SUPREME COURT OF THE STATE OF CONNECTICUT

S.C. 19036

FRANK VANDEVER

v.

COMMISSIONER OF CORRECTION

BRIEF OF AMICI CURIAE

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STATEMENT OF ISSUE

"Did the Appellate Court improperly conclude, contrary to the rule of *Sandin v. Conner,* 515 U.S. 472 (1995), and *Wilkinson v. Austin,* 545 U.S. 209 (2005), that the petitioner had no liberty interest in avoiding administrative segregation?"

TABLE OF AUTHORITIES

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STATEMENT OF INTEREST OF AMICI

ACLUF-CT is the litigative arm of the American Civil Liberties Union of Connecticut (ACLU-CT), a state affiliate of the American Civil Liberties Union (ACLU), which is a national non-partisan organization of approximately 500,000 members committed to protecting the civil rights and liberties of all persons. ACLU-CT has six regional chapters, five campus chapters, and approximately 6,000 members in Connecticut. ACLUF-CT engages in civil rights litigation in Connecticut's state and federal courts.

The Allard K. Lowenstein International Human Rights Clinic is a legal clinic at Yale Law School that combats both domestic and international human rights abuses. Established in 1989, the Clinic provides research and litigation support to organizations both within the U.S. and abroad. The Clinic has submitted *amici* briefs to a variety of federal and state courts, including to this Court. *See, e.g.*, *State of Connecticut v. Santiago*, 49 A.3d 566 (Conn. 2011)

This case presents the important question of whether a prisoner has a liberty interest in avoiding placement in the extreme form of isolation known as Administrative Segregation. The ACLUF-CT has a strong interest as well as experience and expertise in this question. The ACLUF-CT has litigated and acted as *amicus curiae* in many cases involving prisoners' rights issues. In *West v. Manson*, No. H-83-366 (AHN), the ACLUF-CT represents a class of female prisoners at Connecticut Correctional Institution at Niantic who received grossly inadequate mental health services and drug dependency treatment, especially in comparison to their male counterparts. In *OPA v. Choinski*, No. 3:03 CV 1352 (RNC), the ACLUF-CT represented prisoners and detainees with mental illness at Northern Correctional Institution and Garner Correctional Institution in an Eighth Amendment action

challenging such detainees' confinement in isolation. In *Doe v. Meachum*, 126 F.R.D. 459 (D. Conn. 1989), the ACLUF-CT represented a class of prisoners who had been diagnosed with HIV or AIDS and had received discriminatory care or treatment under the DOC's policies. In *In re Lukas K.*, 300 Conn. 463, 14 A.3d 990 (2011), the ACLUF-CT acted as *amicus curiae* for respondent Jason C., who brought a due process action challenging the termination of his parental rights while he was incarcerated.

The Lowenstein Clinic likewise has a strong interest as well as expertise in the rights of people in detention under both U.S. constitutional and international law. The Clinic has filed *amicus curiae* briefs before various state and federal courts regarding domestic and international legal standards for the treatment of prisoners, detained immigrants, and terrorism suspects. The Clinic also intervened in a case before the European Court of Human Rights regarding the legality of extradition of British nationals to the United States, where they faced possible confinement in the federal "supermax" prison in Florence, Colorado. *Babar Ahmad and Others v. United Kingdom*, App. Nos. 24027/07, 11949/08 and 36742/08 Eur. Ct. H.R. (2010). Further, working in collaboration with the ACLUF-CT, the Lowenstein Clinic has investigated claims by numerous prisoners in Administrative Segregation at Northern Correctional Institution. That work has led to ongoing discussions with the Connecticut Department of Correction regarding the conditions and terms of Administrative Segregation.[1]

[1] Counsel for Frank Vandever and counsel for the State did not write this brief in whole or in part and did not contribute to the cost of the preparation or submission of the brief. No persons other than the ACLU-CT, its members or its counsel, made any monetary contribution to this brief.

STATEMENT OF FACTS AND PROCEEDINGS

The Amici adopt the statement of facts and proceedings set forth in the brief of the Appellant, Frank Vandever.

STANDARD OF REVIEW

"Questions of law and mixed questions of law and fact receive plenary review" by this Court. *Duperry v. Solnit*, 803 A.2d 287, 296 (Conn. 2002). Upon a finding of error, this Court may remand the case for further proceedings. Conn. Gen. Stat. Ann. §52-265 (West).

SUMMARY OF ARGUMENT

Connecticut prisoners have a constitutionally protected liberty interest in avoiding placement in Administrative Segregation (A/S), which restricts prisoners to their cells for 23 hours per day and limits their access to programming, exercise, and basic human interaction. From the time of Mr. Vandever's classification in 1997 to the present, prisoners classified to A/S have been sent to Northern Correctional Institution ("Northern")—the state's most restrictive prison, colloquially referred to as a "supermax."[2] In every aspect—from the bare concrete walls to the constraints on visits, phone calls, and showers–Connecticut's A/S program is designed to impose atypical and significant hardships so as to deter violent and disruptive behavior elsewhere within the prison system and to impel prisoners to progress out of A/S and into the comparatively comfortable conditions of General Population. The Connecticut Department of Correction (CDOC) recognizes the

[2] Daniel P. Mears, *Evaluating the Effectiveness of Supermax Prisons*, Urban Inst., 69 (March 2006), http://www.urban.org/UploadedPDF/411326_supermax_prisons.pdf (listing Northern as a supermax); *Id.* at 3 (finding that 95% of wardens agree on the NIC definition: "A supermax is a stand-alone unit or part of another facility and is designated for violent or disruptive inmates. It typically involves up to 23- hour-per-day, single-cell confinement for an indefinite period of time. Inmates in supermax housing have minimal contact with staff and other inmates.").

hardship imposed by A/S, as reflected in its own Administrative Directives, which provide for pre-placement hearing prior to transfer to Northern. *Administrative Directive* 9.4 §12.

The Appellate Court ignored binding U.S. Supreme Court precedent in holding that Mr. Vandever did not have a liberty interest in avoiding placement in A/S. The Appellate Court failed to engage in the fact-specific analysis required as to whether the conditions endured by Mr. Vandever constituted an "atypical and significant hardship" and thus implicated a liberty interest under the Due Process Clause of the Fourteenth Amendment. *Sandin v. Conner,* 515 U.S. 472, 484 (1995); *Wilkinson v. Austin,* 545 U.S. 209, 222 (2005). Upon review, this Court should find that Mr. Vandever had a liberty interest in avoiding the placement in the A/S program at Northern, which shares many features with the policies and conditions that the U.S. Supreme Court found implicated a liberty interest in *Wilkinson*. In the alternative, if this Court finds the record incomplete as to the conditions at Northern during Mr. Vandever's confinement there in 1997-1999, this case should be remanded for an inquiry into those conditions under the standard articulated in *Sandin* and *Wilkinson*.

ARGUMENT

1. Confinement at Northern Correctional Institution entails "atypical and significant hardship" and therefore implicates a liberty interest under the Fourteenth Amendment.

The Appellate Court found that Mr. Vandever lacked a liberty interest in avoiding placement in A/S because "[u]nder Connecticut law, the Commissioner of Correction retains discretionary authority to classify prisoners at any security level." *Vandever v. Comm'r of Correction*, 135 Conn. App. 735, 741-42, 42 (2012).[3] That analysis is

[3] Even on its own terms, the Appellate Court's analysis is contradicted by federal district court decisions finding a state-created liberty interest in avoiding placement in A/S derived from the mandatory language of the CDOC's own policies. Administrative Directive 9.4

inconsistent with clear U.S. Supreme Court precedent. Prisoners have a protected liberty interest in avoiding restrictive conditions of confinement that impose an "atypical and significant hardship on the prisoner in relation to ordinary incidents of prison life." *Sandin*, 515 U.S. at 484. The "touchstone of the inquiry" into whether or not a liberty interest exists "is *not* the language of the regulations regarding those conditions *but* the nature of those conditions themselves in relation to the ordinary incidents of prison life." *Wilkinson*, 545 U.S. at 223 (emphasis added). The Appellate Court's holding was therefore clearly erroneous for its failure to engage in the "touchstone" analysis of conditions required by the United States Supreme Court.

Under *Wilkinson* and its progeny, transfer to A/S at Northern triggers a liberty interest. The Second Circuit[4] has held that courts must look at "[b]oth the conditions and their duration . . . since especially harsh conditions endured for a brief interval and somewhat harsh conditions endured for a prolonged interval might both" implicate a liberty

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provides that, "[a]n inmate *shall not be* placed in Administrative Segregation Phase I ... without notice and a hearing." §12. *See Dorlette v. Butkiewicus*, 11-CV-1461 TLM, 2013 WL 4760943 (D. Conn. Sept. 4, 2013) (holding that Administrative Directive 9.4 includes "language of an unmistakably mandatory character" and therefore that this directive is the source of a state-created liberty interest); *Alston v. Cahill*, No. 3:07-CV-473 RNC, 2012 WL 3288923 (D. Conn. Aug. 10, 2012) (holding that while prisoners do not have a state-created liberty interest with respect to classification generally, Administrative Directive 9.4 "cabins [the Director's] discretion by requiring the director to act in accordance with the substantive requirements" of that directive, therefore prisoners *do* have a state-created liberty interest in avoiding placement on Administrative Segregation.); and *Oliphant v. Wezner*, CIV.3:99CV01894(AWT), 2005 WL 999973, n1 (D. Conn. Apr. 27, 2005) (holding that while Connecticut law grants the Commissioner discretion to transfer prisoners within the Department, "the procedural guarantees set forth in the Administrative Directives demonstrate that the Commissioner has chosen to circumscribe her discretion by guaranteeing certain procedural protections").

[4] "[I]t is well settled that decisions of the Second Circuit, while not binding upon this court, nevertheless 'carry particularly persuasive weight' in the resolution of issues of federal law" where the Supreme Court has not spoken. *Dayner v. Archdiocese of Hartford*, 301 Conn. 759, 783-84, 23 A.3d 1192 (2011) (citations omitted).

interest. *Palmer v. Richards*, 364 F.3d 60, 64 (2d Cir. 2004).[5] In some instances, a lengthy placement in a segregation unit may be itself sufficient to find a liberty interest. *Colon v. Howard*, 215 F.3d 227, 231-32 (2d Cir. 2000) (holding that 305 days in "normal SHU conditions" met the *Sandin* standard); *Reynoso v. Selsky*, 292 F. App'x 120, 122-23 (2d Cir. 2008) (similar).[6] Mr. Vandever was in A/S for 19 months, longer than the duration identified in *Reynoso* and *Colon* as sufficient to trigger a liberty interest.

Even in the absence of an especially long duration, a *Wilkinson* claim is not precluded; the court is required to develop and analyze "a detailed record of the conditions of the confinement relative to ordinary prison conditions." *Palmer*, 364 F.3d at 64-65 (requiring fact-finding as to conditions for confinement lasting 77 days).[7] Conditions must be considered as a whole: "[w]hile any of these conditions standing alone might not be sufficient to create a liberty interest, taken together they impose an atypical and significant hardship within the correctional context." *Wilkinson*, 545 U.S. at 224. Relevant factors may include commissary privileges, furniture, programming, time spent in-cell, and hygienic conditions. *Davis v. Barrett*, 576 F.3d 129, 134 (2d Cir. 2009).

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[5] Most federal circuits concur; courts should look primarily to the conditions of confinement and the duration of confinement. *E.g., Harden-Bey v. Rutter*, 524 F.3d 789, 795 (6th Cir. 2008); *Marion v. Columbia Correction Inst.*, 559 F.3d 693, 697 n.2 (2009).

[6] Other Circuits have also found that a liberty interest is implicated by long-term confinement even without establishing a factual record as to specific conditions. *E.g., Marion*, 559 F.3d at 699; *Trujillo v. Williams,* 465 F.3d 1210, 1225 (10th Cir. 2006); *Williams v. Fountain,* 77 F.3d 372, 374 (11th Cir. 1996).

[7] Other circuits have also held that a fact-specific analysis of conditions of confinement is necessary to determine whether periods of segregation much shorter than Mr. Vandever's implicate due process concerns. *See, e.g. Marion*, 559 F.3d 693 (holding that 240 days of segregation "was sufficiently long to implicate a cognizable liberty interest if the conditions of confinement during that period were sufficiently severe"); *Mitchell v. Horn,* 318 F.3d 523, 527, 532-33 (3d Cir. 2003) (reversing summary judgment with respect to 90 days' segregation "given the 'fact-intensive inquiry' implied by *Sandin*"); *Gaines v. Stenseng,* 292 F.3d 1222, 1225-26 (10th Cir. 2002) (reversing and remanding dismissal of claim involving 75-day segregation).

Wilkinson found that the conditions at Ohio's supermax (OSP) were sufficiently harsh to trigger a liberty interest regardless of how "ordinary incidents of prison life" were measured. 545 U.S. at 223. Thus, the Court did not resolve "the baseline from which to measure what is atypical and significant in any particular prison system." *Id.*[8] The Second Circuit has not squarely addressed this question but has suggested that the general population be considered as part of this baseline.[9] *See Davis*, 576 F.3d at 134 (vacating a summary judgment order for failure to "adequately compare [the relevant] conditions to the conditions in the general population and other segregated confinement").

With respect to A/S at Northern, like the OSP supermax in *Wilkinson*, the question of baseline is obviated by the severity of the conditions in question. The CDOC's own description of Northern reveals conditions that closely resemble those that the *Wilkinson*

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[8] Prior to *Wilkinson*, other circuits generally had adopted one of two approaches: comparing the challenged conditions either (1) to those of general prison population, *see, e.g., Beverati v. Smith,* 120 F.3d 500, 504 (4th Cir. 1997), *Keenan v. Hall,* 83 F.3d 1083, 1089 (9th Cir. 1996), *amended by* 135 F.3d 1318 (9th Cir. 1998), *and Phillips v. Norris*, 320 F.3d 844, 847 (8th Cir. 2003); or (2) to "the most restrictive conditions that prison officials, exercising their administrative authority...*routinely impose* on inmates serving similar sentences," *Hatch v. District of Columbia,* 184 F.3d 846, 847 (D.C.Cir. 1999) (emphasis added), *see, e.g. Griffin v. Vaughn*, 112 F.3d 703, 706 n. 2 (3rd Cir. 1997). Since *Wilkinson* failed to resolve this disagreement between possible baselines, both standards have persisted. *Compare Walker v. Grable*, 414 F. App'x 187, 188 (11th Cir. 2011) (unreported opinion) *with Marion*, 559 F.3d at 699. Other circuits have taken varying approaches. *See Pressley v. Blaine*, 352 F. App'x 701, 706 (3d Cir. 2009) (unreported opinion) (stating that the basis for comparison is "hardships endured by other prisoners"); *Hernandez v. Velasquez*, 522 F.3d 556, 563 (5th Cir. 2008) (comparing challenged conditions to those found unactionable in other cases under *Sandin*, 515 U.S. 472); *Harden-Bey v. Rutter*, 524 F.3d 789, 792 (6th Cir. 2008) (requiring that a prisoner's conditions of confinement be considered "in relation to prison norms and to the terms of the individual's sentence"); *Skinner v. Cunningham*, 430 F.3d 483, 486 (1st Cir. 2005) (acknowledging but not resolving disagreement among circuits). The Tenth Circuit is unique in engaging in a multi-factored analysis. *See Estate of DiMarco v. Wyoming Dep't of Corr., Div. of Prisons*, 473 F.3d 1334, 1342 (10th Cir. 2007).

[9] The "particularly persuasive weight" of Second Circuit decisions on this Court's interpretation of federal law is of extra importance "given the existence of a circuit split." *Dayner v. Archdiocese of Hartford*, 301 Conn. 759, 784, 23 A.3d 1192, 1207 (2011).

Court found "impose an atypical and significant hardship under any plausible baseline." 545 U.S. at 223. The Court described the conditions at OSP as follows:

> All meals are taken alone in the inmate's cell instead of in a common eating area. Opportunities for visitation are rare and in all events are conducted through glass walls. It is fair to say OSP inmates are deprived of almost any environmental or sensory stimuli and of almost all human contact. Aside from the severity of the conditions, placement at OSP is for an indefinite period of time, limited only by an inmate's sentence....Inmates otherwise eligible for parole lose their eligibility while incarcerated at OSP.

Id. at 214-15. The CDOC's Administrative Directives detail almost identical restrictions for A/S: Meals are in cells; recreation lasts only for an hour, five days a week, either in shackles or in "a secure individual recreation area"; there is no out-of-cell programming; and only 30 minutes per week of non-contact visiting is permitted. *Administrative Directive* 9.4, Attachment A. As in OSP, prisoners may remain in A/S at Northern for years or decades.[10] *Administrative Directive* 9.4, Attachment B. Finally, prisoners are ineligible for parole while in A/S at Northern, effectively extending their sentences.[11]

Moreover, the conditions associated with A/S are not "routinely impose[d]" on prisoners within the Connecticut correctional system.[12] In the past decade, the number of prisoners at Northern—whether in A/S or some other program—has hovered at around

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[10] While prisoners may transition out of A/S, transfer is conditioned upon completion of three "Phases." *See Administrative Directive* 9.4 §12(F) and *Attachment A*. For prisoners unable to conform their behavior, placement may be indefinite.

[11] A/S is considered an "Overall Risk Level 5" status, and Northern is a "Level 5" security facility. *See Administrative Directive* 9.2. It is the policy of the Connecticut Board of Pardons and Paroles to deny review of those individuals "classified by the Connecticut DOC as an overall risk level '5'." http://www.ct.gov/bopp/cwp/view.asp?a=4330&q=508186.

[12] Note, however, that percentage of population is not dispositive, provided that the conditions entail "atypical conditions of severe hardship." *Welch v. Bartlett*, 196 F.3d 389, 394 (2d Cir. 1999); *accord Kawalsinki v. Morse*, 201 F.3d 103, 107 (2d Cir. 1999).

2.5% of the statewide prisoner population.[13] The CDOC itself describes Northern as an extraordinary measure, existing only to control the state's "most volatile...highly disruptive and assaultive prisoners."[14] Indeed, the CDOC apparently recognizes the seriousness of A/S by requiring notice and hearing prior to transfer.[15]

2. Eighth Amendment and international legal precedents support the finding that extreme isolation at Northern entails "atypical and significant hardship."

The A/S program at Northern, like supermax institutions across the country, is characterized by highly restrictive conditions and extreme isolation.[16] Prisoners in A/S receive no out-of-cell programming and are strip-searched and shackled when escorted from their cells.[17] Time out of cell each week is limited to three showers, one 15-minute

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[13] As of July 1, 2013, Northern held 120 prisoners. *See* Christopher Reinhart, *Fixed Beds in Department of Correction Facilities*, OLR Research Report (Oct. 15, 2008), http://www.cga.ct.gov/2008/rpt/2008-R-0576.htm; *Northern Correctional Institution*, Conn. Dep't. of Corrections, http://www.ct.gov/DOC/cwp/view.asp?a=1499&q=265436. The total population of sentenced prisoners in Connecticut prisons and jails was a little less than 13,000 in 2013. *Population Counts by Facility as of July 1, 2013*, Conn. Dep't. of Corrections, http://www.ct.gov/doc/cwp/view.asp?a=1505&q=527656. In 2008, when the total prison population was about 15,000, Northern had 586 beds, but at that point the facility accommodated not only prisoners in A/S, but also the prisoners on death row and in other restrictive programs that are no longer housed at Northern. *Id.*

[14] *Annual Report*, Conn. Dep't. of Correction, 14 (2003), http://www.ct.gov/doc/lib/doc/PDF/PDFReport/annualreport2003.pdf.

[15] Administrative Directive 9.4 §12, Attachment A.

[16] *See, generally,* WILLIAM C. COLLINS, SUPERMAX PRISONS AND THE CONSTITUTION: LIABILITY CONCERNS IN THE EXTENDED CONTROL UNIT (National Institute of Corrections, 2004). The report noted that "[a]lthough operating models for supermax prisons vary, the extraordinarily high level of security required—and the restrictions that go along with that security—mean that, even under the best of circumstances, these facilities operate very close to the edge of what the Constitution allows." *Id.* at 2. *See also* Hope Metcalf, et al., *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies* (Yale Law School, Public Law Working Paper No. 301, 2013). Available at SSRN: http://ssrn.com/abstract=2286861 or http://dx.doi.org/10.2139/ssrn.2286861.

[17] *See Administrative Directive* 9.4, Attachment A.

phone call, one thirty minute non-contact visit, and five hours of exercise in a caged area.[18] Instead of face-to-face contact, prisoners generally communicate with officers through steel traps in their cell doors, and they converse amongst themselves by speaking into air vents or shouting across concrete walls.

The immense mental strain caused by prolonged isolation has prompted federal courts to forbid the placement of severely mentally ill prisoners into Northern-like conditions.[19] Supermax placement has been demonstrated to exacerbate serious mental illness and can produce psychological impairment.[20] Major studies have found isolation to

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[18] *Id.*

[19] For prisoners with pre-existing mental health conditions or those at a high risk of developing mental illness, being subjected to Northern-like conditions may constitute cruel and unusual punishment. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1264 (N.D. Cal. 1995) ("[I]f the particular conditions of segregation being challenged are such that they inflict a serious mental illness, greatly exacerbate mental illness, or deprive inmates of their sanity, then defendants have deprived inmates of a basic necessity of human existence—indeed, they have crossed into the realm of psychological torture.") *See also Jones "El v. Berge*, 164 F. Supp. 2d 1096, 1125-26 (W.D. Wis. 2001) (issuing preliminary injunction for removal of mentally ill prisoners from Wisconsin supermax); *Ruiz v. Johnson,* 37 F.Supp. 2d 855, 914 (S.D.Tex.1999), *rev'd on other grounds,* 243 F.3d 941 (5th Cir.2001), *adhered to on remand,* 154 F.Supp. 2d 975 (S.D.Tex.2001) ("The same standards that protect against physical torture prohibit mental torture as well-including the mental torture of excessive deprivation."); *Wilkerson v. Stalder*, 639 F. Supp. 2d 654, 677-78 (M.D. La. 2007) (recognizing "social interaction and environmental stimulation" as "basic human needs" for the purposes of Eighth Amendment analysis). Further, when coupled with other hardships such as insect infestations, excessive noise, or unhygienic bedding, segregation conditions have been found to constitute cruel and unusual punishment. *See, e.g., Gates v. Cook*, 376 F.3d 323 (5th Cir. 2004) (finding that A/S conditions paired with insect infestations were unconstitutional); *Keenan v. Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996) *opinion amended on denial of reh'g,* 135 F.3d 1318 (9th Cir. 1998); *Toussaint v. McCarthy*, 597 F. Supp. 1388, 1411 (N.D. Cal. 1984) *rev'd in part on other grounds,* 801 F.2d 1080 (9th Cir. 1986) (same, as to combination of lockup with unhygienic clothing).

[20] *See, e.g.*, Kristin G. Cloyes et al., *Assessment of Psychosocial Impairment in a Supermaximum Security Unit Sample*, 33 CRIM. JUST. & BEHAV. 760, 773-74 (2006); David Lovell et al., *Who Lives in Super-Maximum Custody? A Washington State Study*, 64 FED. PROBATION 33, 36 (2000); Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, 49 CRIME & DELINQUENCY 124 (2003); Stuart Grassian, Psychopathological Effects of Solitary Confinement, 140 AM. J. OF PSYCHIATRY 1450 (1983).

produce symptoms such as depression, anxiety, panic, hallucination, suicidal thoughts, and a "loss of the sense of reality."[21] Concerns about the human and fiscal costs of extreme isolation have also prompted reforms across the country.[22]

The international community has likewise raised concerns that the hardships imposed by conditions like those in A/S implicate human rights prohibitions against cruel or inhuman punishment.[23] The Committee Against Torture has called on the United States to reconsider its use of prolonged isolation,[24] and the Inter-American Court of Human Rights has described the use of solitary confinement as "cruel and inhuman treatment[], damaging to the person's psychic and moral integrity and the right to respect of the dignity inherent to

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The first study of a supermax to find no significant effect was based on self-report questionnaires but no clinical data. Maureen O'Keefe et. al., *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation*, Colo. Dep't. of Corrections, Office of Planning and Analysis (2010). Other researchers have pointed out numerous methodological flaws with that study, and the authors have refused to turn over the raw data for outside review. *See* Stuart Grassian and Terry Kupers, *The Colorado Study vs. the Reality of Supermax Confinement*, CORR. MENTAL HEALTH REP., May-June 2011, at 333, 335-36.

[21] Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates. A Brief History and Review of the Literature*, 34 CRIME AND JUSTICE 441, 476-488 (2006).

[22] *See, e.g., Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the S. Judiciary Comm.*, 112th Cong. (2012); Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives, and Sanity*, N.Y. TIMES, March 10, 2012; Gov't Accountability Office, GAO-13-429, Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing (May 2013).

[23] This Court may properly consider the international community's discussion of A/S's harsh conditions, since the "opinion of the world community, while not controlling" provides a "respected and significant confirmation for [the Court's] own conclusions." *Roper v. Simmons*, 543 U.S. 551, 578 (2005) (citation omitted).

[24] U.N. Comm. Against Torture, 36th Session, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and Recommendations of the Committee Against Torture: United States of America, CAT/C/USA/CO/2, at ¶36 (May 18, 2006). The Committee Against Torture is the official body of independent experts established pursuant to the Convention Against Torture, a treaty ratified by the United States and part of United States law. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 17, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85.

the human person."[25] The U.N. Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment has also recognized the "adverse acute and latent psychological and physiological effects" of prolonged isolation, and noted that because it "deprived [prisoners] of their liberty," they must be allowed to "to challenge expeditiously the lawfulness of the detention."[26]

CONCLUSION

Assignment to Northern entails severe isolation, restrictions on daily life, and a departure from typical prison conditions. The constitutional significance of this hardship can be inferred from a side-by-side comparison of the CDOC's own description of confinement at Northern and the conditions the *Wilkinson* Court found to impose a liberty interest. This Court should therefore apply the *Wilkinson* standard and hold that prisoners have a liberty interest in avoiding classification to A/S. If the Court finds the record incomplete as to the conditions endured by Mr. Vandever as a result of his 1997 classification to A/S, the Court should remand the case to develop a sufficient record and order an analysis of those conditions under the standard articulated in *Sandin* and *Wilkinson* and explicated by the Second Circuit.

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[25] *Case of the Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, at ¶323 (Nov. 25, 2006).

[26] Special Rapporteur of the Human Rights Council, *Interim Rep. of Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Accordance with General Assembly resolution 67/161, transmitted by Note of the Secretary*-General, ¶¶ 41, 76 U.N. Doc. A/68/295 (Aug. 2, 2013) (by Juan E. Méndez).

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Certificate of Compliance and Service

The undersigned hereby certifies that this application conforms with the relevant requirements of §§67-7, 66-3, and 62-7 of the Connecticut Practice Book. The undersigned further certifies that a copy of this Brief of Amicus Curiae was served by first-class mail this 5th day of December, 2013 to the following:

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