

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

G.H., a minor, by and through his parent
and legal guardian, GREGORY HENRY;
R.L., a minor, by and through her parent
and legal guardian, ANGEL CARTER;
B.W., a minor,

Case No.:

Florida Department of Juvenile Justice (DJJ) isolate thousands of children in solitary confinement every year. The risk of harm for children begins immediately when they are isolated in solitary confinement.

2. Solitary confinement is unnecessary, unproductive, and can be permanently damaging to the individuals subjected to it. A national consensus is emerging that solitary confinement poses a risk of harm for anyone, but is especially harmful for children who are still developing physically, psychologically, and socially. For children with mental illness, developmental disabilities, or histories of trauma, the risk of harm from isolation is even greater. Among other authorities, the U.S. Department of Justice, the American Medical Association, the American Academy of Child and Adolescent Psychiatry, and the National Commission on Correctional Health Care have recognized that solitary confinement is harmful and should be eliminated for children.

3. The named Plaintiffs, and the class they seek to represent, are, or will be, subject to solitary confinement, in one of the 21 operated secure detention centers (Secure Detention) throughout the state. They bring this action to address the violations of their rights.

4. DJJ, through policy and practice, subjects children to solitary confinement, often the same child repeatedly, without any time limit, to manage their behavior as a first response to any situation. In solitary, children spend hours

or days behind locked steel doors in tiny cells. DJJ denies them access to outdoor recreation and schooling and deprives them of

6. Depriving a child of meaningful social interaction, programming, or mental stimulation is harmful and counterproductive to the goals of ensuring the safety and security of juvenile facilities. For these reasons, there is a national trend among juvenile and correctional entities to eliminate or dramatically reduce disciplinary or punitive isolation for juveniles and, instead, use more appropriate techniques for managing behavior. These entities use very brief, short-term separation of a youth from others, if at all, and only as a last resort when other options fail to deescalate situations which pose an acute immediate risk of physical harm to the youth or others. During these brief separations, youth receive mental health services, access to basic necessities, programming, and procedural safeguards such as individualized assessments, supervisory approvals, and reviews. Despite the national shift away from using solitary confinement based on a consensus among scientific, medical, and mental health professionals about the psychological and physiological risks of serious harm, DJJ has ignored these risks and continues to subject children in secure detention centers to frequent and repeated solitary confinement.

7. Defendant Simone Marstiller is aware of and has deliberately disregarded the substantial risk of harm to the rights of Plaintiffs, and other similarly situated children, by authorizing and subjecting them to illegal conditions of confinement, including a policy and practice of using harmful solitary

confinement in violation of the right to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Defendants Simone Marsteller and DJJ have also acted, and are acting, under color of state law to discriminate against Plaintiffs and Class Members with disabilities in violation of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

8. Plaintiffs, on behalf of themselves and the class they seek to represent (hereafter collectively “Plaintiffs”), bring this action to redress the violations of their civil, statutory, and constitutional rights by Defendants while acting under color of state law. Plaintiffs challenge Defendants’ statewide policy and practice of using solitary confinement in Secure Detention where children are isolated from others in a locked cell with no meaningful social interaction, environmental stimulation, outdoor recreation, schooling, or proper care. Without judicial intervention, these children will continue to suffer from the physical and psychological harm from solitary confinement. Plaintiffs seek declaratory and injunctive relief requiring Defendants to cease the challenged unlawful policies and practices.

JURISDICTION AND VENUE

9. Plaintiffs’ claims for relief are predicated upon 42 U.S.C. § 1983 which authorizes actions to redress the deprivation, under color of state law, of

Regional Juvenile Detention Center (Volusia JDC). He appears in this action through his parent and legal guardian, Gregory Henry.

17. Each time that DJJ locked G.H. in solitary confinement ~~was~~
horrible. DJJ took ~~a~~ of his personal property and left him in an empty room ~~to~~

among people in solitary confinement. He engaged in acts of self-harm while in solitary confinement by wrapping his pants around his neck and choking himself. G.H. felt like he was going to die. He became paranoid. G.H. had difficulty sleeping and thought he was having a seizure while he was sleeping. However, he does not get seizures. His back and neck also became sore because DJJ would not give him a mat to lie down on during the day. Instead, he lay on a hard concrete slab in the cell.

20. Defendants subject G.H. to a substantial risk of serious harm by isolating him in confinement, including by causing him to engage in serious self injury, placing him at risk for suicide, exacerbating his psychiatric disability, and causing him to experience further trauma.

Plaintiff R.L.

22. Plaintiff R.L. is a 13-year old African American child who lives in Jacksonville, Florida. She is in Secure Detention at the Duval Regional Juvenile Detention Center (Duval JDC). She appears in this action through her parent and legal guardian, Angel Carte

23. Prior to her placement in Secure Detention, R.L. received Exceptional

24. DJJ isolated R.L. in solitary confinement at the Duval JDC at least two times. On August 27, 2019, DJJ put R.L. in confinement for approximately six hours after another child punched her in the face. DJJ kept R.L. in confinement even after she filed a grievance asking not to be put in confinement and told DJJ that isolating her made her anxiety worse and would put her at risk of harm because of her psychiatric disability. R.L. cried in confinement she was

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26. Defendants' solitary confinement policies and practices caused R.L. to display symptoms and harm that are consistent with those experts identify among people in solitary confinement. She was depressed because she could not talk to her mother. She felt more anxious and found it difficult to sleep. She felt upset and trapped. She felt alone and angry. The trauma of solitary confinement made her

Plaintiff B.W.

29. Plaintiff B.W. is an African-American girl who lives in Jacksonville, Florida. She turned 16 years old while in Secure Detention at the Duval JDC. She appears in this action through her parent and legal guardian, Leroi Luzunaris.

30. B.W. has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and prescribed Adderall. DJJ diagnosed B.W. as needing to see an eye doctor for an exam and glasses to correct impaired vision in both eyes with significantly impaired vision in her left eye. Her disabilities interfere with her ability to concentrate, think and see.

31. DJJ determined that B.W. was pregnant while she was in Secure Detention at the Duval JDC in June 2019 based on a pregnancy test. She is currently approximately 13-14 weeks into her pregnancy.

32. In July 2019, while DJJ was aware that she was pregnant, DJJ isolated B.W. in solitary confinement. She was initially told that she would be put into isolation because she was pregnant, but then put in confinement because she did not go to school.

complications, or aggravated pregnancy-related symptoms caused by the trauma of solitary confinement.

33. DJJ has repeatedly isolated B.W. confinement at least 11 times while she has been in Secure Detention for periods ranging from several hours to three days. In 2018, while B.W. was in Secure

B.W. felt vulnerable, powerless, and miserable. No staff told her how long she would be in solitary confinement or when she would get out.

35. Defendants' solitary confinement policies and practices caused B.W. to display symptoms and harm that are consistent with those experts identify among people in solitary confinement. She felt alone, missed her family, and cried. She felt distressed, uneasy, and worried because she was locked in a cell for days and did not know when she would get out. She could not socialize with other people. While she was pregnant, the smell and filthy conditions of the room made her feel sick and nauseated.

36. Defendants subject B.W. to a substantial risk of serious harm by isolating her in confinement and depriving her of social interaction, environmental stimulation, and exercise. By isolating B.W. in solitary confinement, Defendants also subject her to disability discrimination by failing to modify their policies and procedures to accommodate her disability and by denying her equal access to programs, services, and activities, including recreation, education, and healthcare because of her disability; and by failing to house her in the most integrated setting to meet her needs.

37. B.W. reasonably fears that she will be subject to solitary confinement again at the Duval JDC if she is not granted injunctive relief because Defendants have repeatedly subjected B.W. and other children to solitary confinement.

38. Plaintiffs sue through their parents and legal guardians who are adult citizens of the State of Florida.

DEFENDANTS:

39. Defendant Simone Marstiller (Marstiller) is the Secretary of the Florida Department of Juvenile Justice. She was appointed DJJ Secretary in January 2019 and is sued in her official capacity. As DJJ Secretary, she is responsible for “planning, coordinating, and managing the delivery of all programs and services within the juvenile justice continuum,” which includes all detention centers and related programs and facilities, community-based residential programs, non-residential programs, and all delinquency institutions funded by the department. § 20.316(1)(b), Fla. Stat. (2019). Secretary Marstiller is required to “[e]nsure that juvenile justice continuum programs and services are implemented according to legislative intent; state and federal laws, rules and regulations; statewide program standards; and performance objectives,” “establish program policies and rules, and “coordinate staff development and training.” §§ 20.316(c)(1), (4) & (6), Fla. Stat. Secretary Marstiller has the final authority to take any necessary corrective action concerning a DJJ program or procedure. § 985.632(5)(f)(2), Fla. Stat.

40. At all times relevant to this Complaint, Defendant Marstiller was acting under color of state law

41. Defendant Florida Department of Juvenile Justice is the principal administrative unit within the executive branch of the State of Florida responsible for planning, developing, coordinating, and administering the juvenile justice continuum of comprehensive services and programs statewide for the prevention, early intervention, control, and rehabilitative treatment of delinquent behavior. § 20.03(2); 985.601 Defendant DJJ is an instrumentality of the State of Florida.

42. Defendant DJJ receives federal financial assistance.

FACTUAL ALLEGATIONS

Secure Detention in the Department of Juvenile Justice

43. The Florida juvenile justice system is operationally and philosophically distinct from the adult criminal justice system. The juvenile system manages youth under a strategy of redirection and rehabilitation, rather than punishment. See § 985.02(3), Fla. Stat. Florida's juvenile system focuses on a rehabilitative model of treatment designed to effect positive behavioral change.

44. There are 21 juvenile secure detention centers (Secure Detention) operated by DJJ in Florida. Secure Detention is a physically restrictive facility that houses children pending adjudication, disposition, placement, or pursuant to court order. Fla. Admin. Code. R. 63C014(58). Children taken into custody by law enforcement are screened by DJJ using a standardized Detention Risk Assessment Instrument (DRAI) to determine if they should be placed into Secure

subject to a substantial risk of serious harm from cumulatively spending extensive periods of time isolated in confinement.

52. Defendants isolated ~~behalf~~ of the named Plaintiffs in solitary confinement in Secure Detention, some of them repeatedly for periods ranging from several hours to days at a time pursuant to the policies and practices as described herein.

Deprivations and Conditions in Solitary Confinement in DJJ Detention Centers

53. DJJ subjects children to solitary confinement by either locking them in the cells they typically live in or by placing them in separate confinement cells for the duration of the confinement period. No matter where solitary confinement takes place, the deprivations and conditions are similar.

54. Once isolated, children cannot come out of their tiny cells except to shower for a few minutes each day. DJJ also ensures that there is ~~nothing~~ for the children to do for the duration of their confinement. DJJ does not permit them to go to school or receive education services. There is ~~no~~ recreation or programming and no access to phones, radios, or televisions. Children cannot have any personal property or writing materials.

55. While in confinement, DJJ prohibits ~~normal~~ human contact. The only way children can speak to someone is by banging on the ~~door~~ to try to attract the attention of staff, or by yelling loudly so staff or another child may hear them.

children with mental illness or who are at a heightened risk of suicide or are at risk from solitary confinement. DJJ placed Plaintiff G.H. in solitary confinement even though he was a suicide risk and actually tried to choke himself by tying his pants around his neck while in solitary. After a detention staff member observed this behavior, DJJ kept G.H. in solitary confinement, where he tied his pants around his neck and tried to choke himself again.

61. DJJ through policy and practice, does not provide an assessment by a mental health professional before it subjects a child with mental illness to solitary confinement. DJJ also fails to regularly provide a mental health status examination by a qualified professional within one hour after confinement begins and at regular intervals as long as a child is in solitary confinement despite a scant Facility Operating Procedure requiring a licensed mental health professional to “review the status” of children in solitary confinement every 24 hours. DJJ also fails to provide mental health treatment for children in solitary confinement; effective monitoring for signs and symptoms of suicide in solitary confinement; examination or treatment after release from solitary confinement to address any lasting effects; or meaningful mental health interventions and de-escalation services in response to obvious signs of suffering and pain. So, DJJ conducted no mental health evaluation of R.L. before placing her in solitary confinement even though it was aware of her bipolar disorder and major depressive disorder. Likewise, mental health staff failed

to effectively intervene with respect to G.H.'s attempts to choke himself in confinement. As a result of DJJ's failure to develop and implement adequate policies and procedures recognized by experts as necessary to eliminate the known risk of harm, the named Plaintiffs and members of the class are suffering from the damaging effects that mirror those reported in the research about children subjected to solitary confinement.

J., concurring) (citing Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U.J.L. & Pol'y 325 (2006)).

64. The psychological harms of solitary for adults have been widely documented by experts. Solitary confinement can exacerbate mental illness or bring about symptoms in people with no prior diagnosis. These psychological harms include: anxiety, depression, insomnia, confusion, withdrawal, emotional flatness, cognitive disturbances, hallucinations, paranoia, psychosis, and suicidality.⁴ These effects start to manifest within hours or days of isolation,

66. Children suffer from a heightened risk of psychological and physical harm from solitary confinement. Based on knowledge of the brain development and the impact of adverse childhood experiences on the physical, mental, and behavioral health of children and adolescents, the American Academy of Child and Adolescent Psychiatry has asserted that children subjected to solitary confinement in the criminal justice system are at particular risk for these adverse reactions.

67. The substantial risk of serious harm to children is also established through a well-recognized national study by the Department of Justice's Office of Juvenile Justice and Delinquency

social integration, children are exposed to higher rates of suicidal behavior.⁸ This evidence demonstrates a substantial risk of serious harm that can be fatal for children exposed to solitary confinement for even short periods of time. Despite this known risk of serious harm, DJJ subjects children who have attempted suicide or engaged in self-injury to solitary confinement in 7(to)y 2s of 1.4362(nc)w(h)8(o4bj)9(e

not fully developed. As a result, trauma to children can cause permanent changes in brain development and create a higher risk of developing psychiatric conditions like paranoia and anxiety.¹¹

70. The risk of harm to children from solitary confinement, including for suicide, is also increased by the disproportionately high incidence of preexisting mental illness among children involved in the juvenile justice system. Many children who come into contact with the juvenile justice system have diagnosed, or undiagnosed, mental illness or have been receiving special education services prior to placement in Secure Detention. National data indicate that up to 75% of children in the juvenile justice system meet the criteria for a mental health disorder.¹² DJJ estimates that over 65% of youth under the agency's care have a mental illness or substance abuse issue.¹³

71. For children with preexisting mental illness, the serious psychological harm caused by solitary confinement is even more devastating. The combination of the lack of any meaningful activity, normal social contact and the stressors of living in a dilapidated, filthy, and loud housing area for extended periods results in a heightened risk of worsening mental health symptoms for

children. When children engage in behaviors that are a manifestation of their disabilities, such as yelling or striking their cell doors with their hands, heads, bodies, DJJ penalizes these children by adding more time in solitary confinement. Plaintiff G.H. continued to be held in solitary confinement after he banged on his cell door and flooded his cell, behaviors that were related to his disabilities. These actions by DJJ only add to the danger for youth with mental illness, such as G.H. and R.L., who have an increased risk for suicide.

72. A substantial number of children exposed to solitary confinement are at further risk of harm because they also suffer from trauma. This trauma can include physical or sexual abuse; being a victim of or witnessing violence; loss of family members to death, imprisonment, or abandonment; or a child's removal from the home through the dependency system or due to arrest.¹⁴ Children in the juvenile justice system have much higher rates of Adverse Childhood Experiences (ACEs) such as witnessing or being a victim of violence.¹⁵ A recent study shows that 50% of youth in Florida's juvenile justice system report four or more ACEs.¹⁶ The use of solitary confinement places these children

75. In concluding that solitary confinement should be banned for juveniles, in 2012, the United States Attorney General's National Task Force on Children Exposed to Violence concluded, "Nowhere is the damaging impact of incarceration on vulnerable children more obvious than when it involves solitary confinement," including increased vulnerability to suicide.¹⁸ In 2016, the United States Department of Justice ended the practice of using solitary confinement for juveniles in all federal prisons because of the growing consensus of the risk of harm for children.²⁰

76. Human rights organizations and authorities also recognize the harms of solitary confinement for juveniles and advocate for an end to the practice. The World Health Organization²¹ and the United Nations have recognized that solitary confinement is particularly harmful to a child's psychological well-being and cognitive development.²² In a 2015 report, the United Nations Special Rapporteur

[http://dcfs.nv.gov/uploadedFiles/dcfsvgov/of loTm \(22\)Tj EMr14\(e\)the United JrTd \(.f\)4o2hgovJo,Jopa.](http://dcfs.nv.gov/uploadedFiles/dcfsvgov/of%20Tj%20EMr14(e)the%20United%20States%20Department%20of%20Justice%20Report%20on%20Solitary%20Confinement%20for%20Youth.pdf)

on Torture condemned the solitary confinement of children for any duration as torture and acknowledged the high risk of mental illness and higher rates of suicide and self-harm for juveniles in solitary confinement.

78.

Detentionfor minor issues, including

even for behaviors that could pose an imminent physical threat to self or others. Instead, DJJ's solitary confinement times for children extend well past the purported threat has subsided, including for the named Plaintiffs.

84. DJJ's policy and practice for solitary confinement in detention is contrary to well established juvenile detention and correctional standards. Instead of isolating children for prolonged periods as Defendants do, other correctional systems that have addressed the harms posed by solitary confinement of juveniles have reformed their practices. These states use confinement, if at all, only as a last resort after de-escalation techniques and behavior interventions have been exhausted by trained individuals; and only for the shortest duration possible with strict time limits, to remedy a specific and serious threat to an individual or other's physical safety. Confinement is never used as punishment. They provide programming and services to avoid the use of confinement; ensure that staff are appropriately trained in the use of verbal de-escalation, restorative justice, and behavior intervention techniques; and that these are used and exhausted to defuse situations; require approvals for initial continued confinement placement; consistently provide mental health and medical assessments, services, and oversight by qualified professionals before and during confinement; and require confinement use to be recorded, reviewed, and analyzed.

85. DJJ recognizes that standards such as behavior interventions, prohibiting isolation for children at risk for suicide, and using conflict resolution strategies should be used; DJJ, in fact, uses some of these policies in adjudication residential program policy concerning room restrictions. See Fla. Admin. Code. R. 63E-7.009. This policy, however, does not apply to Plaintiffs in Secure Detention.

86. There is also no legitimate penological justification for DJJ's policy and practice of denying children access to basic human needs while in solitary confinement. DJJ deprives children in solitary confinement of: required daily educational instruction; outdoor recreation; reading and writing materials; a clean cell free from the smell or presence of human waste; and normal human interactions.

Defendant Marsteller is Deliberately Indifferent to the Serious Risk of Harm

87. Defendant Marsteller has known of and disregarded a substantial risk to Plaintiffs' health and safety posed by the use of solitary confinement in Secure Detention. Defendant Marsteller has failed to stop subjecting children to solitary confinement in detention despite the knowledge of the risk of physical and psychological harm to children.

88. Defendant Marsteller has been repeatedly warned about, but failed to eliminate, the risks of harm to children from solitary confinement. For example, in February 2011, a lawsuit was brought against the DJJ Secretary by a class of

children with mental illness and developmental disabilities who were adjudicated delinquent and in DJJ custody at the North Florida Youth Development Center²⁶ in J.B. v. Walters, Case No. 11-83-RH-WCS (N.D. Fla.).

89. The allegations in J.B. Walters included inter alia, that the DJJ Secretary subjected youth to an unconstitutional pattern and practice of the punitive use of isolation and restraints. The Complaint alleged that DJJ was subjecting children diagnosed with serious mental illness, trauma, learning disabilities, intellectual disabilities, and who had engaged in acts of self-harm or attempted suicide to a risk of harm by placing them in punitive isolation in dangerous conditions. Through that litigation, the DJJ Secretary was specifically informed that, "Isolation is contraindicated for adolescents with developmental disabilities, mental illness and harmful behaviors." Id., Doc. 1 (Complaint), ¶¶ 66-70. In response to this litigation, the DJJ Secretary and the agency made a decision to close the institution, and amend its rules to eliminate the use of solitary confinement in residential programs (i.e., post-adjudication). They deliberately chose not to eliminate the use of solitary confinement in Secure Detention.

²⁶ This program was referred to as the North Florida Youth Development Center by DJJ. It was comprised of two DJJ residential facilities adjacent to each other on the same campus: the Arthur G. Dozier School for Boys and the Jackson Juvenile Offender Center.

90. On December 1, 2011, the U.S. Department of Justice Civil Rights Division (DOJ) also sent the DJJ Secretary and DJJ a findings letter following its investigation of the North Florida Youth Development Center, concluding that “youth were subject to lengthy and unnecessary isolation,” youth with mental health needs or at risk for suicide were in danger and improperly subjected to solitary confinement, and youth confined in the isolation units did not consistently receive required services, such as education materials, regular mental health evaluations or daily large muscle exercise. Findings Letter, at 4, 178.²⁷

91. Defendant Marsteller’s knowledge of the risk of harm to children is apparent in the differences in DJJ’s written policies concerning what forms of isolation are permissible in residential postadjudication programs compared to Secure Detention. Defendant amended DJJ’s administrative rules several years ago to explicitly prohibit the use of punitive isolation in residential programs. Defendant only authorize

ratifies, and oversees these DJJ policies, practices, and procedures.

20.316(1)(c), Fla. Stat. See also §§ 120.54 (2) & (3), Fla. Stat.

92. Similarly, in DJJ residential programs, Defendants explicitly prohibit isolation or solitary confinement behind a closed door. They only authorize “room restriction” as part of a behavior management system. Even so, room restriction cannot be used for children at risk for suicide, cannot exceed four hours, requires supervisor approval, requires conflict and behavior intervention by staff, happens in a child’s room with the door open, and requires children to be supervised during this brief time separation. See Fla. Admin. Code. R. 63E 7.009(4).

93. Despite the elimination of solitary confinement in DJJ’s residential programs, Defendants have refused to eliminate solitary confinement in Secure Detention for the same children. As a result, under DJJ’s policies and practices, children who purportedly must be isolated and deprived of education, outdoor recreation, writing or reading materials, social stimulation, and normal human interactions suddenly and arbitrarily no longer require such measures days or weeks later after they are placed in a DJJ residential program.

94. Defendants review the data maintained by DJJ concerning the use of solitary confinement in DJJ operated secure detention centers. This includes, at a minimum, all records kept of any confinement, and notifications to the Assistant

Secretary for Detention Services of any confinement placements permitted beyond 24 hours or the need for any confinement hearing if a child is held in solitary beyond 72 hours. Fla. Admin. Code. 62C22(e) & (h).

95. Defendants were also warned of the risk of harm to children subject to solitary confinement in detention through the following several letters or emails from counsel with Florida Legal Services since September 2018 behalf of youth subject to solitary confinement who had engaged in self-harm and were at risk for suicide; grievances filed by children, including Plaintiffs asking to be removed from solitary confinement or not placed in confinement again because they posed no imminent physical risk of harm to themselves or others were instead at risk of harm in confinement; their own knowledge of children with mental health conditions or physical injuries like broken or sprained arms, children who have attempted suicide by wrapping sheets around their neck, children who have cut themselves with pencils or other objects, all of whom were placed in solitary confinement; and the DJJ Secretary's trip to the Missouri Youth Services Authority to learn about the "Missouri Model" of juvenile justice which eliminated the practice of juvenile solitary confinement.

Defendants' Policies and Practices Discriminate Against Children with Disabilities

96. DJJ, through its policies and practices, discriminates against children with disabilities in its use of solitary confinement in Secure Detention. It fails to

reasonably modify its solitary confinement policies and procedures when needed to avoid discrimination on the basis of disability. It fails to ensure that children with disabilities in solitary confinement have access to, are permitted to participate in, and are not denied the benefits of programs, services, and activities because of their disabilities. It fails to ensure that children with disabilities in isolation are housed in the most integrated setting appropriate to their needs.

97. DJJ fails to reasonably modify its solitary confinement policies and procedures to ensure that children with disabilities are not placed in solitary confinement or have their time extended because of their disabilities. For example, children with psychiatric or developmental disabilities have difficulty regulating their behaviors or respond erratically or inappropriately to conflict, stress, trauma, staff, and other youth. For example, Plaintiffs R.L. and G.H., because of their disabilities, do not have effective coping skills to manage the conditions and conflicts inherent in Secure Detention and often react to stressful situations with emotional outbursts and impulsive behaviors. Some children also have a hard time understanding facility rules or directions and fail to identify or recognize behavior as disability related and provide the accommodations, supports and services that these children need. Instead, DJJ responds by labeling this as misbehavior and sends them, including Plaintiffs, to

98. DJJ also fails to modify its policies and procedures while children with disabilities are in solitary confinement. This includes failing to offer adequate out-of-cell time, social interaction, environmental stimulation, mental health treatment, recreation, and school services to prevent mental health symptoms from becoming worse. As a result, many children with psychiatric and developmental disabilities in isolation experience further harm and engage in acts such as banging or punching the doors or concrete walls or, in the case of G.H., tying his pants around his neck.

99. DJJ has failed to adopt policies and procedures to ensure that children with disabilities are housed in the most integrated setting appropriate to meet their needs, which cannot be met in solitary confinement. DJJ subjects children with psychiatric and developmental disabilities, including Plaintiff A.S., to solitary confinement when they engage in nonconforming behaviors due to their disabilities, instead of housing them in settings where they can receive treatment and services that they need to live safely and with others. For example, children diagnosed with Attention Deficit Hyperactivity Disorder, including Plaintiff B.W., may exhibit impulsive behavior such as fighting with peers or unable to focus or be attentive to staff directions. Rather than developing a system with reasonable accommodations that actively reinforces preferred behaviors or uses

mental health services to intervene direct, and deescalate situations, DJJ punishes these children, including Plaintiff B. With solitary confinement.

100. The unnecessary placement of children with disabilities in solitary confinement perpetuates unwarranted assumptions and stereotypes that they are incapable of participating in and benefiting from services, activities, and programs. Such placement also causes harm by severely limiting their independent daily activities, including social contacts, educational advancement, and healthcare.

101. Other juvenile justice systems have safely integrated children with disabilities into their general population by providing adequate therapeutic and programmatic services. DJJ fails to develop and implement such policies and practices.

CLASS ACTION ALLEGATIONS

Plaintiff ClassDefinition

Typicality: Fed. R. Civ. P. 23(a)(3)

106. The claims of the Plaintiffs are typical of those of the Plaintiff Class, as their claims arise from the same policies, practices, or courses of conduct; and their claims are based on the same theory of law as the class.

Adequacy: Fed. R. Civ. P. 23(a)(4)

107. Plaintiffs are capable of fairly and adequately protecting the interests of the Plaintiff Class because Plaintiffs do not have any interests antagonistic to the class. Plaintiffs, as well as the Plaintiff Class members, seek to enjoin the unlawful acts and omissions of Defendants. Plaintiffs are represented by counsel experienced in civil rights litigation, prisoners' rights litigation, and complex class action litigation.

Fed. R. Civ. P. 23(b)(1)(A) and (B)

108. This action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(1) because the number of class members is several thousand children and the prosecution of separate actions by individuals would create a risk of inconsistent and varying adjudications, which in turn would establish incompatible standards of conduct for Defendants. In addition, the prosecution of separate actions by individual members could result in adjudications with respect to individual

members that, as a practical matter, would substantially impair the ability of other members to protect their interests.

Fed. R. Civ. P. 23(b)(2)

109. This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because DJJ's policies, practices, actions, and omissions that form the basis of this Complaint are common to and apply generally to all members of the class, and the injunctive and declaratory relief sought is appropriate and will apply to all members of the class. Defendant 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. All statewide confinement policies are centrally promulgated, disseminated, and enforced from the central headquarters of DJJ. The injunctive and declaratory relief sought is appropriate and will apply to all members of the Plaintiff's Disability Subclass.

110. Plaintiffs bring this action on behalf of themselves and, pursuant to Rule 23(a), (b)(1) and (b)(2) of the Federal Rules of Civil Procedure, on behalf of a subclass of all qualified children with disabilities as that term is defined in 42 U.S.C. § 12101 and 29 U.S.C. § 705(9)(B), who are, or will be, in custody in a DJJ-operated secure detention center and subject to solitary confinement (disability subclass)

Disability Subclass Meets Fed. R. Civ. P. 23 Requirements

Numerosity: Fed. R. Civ. P. 23(a)(1)

111. The subclass is so numerous that joinder of all members is impracticable. The class is fluid, as children with disabilities regularly enter and leave the class as a result of DJJ's confinement policies and practices. The exact number of subclass members is unknown, but members are identifiable using records maintained by DJJ in the ordinary course of business. On information and belief, there are at least several hundred subclass members. Due to DJJ's solitary confinement policies and practices, all members of the subclass are at risk of suffering from discrimination.

Commonality: Fed. R. Civ. P. 23(a)(2)

112. There are questions of law and fact common to the members of the subclass, including whether DJJ violates the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. DJJ is expected to raise common defenses to these claims, including denying that its actions violate the law.

Typicality: Fed. R. Civ. P. 23(a)(3)

113. The claims of Plaintiffs are typical of those of the disability subclass, as their claims arise from the same policies, practices, or courses of conduct; and their claims are based on the same theory of law as the class' claims.

Adequacy: Fed. R. Civ. P. 23(a)(4)

114. Plaintiffs are capable of fairly and adequately protecting the interests of the disability subclass because they do not have any interests antagonistic to the subclass. Plaintiffs and the disability subclass members seek to enjoin the unlawful acts and omissions of DJJ. Plaintiffs are represented by counsel experienced in civil rights litigation, prisoner's rights litigation, and complex class action litigation.

Fed. R. Civ. P. 23(b)(1)(A) and (B)

115. Since the number of the disability subclass is approximately several thousand children, prosecution of separate actions by individuals would create a risk of inconsistent and varying adjudications, which in turn would establish incompatible standards of conduct for DJJ. In addition, the prosecution of separate actions by individual members could result in adjudications with respect to individual members that, as a practical matter, would substantially impair the ability of other members to protect their interests.

Fed. R. Civ. P. 23(b)(2)

116. This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because DJJ's policies, practices, actions, and omissions that form the basis of this Complaint are common to and apply generally to all members of the subclass, and the injunctive and declaratory relief sought is appropriate and will

apply to all members of the subclass. Defendants have 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. All state-wide confinement policies are centrally promulgated, disseminated, and enforced from the central headquarters of DJJ. The injunctive and declaratory relief sought is appropriate and will apply to all members of the disability subclass.

CLAIMS FOR RELIEF

COUNT I

(All Plaintiffs and the Plaintiff Class v. Defendant Marstiller)
42 U.S.C. § 1983; Fourteenth Amendment

implemented, and enforced, and they amount to the unnecessary and wanton infliction of pain.

120. These policies have been and continue to be implemented by

COUNT II

(All Plaintiffs and the Plaintiff Class v. Defendant Marsteller)

42 U.S.C. § 1983; Eighth Amendment

124. Paragraphs 1 through 116 are incorporated herein as if fully set forth.

125. Through the policies and practices described herein, Defendant Marsteller subjects all Plaintiffs and the Plaintiff Class to a substantial risk of serious harm and deprives Plaintiffs and the Class of the minimal civilized measure of life's necessities and human dignity through the excessive and inappropriate use of solitary confinement. These policies and procedures are inconsistent with evolving standards of decency in a civilized society. Defendant Marsteller has caused the wanton infliction of pain upon Plaintiffs and the Plaintiff Class.

126. There is no legitimate penological purpose for Defendant Marsteller's solitary confinement policies, practices, and procedures as authorized, implemented and enforced, and they amount to the unnecessary and wanton infliction of pain.

127. These policies have been and continue to be implemented by Defendant Marsteller and her agents, officials, employees, and all persons acting in concert under the color of state law, in their official capacity, and are the direct and proximate cause of the Plaintiffs' and the Plaintiff Class's ongoing deprivation of rights secured under the Eighth Amendment to the United States Constitution.

128. Defendant Marsteller has been and is aware of all deprivations complained of herein, and has condoned or been deliberately indifferent to such conduct. Defendant also has been and is aware of the substantial risk of harm caused by these deprivations and has done nothing to alleviate or reduce this risk of harm. It should be obvious to Defendant Marsteller, and to any reasonable person, that the conditions imposed on Plaintiffs and the Class cause tremendous mental anguish, physical harm, suffering, and pain to such individuals.

129. Plaintiffs have suffered harm and will continue to suffer harm, for which there is no adequate remedy at law, as a direct and proximate cause of Defendant's violation of their rights under the Eighth Amendment to the United States Constitution and 42 U.S.C. § 1983.

130. These harms will continue unless enjoined by this Court.

COUNT III
(All Plaintiffs and the Disability Subclass v. Defendant DJJ)
Americans with Disabilities Act

131. Paragraphs 1 through 116 are incorporated herein as if fully set forth.

132. Plaintiffs and other Disability Subclass members are qualified

requirements for the receipt of services of the participation in programs and activities provided by Defendants. 42 U.S.C. § 12102(2); 42 U.S.C. § 12131(2).

133. Plaintiffs

receive services in the most integrated setting appropriate to their needs. 28 C.F.R.

§ 35.152(b)(2)

142. Plaintiffs and other Disability Subclass members are qualified to participate in the services, programs, activities, and benefits provided to children in DJJ custody within the meaning of Section 504 of the Rehabilitation Act.

143.

147. Defendant DJJ violates Section 504 of the Rehabilitation Act by failing to reasonably accommodate children with disabilities in its facilities, programs, activities, and services.

148. As a result of Defendant DJJ's discrimination and failure to provide reasonable accommodations, Plaintiffs and members of the Disability Subclass do not have equal access to DJJ's activities, programs, and services for which they are otherwise qualified.

149. As a direct and proximate cause of these policies and practices, Plaintiffs and the Disability Subclass have suffered and continue to suffer harm and violation of their rights under Section 504 of the Rehabilitation Act. These harms will continue unless enjoined by this Court.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and the class and disability subclass they seek to represent, respectfully request that this Court:

- A. Assume jurisdiction;
- B. Permit the Plaintiffs to proceed using pseudonyms;
- C. Declare this suit is maintainable as a class action pursuant to Rules 23(a) and 23(b)(1) and (2) of the Federal Rule of Civil Procedure;
- D. Adjudge and declare that the conditions, acts, omission, policies, and practices of Defendants and their agents, officials, and employees are in violation

of the rights of Plaintiffs and the class and subclass they represent under the Eighth and Fourteenth Amendments to the U.S. Constitution;

E. Permanently enjoin Defendants, their

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*Pro hac vice application
forthcoming

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