

constitutional standards of decency are evolving. Plaintiffs bring this class action seeking to remedy the unconstitutional conditions in C-Pod, and say:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4). Plaintiffs bring claims under 42 U.S.C. § 1983 for the deprivation of rights secured by the Eighth and Fourteenth Amendments to the United States Constitution.

2. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this judicial district and the parties reside in this district.

PARTIES

3. Plaintiff Azariah Lazar is a pretrial detainee housed in “C-Pod” at the Middlesex County Adult Correction Center located at U.S. Route 130 and Apple Orchard Lane, North Brunswick, NJ 08902. Mr. Lazar has been in C-Pod since February 2015.

4. Plaintiff Luis Borrero is awaiting trial and housed in C-Pod. He is also serving a sentence in Pennsylvania. Mr. Borrero has been in C-Pod since June 2015.

5. Plaintiff Hector Amengual is a pretrial detainee housed in C-Pod since May 2014.

6. Plaintiff Sean Pershing is a pretrial detainee housed in C-Pod since September 2015.

7. Plaintiff Tyson Ratliff is a pretrial detainee housed in C-Pod since September 2015.

8. Plaintiff Jonathan Rodriguez is a pretrial detainee housed in C-Pod since September 2015.

9. Plaintiff Terrence Edwards is a pretrial detainee housed in C-Pod since October 2015.

10. Plaintiff Damani Harris is a pretrial detainee housed in C-Pod since October 2014.

11. Plaintiff Patrick O'Dwyer is a pretrial detainee housed in C-Pod since November 2014.

12. Defendant Middlesex County is a body politic with a principal business address at the County Administration Building, 75 Bayard Street, New Brunswick, NJ 08901. The subdivision of the County responsible for the jail is the Office of Adult Corrections and Youth Services.

CLASS ALLEGATIONS

13. Plaintiffs bring this action individually and on behalf of all persons who are now or will be housed in C-Pod during the pendency of this lawsuit, pursuant to Fed. R. Civ. P. 23(a) and (b)(2).

14. This is a fluid class of about 50 individuals at a given time and is so numerous that joinder of all members is impracticable.

15. There are questions of law or fact common to the class. All individuals in C-Pod are subject to the same conditions, the constitutionality of which will be determined under either the Eighth or Fourteenth Amendments.

16. The claims or defenses of the representative parties are typical of the claims or defenses of the class.

17. The representative parties will fairly and adequately protect the interests of the class. There are no conflicts between the Plaintiffs and other class members. No class member has an interest in maintaining the current inhumane conditions in C-Pod.

18. The party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

19. Plaintiffs have retained competent and experienced counsel who will fairly and adequately represent the interests of the class. The Public Defender has done substantial work in investigating and identifying potential claims in the action and has experience in handling class actions. This experience includes prosecuting class action claims on behalf of inmates in county jails and state prisons throughout New Jersey. Accordingly, the Public Defender has knowledge of the applicable law and procedures that relate to these claims. Finally, in what can be described as the largest public interest law firm in the State of New Jersey, the New Jersey Office of the Public Defender will commit substantial resources to representing the class.

FACTUAL ALLEGATIONS

20. Plaintiffs are inmates housed in an area of the Correction Center known as C-Pod, a cluster of maximum-security cells spanning four levels of the jail.

21. There are about 50 inmates in C-Pod.

22. The cells in C-Pod are smaller than a parking space. They have narrow windows that are sealed shut, many of which are painted over, preventing the inmates from looking outside. Other windows are so dirty that only a faint glow of sunlight comes through. Aside from a small window and a slot for food, the doors are solid metal.

23. The cells are equipped with a combination toilet-sink, a bed with a thin foam mattress, and a small desk. There is no chair for the desk, so inmates must either sit on the concrete floor or the bed.

24. In C-Pod, time passes in long silences broken by the sudden outbursts of the mentally ill, who scream, bang on the walls and toilets, and jump on the beds in their cells.

25. The air in C-Pod is dusty, tinged with sewage, and inadequately ventilated; it causes some Plaintiffs to have nosebleeds or asthma attacks.

26. The air in C-Pod is uncomfortably cold at all times. Inmates are provided with only one, thin blanket, which exacerbates the discomfort.

27. The cells are infested with flies, roaches, centipedes and other insects.

28. There is black mold in the shower facilities.

29. Many of the cells have leaky plumbing, causing rank water to pool on the floor.

30. The inmates are confined alone in their cells 5 days a week for 23 hours a day, and 2 days a week for 24 hours.

31. The inmates' only form of stimuli comes in the form of an antiquated book delivered by library staff.

32. On days when an inmate can leave his cell for an hour, he may not interact with, or even speak to, any other inmates. He may only shower by himself or pace around in one of the small, 10x10 chain-link cages inside C-Pod. Some of the cages face a television controlled by the officer on duty, and some have a telephone that inmates can use if they have sufficient funds.

33. Officers are not always scrupulous in allowing an inmate his full hour.

34. The hourly schedule for when an inmate may leave his cell is not consistent. For example, an inmate may be permitted to leave for an hour at 6 a.m. on one day but 6 p.m. on the following day, meaning he will remain alone in his cell for much longer than 24 hours even during the 5 days he is permitted to leave his cell.

35. Unlike inmates in the general population, inmates in C-Pod are never allowed to:
- A. Eat meals away from their toilets or with other inmates;
 - B. Have in-person visits from family, friends or loved ones;
 - C. Participate in religious groups or services;
 - D. Participate in groups or programs designed to educate or rehabilitate them;
 - E. Access the law library to research their cases;
 - F. Access the computer laboratory; or
 - G. Go outside for exercise, recreation, and their overall well-being, meaning Plaintiff Hector Amengual, for example, has not been exposed to fresh air and natural sunlight for over 1.5 years.

36. The inability to go outside or even walk in one direction for more than 10 feet causes inmates a number of physical maladies, such as stiffness of the joints and backaches.

37. Unlike inmates in the general population, inmates in C-Pod have restricted access to their attorneys.

- A. If they do not have sufficient funds to use the telephone in one of the 10x10 cages, an inmate's only way of contacting his attorney by phone is through a social worker who visits between once a week and once a month.
- B. Attorneys wishing to meet with an inmate in C-Pod are routinely subject to long wait times and limited timeframes in which to conduct the meeting. For example, the afternoon visitation hours at the Correction Center are between 2-4 p.m., but attorneys wishing to visit with a C-Pod client must wait until 3:30 p.m. to accommodate "window checks" that are scheduled during attorney visitation hours. And when the meetings do occur, they are short and

harried because of the time constraints and because there is only one meeting room in the pod.

C. Additionally, the physical layout of the attorney-client meeting room impairs an inmate's access to his attorney. There is no desk or table at which the attorney and client may sit. Instead, the room is divided in two by a chain-metal partition, with the inmate on one side and his attorney on the other.

38. These conditions, separately and in combination, deprive Plaintiffs of the minimal necessities of civilized life and cause them unnecessary pain and suffering. This is of grave constitutional concern.

39. Solitary confinement lasting more than 10 days results in a distinct set of emotional, cognitive, social, and physical pathologies.

40. Solitary confinement creates or exacerbates serious mental health problems and anti-social behavior, and leads to an increased rate of recidivism after release.¹

41. Because solitary confinement deprives the subject of social and environmental stimulation, it is "toxic to brain functioning and causes symptoms characteristic of stupor and delirium."²

42. Neurological effects may include perceptual distortions, illusions, and hallucinations; panic attacks; difficulties with thinking, concentration, and memory; frightening and uncontrollable fantasies, such as those involving revenge, torture, or mutilation; paranoid and persecutory delusions; and problems with impulse control.

¹ Vera Institute of Justice Safe Alternatives to Segregation Initiative, *Request for Proposals for Technical Assistance Sites*, <http://www.vera.org/project/safe-alternatives-segregation-initiative>.

² Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol'y 325, 348 (2006).

43. The motor effects of those subject to solitary confinement range from a state of restlessness, yelling, and banging at one end of the spectrum to a kind of regressed, dissociated, withdrawn, hypnoid state at the other.

44. Suicide rates and incidents of self-mutilation (such as banging one's head against the cell wall) are much higher for people in segregation than those in the general prison population.

45. In C-Pod, inmates who exhibit some of these disturbed behaviors are stripped naked and put in a thin mesh gown known as "the chicken suit" and held for hours or days in a cold, empty observation cell without a bed or even a blanket.

46. These types of conditions may cause prolonged or permanent psychiatric disability, including impairments which destroy the inmate's capacity to reintegrate into the community upon release.

47. Plaintiffs are suffering from some or all of the foregoing effects.

48. The conditions in C-Pod violate the evolving standards of decency in the United States towards incarcerated people.

A. The Association of State Correctional Administrators has now recognized solitary confinement as "a grave problem."³

B. Justice Kennedy of the United States Supreme Court recently called on the Judiciary to examine the practice of confining an inmate to near-total isolation for an extended period of time.⁴

³ George Camp et al., *New Report on Prisoners in Administrative Segregation Prepared by the Association of State Correctional Administrators and the Arthur Liman Public Interest Program at Yale Law School*, <http://www.asca.net/system/assets/attachments/8895/ASCA%20LIMAN%20Press%20Release%208-28-15.pdf?1441222595>.

⁴ *Davis v. Ayala*, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring).

C. President Obama recently directed the Attorney General to review the overuse of solitary confinement across American prisons.⁵

D. The American Bar Association now recommends that “[s]egregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner.”⁶

E. The Committee against Torture, the official body established under the United Nations’ Convention against Torture, advocates a “ban [on] solitary confinement regimes in prisons.”⁷

49. Whether solitary confinement should be abolished altogether is debatable.

50. But even if some inmates must be separated, that can be done without the extreme social isolation and sensory deprivations inflicted by the conditions in C-Pod. The conditions in C-Pod are excessive in relation to the purposes assigned to them.

51. There are a number of ways that Defendant can alleviate the harm to which Plaintiffs are subjected, even if they are still confined in C-Pod. Some of these include, but are not limited to: providing access to an outdoor exercise area; increasing the time out of cell; permitting in-person visits with family, friends and loved ones; providing in-cell programming via headphones or speakers in cells that play radio, television or educational information; permitting inmates in C-Pod to interact with one another, such as by eating together; or giving inmates opportunities to increase privileges through good behavior.

⁵ <https://www.whitehouse.gov/the-press-office/2015/07/14/remarks-president-naacp-conference>.

⁶ ABA, *Standards for Criminal Justice: Treatment of Prisoners* 50, Standard 23-2.6 (Rationales for segregated housing) (3d. ed. 2011).

⁷ U.N. Comm. against Torture, *Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America* ¶ 20, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014).

52. These changes are not impracticable. For example, New York offers prisoners in-cell programming via headphones and a jack in their cells that plays radio, television, and other programs. Colorado now requires that incarcerated people held in its Management Control Unit receive four hours of time outside their cell each day. Maine requires that incarcerated people in segregated housing receive group recreation, counseling sessions, and opportunities to increase privileges through good behavior, as well as greater access to radios, televisions, and reading materials. And in a national survey of administrative segregation practices, “44 of 46 responding jurisdictions had an outdoor exercise area.”⁸

53. These changes are also financially feasible. Defendant has sufficient resources to remedy its constitutional defects: in 2014, Middlesex County’s total appropriations were \$454,043,454, with \$12,761,636 in reserves at the end of the fiscal year.⁹

54. The Court should shepherd Defendants into compliance with the evolving standards of decency towards incarcerated people.

CAUSES OF ACTION

Count I

Punishment in Violation of Due Process under the Fourteenth Amendment to the United States Constitution

55. The above facts are incorporated by reference here as if set forth at length.

56. In the context of prisons, the United States Constitution looks beyond historical conceptions to the evolving standards of decency that mark the progress of a maturing society.

⁸ *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison* 41 (Yale Law Sch. Liman Public Interest Program, August 2015), available at <https://www.law.yale.edu/centers-workshops/arthur-liman-public-interest-program/liman-publications>.

⁹ *Middlesex County 2015 Operating Budget*, adopted January 15, 2015, <http://www.co.middlesex.nj.us/Government/Departments/Finance/Documents/2015%20County%20Budget%20handout.pdf>.

57. In light of the known effects of solitary confinement, the conditions in C-Pod are not reasonably related to legitimate purposes.

58. These conditions cause inmates deprivations and hardships over an extended period of time and are excessive in relation to the purposes assigned to them.

59. Therefore, the conditions in C-Pod constitute punishment of pretrial detainees in violation of the Due Process Clause of the Fourteenth Amendment.

Count II

Cruel and Unusual Punishment in Violation of the Eighth Amendment to the United States Constitution

60. The above facts are incorporated by reference here as if set forth at length.

61. The United States Constitution requires the government to respect the human attributes even of those who have committed serious crimes.

62. The Eighth Amendment's scope must change as the basic mores of society change.

63. The conditions of C-Pod deprive inmates of the minimal necessities of civilized life and cause profound and obvious psychological pain and suffering. This suffering is unnecessary and wanton.

64. Under these circumstances, Defendant knows of and disregards an excessive risk to inmate health.

65. Therefore, the conditions in C-Pod inflict cruel and unusual punishment on sentenced inmates, in violation of the Eighth Amendment.

Count III

Restriction on the Right of Access to the Courts in Violation of Due Process under the Fourteenth Amendment to the United States Constitution

66. The above facts are incorporated by reference here as if set forth at length.

67. The Constitution guarantees inmates a right of access to the courts. This right applies to both criminal proceedings and civil proceedings in which an inmate is challenging the conditions of his confinement.

68. Inmates in C-Pod are completely deprived of access to the Correction Center's law library.

69. The conditions in C-Pod restricting attorney visitation severely impair their access to counsel.

70. Therefore, detainees in C-Pod are subject to restrictions that impair their right of access to the courts, in violation of the Fourteenth Amendment.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, individually and on behalf of the class they represent, ask the Court to:

- A. Certify this case as a class action;
- B. Appoint Plaintiffs as class representatives;
- C. Appoint Plaintiffs' counsel as class counsel;
- D. Pursuant to 28 U.S.C. § 2201, declare that the conditions of confinement in C-Pod are unconstitutional;
- E. Permanently enjoin Defendants and all its officers, employees, and agents to transfer inmates out of C-Pod or take all actions necessary to render the conditions of confinement in C-Pod constitutional;
- F. Retain jurisdiction of this case until Defendants have complied with the Court's Orders;
- G. Award costs and reasonable attorney's fees; and

H. Award any other relief the Court deems necessary and just pursuant to 28 U.S.C. § 2202.

LOCAL CIVIL RULE 11.2 CERTIFICATION

The matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding. I certify under penalty of perjury that the foregoing is true and correct.

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