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<https://solitarywatch.org/2017/03/10/federal-court-acknowledges-growing-legal-and-scientific-consensus-on-harms-caused-by-solitary-confinement/>

Policy Issue Resources

close

Search

close

close

by [Joshua Manson](#) | March 10, 2017

A recent [federal appeals court ruling](#) from the Third Circuit of Appeals in Philadelphia could alter the landscape for solitary confinement impact litigation across the country. In what advocates are calling a landmark opinion, the court extensively documented the psychological and physical damage wrought by long-term solitary, quoted the accounts of solitary survivors, and acknowledged the growing chorus of legal and scientific opinion opposing the use of solitary.

The case was brought by two men, Craig Williams and Shawn Walker, who have been held for decades in the custody of the Pennsylvania Department of Corrections. Both men were originally sentenced to death and, as Pennsylvania law requires, automatically subjected to solitary confinement and deprived of access to any person with the exception of prison staff, an attorney, or a spiritual adviser. Both men, upon subsequent repeals, had their death sentences, but not convictions, vacated after 18 years in solitary confinement on death row for Williams, and after 12 for Walker.

However, after having their death sentence vacated, both men then had to wait a number of years about 6 for Williams and 8 for Walker to then be given the sentence of life without parole, and thus finally released from isolation on death row into the general population. But for those 6 and 8 years, Williams and Walker were held in solitary confinement for no reason other than that they had *previously* been sentenced to death, even though that sentence was no longer in place. They were, in effect, still serving one of the most punishing components of a sentence after that sentence was vacated by a superior court.

The two men challenged this prolonged and arbitrary detention in federal court, arguing that their placement in solitary confinement was unconstitutional. They asserted that by imposing hardships that are atypical and significant as compared to the ordinary incidents of prison life—namely, solitary confinement without any legitimate reason, the Pennsylvania DOC had violated their Fourteenth Amendment right by depriving them of liberty without Due Process. The court agreed.

Though the rulings' direct application may be narrow, the opinions' language makes clear that its implications will be broad. It cites the growing shift, in academia as well as in the courts, against solitary confinement if not toward abolition, at least toward curbing the practice.

To reach its decision that the harms of solitary confinement as inflicted upon Williams and Walker were unconstitutional, the court included a thorough investigation into the psychological and physical harms of solitary confinement, and drew upon, at length, what it deems a scientific consensus documenting the damage caused by prison isolation.

This is an extraordinary opinion, David Fathi of the American Civil Liberties Union National Prison Project told Solitary Watch. I've never seen an appellate court review at such length the evidence of solitary confinements' harms. And it's enormously significant that the court acknowledges that these harms are not controversial or speculative, but instead represent the scientific consensus.

Remarkably, in addition to citing to scientific and legal articles, the legal opinion also relies on firsthand testimonies from individuals who have been subject to solitary confinement. The opinion quotes, in its text, Robert King, a former Black Panther who spent 29 years in solitary confinement in Louisiana, as quoted from his 2010 [column in The Guardian](#):

At times I felt an anguish that is hard to put into words. To live 24/7 in a box, year after year, without the possibility of parole, probation or the suspension of sentence is a terrible thing to endure.

The legal opinion also cites to a [2013 column in The Guardian](#) by Five Mualimm-ak, solitary confinement survivor and prison reform activist. The legal opinion quotes Mualimm-ak as saying:

Everyone knows that prison is supposed to take away your freedom. But solitary doesn't just confine your body; it kills your soul Even now that I am out of prison, I suffer major psychological consequences from those years in isolation.

These harms described by King and Mualimm-ak, and detailed by legal academics, scientists, psychologists, and solitary confinement activists, the opinion concludes, are the essence of the atypical and significant hardship inquiry required to prove an unconstitutional deprivation of liberty.

However, the opinion is remarkable not just in the conclusion it reaches, but also in its explicit recognition of the growing jurisprudential shift against solitary confinement, and in its deliberate effort to add to what it calls this growing chorus. In the conclusion of the opinion, the court notes a trend in federal courts across the country, recognizing a liberty interest that solitary confinement restricts.

The decision is the latest and most robust ruling on the constitutionality of an instance of solitary confinement under the Due Process Clause of the Fourteenth Amendment. This line of litigation is distinct from other constitutional claims, notably the Eighth Amendment and Americans with Disabilities Act, as it envisions as an end goal transparency and procedural fairness. Due Process victories like this one incrementally bring the opaque and arbitrary imposition of solitary confinement into the light.

As Fathi explained, The court is clearly serving notice that prison officials can no longer impose solitary confinement without a compelling and defensible reason.

The troubling implication of Due Process litigation, however, is that even if it recognizes that solitary confinement is harmful enough to require regular and meaningful court oversight and Due Process, it does not call for absolute, categorical abolition.

As Laura Rovner, Professor at the University of Denver Sturm College of Law, explains in a [recent essay](#): The Due Process Clause does not prohibit the government from imposing any particular prison condition, even if it is harsh or atypical. Rather, Due Process safeguards are intended to ensure that people are not caused to suffer deprivations in error or without reason. Thus, even in a resounding victory, the conclusion reached is not that the practice is too harmful to exist per se, but only that it is too harmful to exist without proper procedural safeguards. And, as Rovner explains, procedural safeguards that may be sufficient under the Due Process Clause are merely the limited Due Process available in correctional settings.

If solitary confinement is abolished through impact litigation, if it is subject to categorical, absolute prohibition, it will likely be through the Eighth Amendment, which prohibits cruel and unusual punishment. For courts to abolish the practice in all cases, it will require recognition that no matter what the procedures surrounding the practices are, solitary confinement itself is a form of torture, and as such is beyond the pale of state-sanctioned punishment or treatment.

The Third Circuit opinion hints at this, when it notes that researchers have found that even a few days in solitary confinement can cause cognitive disturbances. Further, Rovner notes that if the immediate consequences of Due Process victories may be limited to requiring procedural safeguards, the message may point even further: A judicial determination that set of conditions constitutes an atypical and significant hardship may nonetheless have independent value in the sense that it signals to prisoners, correctional administrators, and the public that those conditions are trouble enough to warrant constitutional scrutiny.

Joshua Manson is a freelance writer and editor based in Brooklyn, New York. He focuses on issues related to policing, prison conditions, and the dangerous health outcomes associated with incarceration. He is on Twitter [@joshua_k_manson](#).

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Once someone is in the prison system he or she can be capriciously placed in solitary simply at the will of the jailer. A son of a friend of mine just suffered through eight months of solitary on the will of his jailer while awaiting trial! His offence was a misdemeanor and he ended up with a five year federal prison term. He had gotten a grant of a million dollars to administer a jail in South Texas that had been deemed unfit. The jail administration colluded with the federal prosecutors and went after him discovering the early ten year old misdemeanor from his teen years to come up charges to detain him, interfere with his conduct of business and trump up current charges to prosecute him for the crime that drew him the five year sentence. Something really went wrong here. He didn't deserve this wrongful legal assault, piercing the wall of juvenile protection of his record in order to charge him, and then subsequent solitary confinement while awaiting trial. At least he'll be confined to Club Fed for his sentence. But the wrongful solitary confinement likely did permanent damage to his brain.

P.O. Box 11374

Washington, DC 20008

info@solitarywatch.org

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