of it on "mentally disturbed prisoners").

E. THE PUBLIC INTEREST AND THE BALANCE OF EQUITIES FAVORS PROTECTING VULNERABLE PRISONERS FROM NEEDLESS HARM

It is always in the public interest to prevent the continuing violation of a plaintiff's federal rights. *See Joelner v. Vill. of Washington Park, Ill.,* 378 F.3d 613, 620 (7th Cir. 2004) ("[s]urely upholding constitutional rights serves the public interest) (quoting *Newsom v. Albemarle County Sch. Bd*., 354 F.3d 249, 261 (4th Cir. 2003)); *see also Preston v. Thompson,* 589 F.2d 300, 303 n. (7th Cir. 1978) 3 ("[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm, and its remedy certainly would serve the public interest.").

In this case the public interest favors taking reasonable steps available to prevent further harm and decompensation to people with serious mental illness who cannot otherwise avail themselves of the treatment and activity that they require. Plaintiffs do not seek the creation of a new program, but only the provision of the *minimum* standards of care that Defendants have agreed to. Defendants will not be harmed by taking these steps. Indeed, as this Court previously found in granting a preliminary injunction in this case, "there is little harm in requiring the Defendants to do what they agreed to do, budgeted to do, and, based on this record, are constitutionally required to do." ECF No. 2070 at 14.

F. THIS COURT SHOULD NOT REQUIRE PLAINTIFFS TO PROVIDE SECURITY PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER

Under Rule 65(c) of the Federal Rules of Civil Procedure, district courts have discretion to determine the amount of the bond accompanying a preliminary injunction, and this includes the authority to set a nominal bond. In this case, the Court should waive bond because Plaintiffs are indigent, the requested preliminary injunction is in the public interest, and the injunction is necessary to vindicate constitutional rights. *See Pocklington v. O'Leary*, 1986 WL 5748, at *2 (N.D. Ill. May 6, 1986) ("[B]ecause of [a prisoner's] indigent status, no bond under Rule 65(c) is required."); *Davis v. Mineta*, 302 F.3d 1104, 1126 (10th Cir. 2002) ("minimal bond amount should be considered" in public interest case); *Complete Angler, L.L.C. v. City of Clearwater*, 607 F.Supp.2d 1326, 1335 (M.D. Fla. 2009) ("Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.").

G. THE PLRA

Any prospective relief ordered by the Court must meet the requirements of the Prison Litigation Reform Act, 18 U.S.C. § 3626 (PLRA):

> In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

18 U.S.C.A. § 3626(2).

This is frequently referred to as the "needs-narrowness-intrusiveness requirement." *See Fields v. Smith*, 653 F.3d 550, 558 (7th Cir. 2011), *cert. den*., 556 U.S. 904 (2012). Under this requirement, it is within the district court's discretion to order injunctive relief where the "orders establish that the court evaluated the record as a whole and identified evidence that fully supports the scope of the injunctive relief granted." *Id.* at 558, citing *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1070 (9th Cir. 2010) ("[T]he language of the PLRA does not suggest that Congress intended a provision-by-provision explanation of a district court's findings.... the statutory language [means] that the courts must do what they have always done when determining the appropriateness of the relief ordered: consider the order as a whole."); *Gomez v. Vernon*, 255 F.3d 1118, 1129 (9th Cir. 2001) (the PLRA "has not substantially changed the threshold findings and standards required to justify an injunction"); *Smith v. Ark. Dep't of Corr*., 103 F.3d 637, 647 (8th Cir.1996) (same); *Williams v. Edwards*, 87 F.3d 126, 133 n. 21 (5th Cir.1996) (same).

An appropriate remedy that is narrowly tailored to the violations and harms at issue, and deferential to the IDOC in its provision of RTU services, can be determined upon further hearing and evidence, including consideration of the limited the steps taken to date. Urgent action is

needed to ensure the ongoing protection of Plaintiffs federal rights. *See Brown v. Plata,* 563 U.S. 493, 511 (2011) ("Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration."). One appropriate form of remedial relief to protect Plaintiffs from further harm would be to issue an order banning the use of solitary confinement or extreme cell confinement for any individual designated as RTU level of care. *See Braggs v. Dunn*, 2017 WL 2773833, at *52 (M.D. Ala. June 27, 2017) ("Given the consensus on the substantial risk of harm of decompensation for these most severely mentally ill prisoners [SMI], the court concludes that it is categorically inappropriate to place prisoners with serious mental illness in segregation absent extenuating circumstances."). The IDOC can maintain flexibility and discretion over how that requirement be implemented, including whether it can be met at Pontiac or if the RTU level of care Class Members need to be relocated to a facility that can meet their needs.

In crafting relief, the Court should also consider lifting the current stay on proceedings for contempt remedies. The violations at Pontiac at issue here include violations of the Court's April 2019 requiring out-of-cell treatment and activity in both segregation and crisis watch, causing serious harm and injury to these Class Members.

WHEREFORE Plaintiffs respectfully request that this Honorable Court enter a order finding violations of the Settlement Agreement, §X(d) and a preliminary injunction with the relief necessary to protect the federal rights of SMI RTU Class Members.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, Amanda Antholt, an attorney, hereby certify that on October 18, 2021, I caused a copy of the foregoing document to be served on all counsel of record via the CM/ECF system.

/s/ Amanda Antholt