

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT KANSAS CITY**

SCOTT CHEEVER and)	
SIDNEY GLEASON,)	
)	
Plaintiffs,)	
v.)	
)	
JEFFREY ZMUDA, Secretary of the)	Case No. 2:20-cv-2555
Kansas Department of Corrections, SAM)	
CLINE, Warden, El Dorado Correctional)	
Facility, and SHANNON MEYER,)	
Warden, Lansing Correctional Facility,)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This Complaint challenges the policy of the state of Kansas that automatically and permanently holds death-sentenced inmates in solitary confinement until their capital sentence is overturned or they die, by natural causes or execution.

For their Complaint, Plaintiffs Scott Cheever and Sidney Gleason state as follows:

1. Plaintiffs, pursuant to Kansas Department of Corrections (“KDOC”) policy and procedure, each were automatically and permanently placed in solitary confinement,¹ sometimes known as “administrative segregation,” based solely on their death sentence. Both Plaintiffs have been held in solitary confinement by KDOC for more than a decade. Under KDOC policy and procedure, Plaintiffs, as well as all other death-sentenced inmates in Kansas correctional facilities,

¹ Under The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), “solitary confinement” is defined as “confinement of prisoners for 22 hours or more a day without meaningful human contact” and “prolonged solitary confinement” is defined as “a time period in excess of 15 consecutive days.” UN Office on Drugs & Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)* R. 44 at 14, available at goo.gl/cPT93i last viewed November 3, 2020).

will remain in solitary confinement until they receive relief from their death sentence, die of natural causes, or are executed. Solitary confinement for death-sentenced inmates such as Plaintiffs is permanent and never reviewed. The ten death-sentenced inmates in KDOC correctional facilities, including Plaintiffs, have been in solitary confinement for periods ranging from more than four years to more than 17 years. Seven of the ten, including Plaintiffs, have been held in solitary confinement for more than a decade.

2. More specifically, under Kansas Department of Corrections Internal Management Policy and Procedure (“IMPP”) § 20-104 I. B. 16, an inmate who is sentenced to death after conviction for a capital offense is placed in solitary confinement (called “administrative segregation”) automatically. Under that IMPP, such inmates “shall not be subject to the periodic Program Management Committee reviews required within the provisions of IMPP 20-106 unless there is some departure from their capital status . . .” Regardless of their behavior, death-sentenced inmates such as Plaintiffs cannot obtain review of or challenge their solitary confinement—it can end only if their death sentence is overturned or by their death. As a result, KDOC policy and procedure deny death-sentenced inmates such as Plaintiffs meaningful human contact for years on end, and Plaintiffs each have been denied such contact for over a decade.

3. KDOC’s policy and procedure of automatic, indefinite solitary confinement for death-sentenced inmates is extreme, debilitating, and inhumane, violates contemporary standards of decency, and poses an unreasonable risk of serious harm to the health and safety of Plaintiffs. Put simply, through such policy and procedure, Defendants systematically and continuously deprive Plaintiffs of the basic human contact required to maintain mental and physical health.

4. Plaintiffs are living lives of indefinite isolation with only limited and sporadic human interaction. They and the other inmates sentenced to death in Kansas are confined alone

between twenty-two and twenty-four hours a day in cells of approximately 82 square feet, roughly the size of a typical spot in a parking lot. Four or five days a week, Plaintiffs are allowed time out of their cells to exercise outside, alone in a small pen or cage, for one hour.² Apart from brief showers (which are to occur three times a week) and extremely infrequent non-contact visits, those exercise periods—which sometimes are set for the middle of the night, thus eliminating any chance of seeing daylight—are the only times Plaintiffs are routinely out of their cells.

5. In the same vein, each meal that Plaintiffs receive is delivered to them through their cell door and they consume them in their individual cells. Plaintiffs are allowed no opportunities to participate in congregate religious activity, educational or self-improvement programs, or any other type of prison programming, or to hold a prison job.

6. When KDOC inmates who are not sentenced to death are placed in solitary confinement for disciplinary or administrative reasons, they are not permanently assigned to solitary confinement and are expected to return to the general prison population. Indeed, KDOC policy and procedure contemplates regular review of all or substantially all solitary confinement placements except for death-sentenced inmates. *See generally* KDOC IMPP § 20-106. In other words, unlike Plaintiffs and the other inmates who are sentenced to death, inmates who are placed in solitary confinement for disciplinary or other reasons do not remain in solitary confinement permanently and indefinitely.

² During the past year, the death-sentenced inmates at El Dorado Correctional Facility, a group that includes Plaintiff Gleason, apparently have sometimes been allowed what might be called communal yard time on a limited basis. It is unclear whether this practice continues, or whether it has been made an official policy of KDOC. Regardless, most one-hour exercise periods at that facility, and all of them for Plaintiff Cheever at Lansing Correctional Facility, are solitary hours in a cage.

7. Other inmates at KDOC correctional facilities who have been convicted of homicide crimes are housed outside of so-called administrative segregation, and thus are not locked in their cells for twenty-two or more hours a day. Upon information and belief, such inmates are able to participate in prison programming, not unlike other inmates in the general prison population.

8. The abhorrent conditions of permanent solitary confinement³ that Plaintiffs endure have not only created a serious risk of harm to their health and safety, but undoubtedly have caused such harm, both psychological and physical, to them.

9. The severe damage caused to human beings from prolonged solitary confinement is well-known among experts, including mental health experts, physicians, corrections experts, and human rights experts in the United States and around the world. It is indisputable that prolonged solitary confinement puts human beings at risk of substantial physical, mental, and emotional harm,⁴ and that this has been recognized for many years.

³ The destructive and inhumane nature of the conditions inherent in permanent solitary confinement cannot be overstated. In an August 5, 2011 report, the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations Commission on Human Rights found that prolonged solitary confinement constitutes torture. As a result, the Special Rapporteur determined that solitary confinement is only acceptable in exceptional circumstances and that the duration of such isolation must be as short as possible, and that 15 days in solitary confinement is a human rights violation.

⁴ See, e.g., Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 *Crime & Just.* 365, 368 (2018) (“Largely because of the robustness and theoretical underpinnings of the data, numerous scientific and professional organizations have reached a broad consensus about the damaging effects of solitary confinement. . . . The American Psychological Association. . . , the world’s largest professional association of psychologists, asserted that ‘solitary confinement is associated with severe harm to physical and mental health among both youth and adults, including: increased risk of self-mutilation, and suicidal ideation; greater anxiety, depression, sleep disturbance, paranoia, and aggression; exacerbation of the onset of pre-existing mental illness and trauma symptoms; [and] increased risk of cardiovascular problems.’”); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 *Wash. U. J. L. & Pol’y* 325, 355 (2006) (“[E]ven those inmates who are more psychologically resilient inevitably suffer severe psychological pain as a result of [solitary] confinement, especially when the confinement is

10. Indeed, members of the United States Supreme Court have condemned prolonged solitary confinement. As put by Justice Anthony Kennedy, “[R]esearch still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price.”⁵ *Davis v. Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring) (citation omitted). In describing the *Davis* case, in which a death-sentenced inmate had been held in isolation for 25 years, Justice Kennedy told the United States House of Representatives Appropriations Subcommittee on Financial Services and General Government: “This idea of total incarceration just isn’t working. And it’s not humane. . . . Solitary confinement literally drives men mad.”⁶ Similarly, after noting that “in 1890, this Court recognized long-standing ‘serious objections’ to extended solitary confinement[,]” Justice Breyer stated that “if extended solitary confinement alone raises serious constitutional questions, then 20 years of solitary confinement, all while under threat of execution, must raise similar questions, and to a rare degree, and with particular intensity.” *Ruiz v. Texas*, 137 S. Ct. 1246, 1247 (2017) (Breyer, J, dissenting from denial of stay of execution). Justice Sotomayor has expressed similar concerns. *Apodaca v. Raemisch*, 139 S.

prolonged, and especially when the individual experiences this confinement as being the product of an arbitrary exercise of power and intimidation.”)

⁵ In the late nineteenth century, the Court noted:

[Prisoners subject to solitary confinement] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.

In re Medley, 134 U.S. 160, 168 (1890).

⁶ Supreme Court Fiscal Year 2016 Budget at 30:42-31:22 (C-SPAN television broadcast Mar. 23, 2015), available at [goo.gl/8Hkuvj](https://www.c-span.org/video/?cspid=322827) (last viewed November 3, 2020).

Ct. 5, 9 (2018) (Sotomayor, J., issuing a statement respecting the denial of certiorari) (“Courts and corrections officials must accordingly remain alert to the clear constitutional problems raised by keeping prisoners . . . in ‘near-total isolation’ from the living world . . . in what comes perilously close to a penal tomb.”).

11. There is no legitimate penological reason to hold Plaintiffs in solitary confinement, much less permanent solitary confinement, based solely on their death sentence. Corrections officials in other states use placement systems based on several objective factors, such as age and prison disciplinary history, because such factors, unlike an inmate’s sentence, are predictive of potential security concerns.⁷ Indeed, in a 2016 report that analyzed the use of solitary confinement in the U.S. and described efforts across the country to improve placement processes, including revising criteria for placing inmates in solitary confinement, the Association of State Correctional Administrators stated that “the prolonged isolation of individuals in jails and prisons is a grave problem in the United States.”⁸

12. KDOC policy and procedure that holds all death-sentenced inmates in permanent solitary confinement is inconsistent with accepted correctional practices. Studies show that

⁷ Some states have mainstreamed death-sentenced prisoners (that is, moved them into the general population) or eliminated automatic solitary confinement. See Mark D. Cunningham, et al., *Is Death Row Obsolete? A Decade of Mainstreaming Death-Sentenced Inmates in Missouri*, 23 Behav. Sci. & L. 307, 316-19 (2005); Randall Chase, “Delaware Quietly Disbands Death Row,” Delaware State News, Dec. 9, 2016, available at <http://delawarestatenews.net/news/delaware-quietly-disbands-death-row/> (last viewed November 3, 2020); Arthur Liman Public Interest Program, Yale Law School, *Rethinking Death Row: Variations in the Housing of Individuals Sentenced to Death*, July 2016, at 15, available at https://law.yale.edu/sites/default/files/documents/pdf/Liman/deathrow_reportfinal.pdf (last viewed November 3, 2020) Colorado has eliminated its prior policy of automatically assigning all death-sentenced prisoners to solitary confinement).

⁸ Ass’n of State Corr. Adm’rs, The Arthur Liman Pub. Interest Program, Yale L. Sch., *Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms* at 1, 4-5 (Nov. 2016).

inmates convicted of homicide are not more violent and are no more of a security risk than inmates convicted of other crimes, and their rates of “violent or assaultive rule infractions” have been found to be “below or near the mean for the entire inmate cohort.”⁹ Indeed, a study that compared the institutional violence histories of death-sentenced inmates with those of other inmates at Potosi (Missouri) Correctional Center shows that death-sentenced inmates who are classified using the same processes as other inmates have rates of institutional violence comparable to those sentenced to life without parole and lower than those of parole-eligible inmates.¹⁰

13. Having continuously and systematically held Plaintiffs in solitary confinement for years, Defendants and their predecessors have subjected Plaintiffs to conditions that effectively constitute torture. Living indefinitely in such conditions without routine human interaction has created the serious risk that Plaintiffs have suffered and will suffer the psychological and physical harms long associated with prolonged solitary confinement.

14. Despite the widely known scientific, medical, correctional, and judicial recognition of the inhumane toll that permanent solitary confinement inflicts, Defendants nonetheless strictly adhere to KDOC policy and procedure that imposes that toll on Plaintiffs and other death-sentenced inmates, and thus are deliberately indifferent to the risk of serious harm posed by that policy. Indeed, that indifference to the conditions of Plaintiffs’ lives is even reflected in KDOC policy concerning solitary confinement as applied to all inmates other than death-sentenced inmates, which recognizes both that solitary confinement must be carefully and regularly reviewed

⁹ Jon Sorensen & Mark D. Cunningham, *Conviction Offense and Prison Violence: A Comparative Study of Murderers and Other Offenders*, 56 *Crime & Delinquency* 103, 114 (Jan. 2010), available at goo.gl/ecg3qR (last viewed November 3, 2020).

¹⁰ Mark D. Cunningham, et al., *Is Death Row Obsolete? A Decade of Mainstreaming Death-Sentenced Inmates in Missouri*, 23 *Behav. Sci. & Law* 307, 316-319 (2005).

and that limits on solitary confinement are necessary. By those policies, Defendants effectively acknowledge the adverse health effects of prolonged, let alone permanent, solitary confinement, and yet the permanent solitary confinement of Plaintiffs and other death-sentenced inmates continues.

15. Plaintiffs' permanent solitary confinement was imposed, and continues, without any rational basis and without Plaintiffs being afforded any process to challenge their confinement or to address the harm that it has inflicted on them.

16. The hardships that result from Plaintiffs being held permanently in solitary confinement are debilitating, inhumane, and violate contemporary standards of decency. KDOC's imposition of permanent solitary confinement for death-sentenced inmates deprives Plaintiffs of basic human contact necessary to maintain their mental and physical health. Plaintiffs have suffered and continue to suffer serious physical and psychological injuries as a direct result of the hardships presented by the conditions in permanent solitary confinement.

17. Defendants, who are employed by the state of Kansas, have acted and are acting under color of state law to deprive Plaintiffs of their rights to due process of law, guaranteed by the Fourteenth Amendment, and to be free of cruel and unusual punishment, guaranteed by the Eighth and Fourteenth Amendments. Plaintiffs seek declaratory and injunctive relief to address these violations of rights guaranteed to them by the United States Constitution.

Jurisdiction and Venue

18. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 and the Eighth and Fourteenth Amendments to the United States Constitution.

19. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 1343.

20. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) and (2).

The Parties

21. Scott Cheever is 39 years old. He was sentenced to death in January, 2008. Upon his death sentence, KDOC placed Cheever in solitary confinement, otherwise known as administrative segregation, at Lansing Correctional Facility (“LCF”), where he has remained for more than a dozen years.¹¹

22. Sidney Gleason is 41 years old. He was sentenced to death in August, 2006. Upon his death sentence, KDOC placed Gleason in solitary confinement, otherwise known as administrative segregation, at El Dorado Correctional Facility (“EDCF”), where he has remained for over 14 years.

23. Defendant Jeff Zmuda is the Secretary of KDOC and heads that agency. In that capacity, he is responsible for the overall management and operation of Kansas’ correctional facilities, including those at issue here. Defendant Zmuda authorizes or condones the unconstitutional policy of housing all death-sentenced inmates in solitary confinement indefinitely, and thus he directly and proximately has caused and continues to cause the violations of Plaintiffs’ constitutional rights as described in this Complaint. At all relevant times, Defendant Zmuda was acting under color of state law and as KDOC’s official representative. He is sued in his official capacity.

24. Defendant Sam Cline is the Warden of EDCF. As the Warden of EDCF, he makes and is responsible for operational decisions at that prison. As such, Defendant Cline authorizes or condones the unconstitutional policy of housing Plaintiff Gleason at EDCF in solitary confinement

¹¹ There is one notable exception. In December, 2019, without any warning, Cheever was awakened in the middle of the night by KDOC personnel and told that he was immediately being moved to EDCF. Several weeks later—once again without any warning or explanation—Cheever was moved back to LCF.

indefinitely, as described in this Complaint. Therefore, he directly and proximately has caused and continues to cause the violations of Plaintiff Gleason's constitutional rights as described in this Complaint. At all relevant times, Defendant Cline was acting under color of state law and as an official representative of EDCF and KDOC. He is sued in his official capacity.

25. Defendant Shannon Meyer is the Warden of LCF. As the Warden of LCF, she makes and is responsible for operational decisions at that prison. As such, Defendant Meyer authorizes or condones the unconstitutional policy of housing Plaintiff Cheever at LCF in solitary confinement indefinitely, as described in this Complaint. Therefore, she directly and proximately has caused and continues to cause the violations of Plaintiff Cheever's constitutional rights described in this Complaint. At all relevant times, Defendant Meyer was acting under color of state law and as an official representative of EDCF and KDOC. She is sued in her official capacity.

Exhaustion

26. Plaintiffs have exhausted such administrative remedies as were available to them.

COUNT ONE

Violation of Eighth and Fourteenth Amendments (Cruel and Unusual Punishment)

27. The foregoing allegations are incorporated here as if re-alleged.

28. Defendants' automatic and permanent placement of Plaintiffs in solitary confinement has deprived and continues to deprive Plaintiffs of basic human needs, subjecting them to a substantial risk of serious harm. This practice violates their human dignity and their right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. Defendants' policies and procedures are cruel and unusual because they deprive Plaintiffs of basic human needs, threaten and cause serious and irreparable psychological and physical injury, and violate minimal standards of human dignity.

29. The physical and psychological consequences of long-term isolation constitute a severe deprivation of fundamental human needs, including but not limited to such needs as human interaction, environmental and mental stimulation, and adequate physical exercise.

30. This severe deprivation of fundamental human needs causes extreme psychological anguish and is likely to result in lasting psychological and physical harm to Plaintiffs.

31. Permanent solitary confinement subjects Plaintiffs to significant risk of permanent mental illness and physical harm.

32. Defendants' policy and procedures inflicts disproportionate punishment on Plaintiffs.

33. Holding Plaintiffs in these cruel conditions because they were sentenced to death serves no valid, lawful purpose. Doing so has no legitimate penological basis and does not serve any security needs.

34. The years of inflicting this mental and physical harm on Plaintiffs has stripped them of their dignity and worth, violates civilized society's notions of decency and humanity, and constitutes conduct that is unacceptable in modern society.

35. The policies and procedures that KDOC applies to death-sentenced prisoners have been and continue to be implemented by Defendants with deliberate indifference to the substantial risk of serious harm they create. The literature on prolonged and indefinite solitary confinement, including studies by experts of all relevant types, is extensive and unanimous in its conclusions about the harms of solitary confinement. Defendants have been on notice and continue to be on notice of all of the deprivations caused by KDOC policy and procedure on automatic and permanent solitary confinement for death-sentenced inmates and have nonetheless continued to implement them.

36. As a direct and proximate result of Defendants' constitutional violations as described above, Plaintiffs have suffered serious harm and are at substantial risk of serious harm in the future. Plaintiffs have no adequate remedy at law to address Defendants' actions. Plaintiffs will continue to suffer irreparable harm unless Defendants are enjoined from continuing the unlawful policies and procedures that have directly and proximately caused these constitutional violations.

37. An actual controversy exists regarding the constitutionality of Defendants' policies and procedures that automatically and permanently place Plaintiffs and other death-sentenced inmates in solitary confinement. A declaration on this issue will resolve that portion of the controversy between the parties, and the Court's determination of the issues will guide Defendants' actions.

COUNT TWO

Violation of Fourteenth Amendment (Due Process)

38. The foregoing allegations are incorporated here as if re-alleged.

39. By denying Plaintiffs any review of their placement in solitary confinement and providing no possibility of relief from that isolation, Defendants are depriving Plaintiffs of liberty without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

40. The conditions and the length of confinement to which Plaintiffs are subjected constitute an atypical and significant hardship as compared with the ordinary incidents of prison life because of (a) the complete isolation of their solitary confinement, (b) the indefinite and permanent nature of their solitary confinement, and (c) the absence of any avenue to challenge their solitary confinement.

41. Plaintiffs live in isolation in small cells for twenty-two to twenty-four hours a day. Their ability to exercise is severely limited, and they are denied meaningful human interaction and environmental and mental stimulation.

42. Plaintiffs have been held in these abhorrent conditions for more than a decade.

43. Plaintiffs are provided no notice of what they can do to be removed from solitary confinement and there is no process to challenge their ongoing solitary confinement or to determine whether they actually require such confinement.

44. Defendants violate the due process rights of Plaintiffs by holding them in conditions that impose atypical and significant hardship without procedural protections.

45. As a direct and proximate result of Defendants' constitutional violations as described above, Plaintiffs have suffered serious harm and are at substantial risk of serious harm in the future. Plaintiffs have no adequate remedy at law to address Defendants' actions. Plaintiffs will continue to suffer irreparable harm unless Defendants are enjoined from continuing the unlawful policies and procedures that have directly and proximately caused these constitutional violations.

46. An actual controversy exists regarding the constitutionality of Defendants' policies and procedures that automatically and permanently place Plaintiffs and other death-sentenced inmates in solitary confinement. A declaration on this issue will resolve that portion of the controversy between the parties, and the Court's determination of the issues will guide Defendants' actions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants:

A. Declaring that Defendants' policies and procedures that automatically place all death-sentenced inmates in permanent solitary confinement with no opportunity for review violate the Eighth and Fourteenth Amendments to the United States Constitution;

B. Granting permanent injunctive relief against Defendants to comply with the Eighth and Fourteenth Amendments to the United States Constitution by enjoining them and their successors, agents, representatives, or others acting in concert with them or on their behalf, from confining Plaintiffs in permanent solitary confinement with no opportunity for review, and to abolish the policies and procedures that do so;

C. Granting permanent injunctive relief requiring Defendants to present a plan to the Court within 45 days that provides for:

1. the institution of a meaningful individualized placement procedure for death-sentenced inmates such as Plaintiffs that is based on validated risk assessment instruments and the prisoner's individual circumstances; is not arbitrary; and allows death-sentenced inmates the opportunity to qualify for the same placements as those inmates who were not death-sentenced, including placement in either (a) a general population unit, or (b) a modified general population unit in which the death-sentenced inmates remain segregated from the general prison population but have the same privileges as inmates in the general population;
2. application of the new placement procedure described above to Kansas' current population of death-sentenced inmates and any such inmates in the future;
3. alleviation of the conditions of confinement of all death-sentenced inmates so they are no longer incarcerated under condition of isolation, sensory deprivation, and lack of social and physical human contact; and
4. any other measure required to bring Defendants into compliance with the Eighth and Fourteenth Amendments to the United States Constitution.

D. Maintaining jurisdiction over this action to ensure Defendants' full compliance with the injunction;

E. Awarding Plaintiffs their costs and reasonable attorney's fees pursuant to 42 U.S.C. § 1988; and

F. Granting such other and further relief as the Court deems just and proper.

Dated: November 6, 2020

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