

PRELIMINARY STATEMENT

Torture and other abuses come in different shapes and forms. Centuries ago, the methods of mistreatment were more transparent and overtly violent. Today, medieval devices like the rack and the screw have largely been replaced by less conspicuous methods such as prolonged isolation, sensory deprivation, and indefinite confinement without charge. While these new tactics do not necessarily leave visible marks, the pain and damage they inflict is just as pernicious, just as damaging, and just as illegal.

For nearly five years, Plaintiff Ali Saleh Kahlah Almarri (“Mr. Almarri”) has been imprisoned without charge in virtual isolation at the U.S. Naval Consolidated Brig (“the Brig”) near Charleston, South Carolina. Mr. Almarri was initially held completely *incommunicado* and subjected to a brutal interrogation regime. Complaint (“Compl.”) ¶¶ 34-38, 50-52, 68-73; Certification of Andrew J. Savage, III (“Savage Cert.”) ¶¶ 23-25, attached hereto as Exhibit A. He was forced to endure painful stress positions, extreme sensory deprivation, and threats of violence and death. The window in Mr. Almarri’s cell was deliberately obscured so that no natural light could enter and so that Mr. Almarri could not see the world outside. Compl. ¶ 45; Savage Cert. ¶ 11. Mr. Almarri was also denied all books and news, prevented from practicing his religion, and denied items as basic as water, soap, clothing, and toilet paper. Compl. ¶¶ 53-56, 74-87, 89-99; Savage Cert. ¶¶ 16, 18-21, 30-31. Matters became so grave that Mr. Almarri began to feel he was losing his mind and faced an imminent mental breakdown. Compl. ¶¶ 108-111; Savage Cert. ¶¶ 37-47.

In August 2005, Mr. Almarri commenced this lawsuit to remedy these cruel, unlawful, and barbaric conditions of confinement. Only then—with his claims of mistreatment before a federal court—did conditions begin to improve, albeit gradually and unevenly. *Savage Cert.* ¶¶ 48-53. None of these improvements, however, alters these fundamental facts.

First, Mr. Almarri still remains in virtual isolation, denied any meaningful contact with his family or the world outside except for his attorneys and occasional visits by the International Committee for the Red Cross (“ICRC”). Mr. Almarri has not spoken to his wife, his five children (two sons aged 7 and 14; and three daughters aged 9 and twins aged 11), or his elderly parents since he was confined at the Brig. Correspondence by mail, the only form of communication with immediate family members available to Mr. Almarri, takes 10-12 months on average due to the government’s review process. *Id.* ¶¶ 54-59. Last year, the government took more than five months to review a DVD sent to Mr. Almarri by his family which contained pictures of Mr. Almarri’s wife and children, and updates on his family’s life back home. *Id.* ¶ 58. Further, Mr. Almarri’s access to news remains severely restricted, heightening his sense of isolation and feelings of despair. *Id.* ¶ 63. In addition, the government subjects Mr. Almarri’s access to religious texts to excessive delays and sometimes arbitrarily denies him that access altogether without explanation or basis. *Id.* ¶ 64.

Second, the government still maintains that everything Mr. Almarri receives down to the mattress and blanket in his cell is a “privilege.” As “privileges,” those items can be removed at will, as has happened repeatedly in the past. *Id.* ¶¶ 65-68. Deeming

everything a privilege not only facilitates manipulation of basic conditions for unlawful purposes, but also imposes unbearable psychological pressure. Mr. Almarri lives from day to day without knowing what new onerous conditions each day will bring.

Third, Mr. Almarri's continued isolation and other unlawful conditions of confinement are irreparably harming his health and jeopardizing his ability to participate meaningfully in his legal defense. *Id.* ¶¶ 69, 85-86; Declaration of Stuart Grassian, M.D. ("Grassian Decl.") at 15-17, attached hereto as Exhibit B. Recently, Mr. Almarri has exhibited marked signs of deterioration common to individuals subjected to isolation for long periods of time, and "[h]is ability to tolerate this confinement is clearly eroding severely." Grassian Decl. at 16; Savage Cert. ¶¶ 74-86. Although Mr. Almarri has not yet reached the "agitated, confusional, hallucinatory psychosis" that is the most severe consequence of prolonged isolation, his deterioration will worsen the longer he is held under current conditions, further endangering both his health and his ability to work with counsel. Grassian Decl. at 15-17.

In short, Mr. Almarri has been confined in virtual isolation at the Brig now for more than 1,700 days, suffering egregious abuses during much of that time. No person can continue to withstand that kind of deprivation of meaningful human contact without permanent damage. Mr. Almarri is no exception. His prolonged isolation and other unlawful conditions of confinement are irreparably harming his health and safety, endangering what remains of his psychological resilience, and jeopardizing his ability to participate meaningfully in his legal defense.

Mr. Almarri, accordingly, respectfully requests that the Court enter an interim order remedying his prolonged isolation and other unlawful conditions of confinement. At a minimum, that order should direct the government to allow Mr. Almarri regular (monitored) telephone calls with immediate family members (now in Saudi Arabia); ensure rapid processing of Mr. Almarri's correspondence with those family members (including letters and DVDs); grant Mr. Almarri unrestricted access to news (in newspapers, in magazines, and on television); and ensure Mr. Almarri's prompt access to religious texts for the exercise of his faith.¹

STATEMENT OF MATERIAL FACTS

June 2003 to October 2004

Mr. Almarri has been held in virtual isolation at the Brig since he was first imprisoned there as an "enemy combatant" on June 23, 2003, almost five years ago. Compl. ¶¶ 32-35; Savage Cert. ¶ 3. For the first sixteen months of his confinement at the Brig, Mr. Almarri was detained *incommunicado*. He was denied any contact with the world outside, including his family, his lawyers, and the ICRC. All requests to see, speak to, or communicate with Mr. Almarri were ignored or refused. Compl. ¶¶ 34-38, 50-52, 57-58; Savage Cert. ¶ 6. Mr. Almarri's only regular human contact during that period was with government officials during interrogation sessions, or with guards when they delivered trays of food through a slot in his cell door, escorted him to the shower, or took

¹ Undersigned counsel have repeatedly urged the government to take these steps to mitigate the harmful effects of Mr. Almarri's continued isolation. But the government has refused to do so.

him to a concrete cage for “recreation.” The guards had duct tape over their name badges and did not speak to Mr. Almarri except to give him orders. Savage Cert. ¶ 7.

Mr. Almarri was also subjected to brutal interrogation measures, including stress positions, prolonged exposure to extremely cold temperatures, extreme sensory deprivation, and threats of violence and death. Interrogators, for example, told Mr. Almarri they would send him to Egypt or to Saudi Arabia to be tortured and sodomized and forced to watch as his wife was raped in front of him. They also threatened to make Mr. Almarri disappear so that no one would know where he was. Compl. ¶¶ 68-71; Savage Cert. ¶¶ 23-25. On several occasions interrogators stuffed Mr. Almarri’s mouth with cloth and covered his mouth with heavy duct tape. The tape caused Mr. Almarri serious pain. One time, when Mr. Almarri managed to loosen the tape with his mouth, interrogators re-taped it even more tightly. Mr. Almarri started to choke until a panicked agent from the FBI or Defense Intelligence Agency removed the tape. Savage Cert. ¶ 29. In addition, for periods of up to eight days at a time, Mr. Almarri would be placed in a completely bare and cold cell simply for refusing to answer questions. When Mr. Almarri asked for extra clothing or a blanket because he was freezing, his requests were denied. *Id.* ¶ 24.

In addition, Mr. Almarri’s observance of Islam was restricted and degraded so severely that he could not adhere to the most basic tenets of his faith. He was denied water to purify himself and a prayer rug to kneel on when praying. Mr. Almarri was also denied a *kofî* to cover his head during prayer; when he used his shirt as a substitute, he was punished by having his shirt removed. Mr. Almarri was prohibited from knowing the

time of day or the direction of Mecca, which prevented him from praying properly, as Muslims must do five times a day. The only religious item that he was permitted was a Koran, and his copy of the Koran was sometimes taken away to facilitate interrogation and at other times degraded and abused. Compl. ¶¶ 74-87; Savage Cert. ¶¶ 19-21.

Mr. Almarri was also denied basic necessities, including adequate clothing, recreation, and hygienic items such as a toothbrush, toothpaste, soap, and toilet paper. Sometimes, the water to his cell was cut off for up to 20 days. If Mr. Almarri needed water to drink or to wash himself, he had to ring a buzzer. Brig staff often would not respond for several hours. Compl. ¶¶ 90-91; Savage Cert. ¶¶ 30-33.²

October 2004 to August 2005

In October 2004, Mr. Almarri was finally allowed access to counsel, even though that access initially was monitored and severely restricted, and even though the government refused to recognize that Mr. Almarri had a legal right of access to counsel (and still refuses to recognize that right to this day). Compl. ¶¶ 24-27, 65-67; Savage Cert. ¶¶ 6, 34-35.³ Although direct interrogations of Mr. Almarri ceased after he was finally allowed access to his lawyers, Mr. Almarri's conditions remained unbearably

² Mr. Almarri has been told that there are cabinets full of recordings documenting his interrogation and other treatment at the Brig. Savage Cert. ¶ 33. Although Mr. Almarri has sought discovery of those recordings and all other evidence of his interrogation and treatment at the Brig, the government has refused to provide it.

³ Initially, all meetings with counsel were tightly controlled by the Defense Intelligence Agency, whose agents remained in the room for the duration of every meeting. All meetings took place in a non-contact visitation room, and were video and audio recorded. Throughout the meeting, Mr. Almarri remained shackled around both his stomach and legs, and a chain was attached to the floor so that Mr. Almarri could not move his legs at all or bend his knees. All visits were time-restricted, and Mr. Almarri's counsel were debriefed by the Defense Intelligence Agency after each meeting. Savage Cert. ¶¶ 34-35.

brutal and harsh. Mr. Almarri continued to be confined to a 9 by 6 foot cell and denied regular opportunity for physical exercise. On those occasions when he was allowed the opportunity to exercise, that exercise took place either in an outdoor cage or indoors, where Mr. Almarri was kept in hand and leg irons. Compl. ¶¶ 37, 89; Savage Cert. ¶¶ 8-10.

The single window in Mr. Almarri's cell was darkened with an opaque covering that prevented Mr. Almarri from seeing the outside world or knowing the time of day. His cell had only a sink, toilet, and hardened (metal) bed affixed to the wall. Mr. Almarri had no chair on which to sit and no blanket, pillow, or any other soft item inside his cell. Compl. ¶¶ 41, 45; Savage Cert. ¶¶ 11, 13. For more than two years, Mr. Almarri was denied a mattress, causing him discomfort and pain whenever he lay down on the hard and jagged metal surface of his bed. He was finally given a thin mattress at night, but the mattress was removed every morning. As a result of these conditions, Mr. Almarri began to experience persistent tingling and pain in his leg, neck, and other parts of his body. When a doctor finally examined Mr. Almarri, the doctor said that Mr. Almarri should be given a foam mattress, a cushioned chair, and a table (to lean on when sitting to alleviate the pressure). But none of those items was provided, and Mr. Almarri continued to suffer. Compl. ¶¶ 43-44; Savage Cert. ¶¶ 14-15, 17.

On several occasions, Mr. Almarri was confined to his cell for 24 hours a day, 7 days a week, for months at a time. Once Mr. Almarri was forced to spend more than 20 days in his metal bed in his freezing cell, shivering under a thin, stiff "suicide blanket,"

unable even to stand because the floor was too cold and his socks and footwear had been taken away from him. Compl. ¶ 42; Savage Cert. ¶ 16.

Mr. Almarri also continued to be denied all external stimuli and physical, social, and temporal reference points, including all books, news, magazines, TV, and radio, increasing his sense of isolation and hopelessness. Compl. ¶¶ 37, 89; Savage Cert. ¶ 18. Over the course of his confinement, virtually every aspect of Mr. Almarri's physical environment was manipulated to cause disorientation, discomfort, and despair, from the temperature in his cell to loud noises and constant banging intended to wake him at night. Compl. ¶ 64; Savage Cert. ¶¶ 38-39.

Mr. Almarri's isolation and other conditions of confinement wore away his health and safety. Mr. Almarri became increasingly paranoid and unable to tolerate ordinary stimuli. For example, he repeatedly complained about an industrial fan that had been placed near the door of his cell and that remained on continuously. Mr. Almarri believed that the speed of the fan—and thus the volume of the sound it emitted—was adjusted to torment him. Compl. ¶ 47; Savage Cert. ¶ 42; Grassian Decl. at 9, 12. Mr. Almarri also believed noxious odors were being introduced into his cell, and began stuffing his vents with food to try to block the smell. As a result, Mr. Almarri would be declared “non-complaint” and punished with even harsher restrictions. Savage Cert. ¶ 41; Grassian Decl. at 12.

In early 2005, matters became so bad that Mr. Almarri started losing his grip on reality. He told his counsel he was losing his mind and spoke of possible imminent death. Savage Cert. ¶¶ 46-47.

August 2005 to Present

In August 2005, Mr. Almarri commenced this action challenging his conditions of confinement.⁴ Virtually the moment suit was filed, conditions began to improve, albeit slowly and unevenly. Mr. Almarri is now permitted to move about his cell block (though he remains the only prisoner there) and is given adequate time for recreation. *Id.* ¶¶ 49-50, 54. He now has a mattress in his cell all the time. *Id.* ¶ 50. Mr. Almarri's religious practices are no longer degraded, and he can conduct his daily prayers properly, though he continues to be denied religious texts important to his observance and study of Islam. *Id.* ¶¶ 51, 64. Attorney visits are now unsupervised and comfortable chairs are provided. Mr. Almarri is also allowed to speak with his attorneys by telephone. *Id.* ¶ 55. Recently, Mr. Almarri was provided with a computer. *Id.* ¶ 50.⁵

But none of these improvements changes the fundamental, irreducible fact that Mr. Almarri remains virtually isolated and devoid of all meaningful familial and social contact, and that this isolation is irreparably harming his health and safety.⁶ Mr. Almarri still has no contact or verbal communication with anyone outside the U.S. government other than his lawyers and representatives of the ICRC. *Id.* ¶¶ 54-55. Mr. Almarri's contact with his immediate family, who live in Saudi Arabia, is virtually non-existent.

⁴ Mr. Almarri had previously filed a separate habeas action in July 2004 challenging the lawfulness of his detention as an "enemy combatant." That case is currently pending before the full Fourth Circuit. *See Almarri v. Wright*, 487 F.3d 160 (4th Cir. 2007), *rehearing en banc granted sub nom. Almarri v. Pucciarelli* (argued Oct. 31, 2007).

⁵ The computer does not have internet access.

⁶ The United States has detained Mr. Almarri for almost six-and-one-half years including the period from December 12, 2001, when Mr. Almarri was arrested by the FBI at his home in Peoria, Illinois, until June 23, 2003, when he was designated an "enemy combatant" and transferred to the Brig.

His only communication with those family members is through letters that are subject to extraordinary and excessive delays from the government's review process. During 2006-2007, several letters from Mr. Almarri's family took more than twenty months to reach him. In 2007, two letters from his wife and twelve-year-old daughter took more than four months to reach him. Last year, the government took more than five months to review a DVD that Mr. Almarri's family had sent him containing pictures of Mr. Almarri's wife and children and news of their life back home. And a one-page letter Mr. Almarri's wife sent him more than seven months ago is still being reviewed by the government. *Id.* ¶¶ 56-59.

Further, while Mr. Almarri now has some access to news, the news is heavily censored even though increased access would help at least mitigate the harmful effects of his isolation. Some days, the newspaper is redacted so heavily that all that remains is the sports or obituary pages. Mr. Almarri is also prohibited from watching news on television. *Id.* ¶ 63. Mr. Almarri's access to books, including religious texts, also remains severely censored. Mr. Almarri was recently denied books on Islam written more than six centuries ago, including an Arabic-Arabic dictionary used for translating and deciphering Hadith, the oral traditions relating to the words and deeds of the Islamic prophet Mohammed, which are important to Mr. Almarri's practice and study of his faith. The government, moreover, has refused to say what, if any, criteria govern the restrictions on Mr. Almarri's access to news, books, and religious texts, and provides no explanation when that access is denied. *Id.* ¶ 64.

In addition, there are still no rules addressing Mr. Almarri's treatment at the Brig. Instead, the government maintains that everything Mr. Almarri receives is a "privilege" that the government can remove at will, which is exactly what the government has done repeatedly in the past. *Id.* ¶¶ 65-69. Deeming everything a privilege not only facilitates the manipulation of basic conditions for illegal purposes, but also imposes excruciating psychological pressure. For Mr. Almarri must live from one day to the next without ever knowing whether what he has will be taken away or why.

The Continued Danger and Irreparable Harm to Mr. Almarri

Mr. Almarri's prolonged isolation, years of abuse and continued uncertainty over the length and terms of his indefinite confinement are damaging his ability to think, to concentrate, and even to sleep. *Id.* ¶¶ 69, 82-84; Grassian Decl. at 14-15. Recently, Mr. Almarri has exhibited distressing signs of further deterioration. Savage Cert. ¶¶ 74-79; Grassian Decl. at 13-15. He has become increasingly fixated on mundane aspects of his surroundings, from the humming noise of a fluorescent light to the preparation of his food. Mr. Almarri has also become more paranoid about those around him. Savage Cert. ¶¶ 80, 84-85; Grassian Decl. at 13-15.

Stuart Grassian, M.D., an expert on the psychiatric effects of stringent conditions of confinement, notes that he has "only very uncommonly encountered an individual whose confinement was as onerous as Mr. Almarri's, except for individuals who had been incarcerated brutally in some third-world countries." Grassian Decl. at 15. And Mr. Almarri, Dr. Grassian says, "clearly is suffering quite profoundly from increasingly severe symptoms related to his prolonged incarceration in solitary"—symptoms that are

both “strikingly specific and detailed.” *Id.* at 16. As Dr. Grassian observes, Mr. Almarri’s increasing hypersensitivity to ordinary stimuli, his worsening perceptual problems, his “increasing difficulty with obsessive preoccupations,” and his growing manifestation of paranoid thoughts are all the direct result of his continued isolation. *Id.* at 15-16.

As Dr. Grassian also notes, Mr. Almarri’s ability to tolerate his confinement has already eroded “to a worrisome degree” and is “clearly eroding severely.” *Id.* at 16-17. Mr. Almarri is becoming “increasingly irritable and impulsive, and increasingly obsessional.” *Id.* at 17. He will likely “become more agitated, more impulsive, and more distrustful and isolative” the longer his present conditions of confinement continue. *Id.* at 16. The continued stress of this isolation, in turn, will inflict further harm that may last “for a prolonged period of time, or even indefinitely.” *Id.* at 17.

In addition, the impairments caused by Mr. Almarri’s continued isolation will increasingly compromise his ability to work with his attorneys, “potentially hobbling his ability to pursue any appropriate legal remedy.” *Id.* And as Mr. Almarri becomes “more irritable, distrustful, and withdrawn,” he is more likely to be deemed “non-compliant” by Brig staff, leading to yet further environmental deprivation. This is “the classic ‘vicious cycle’ in solitary,” a cycle that is both “enormously harmful” and inevitable. *Id.* at 16-17.

ARGUMENT

Mr. Almarri’s continued isolation, denial of meaningful contact with his family, and restrictions on news and religious texts violate his rights under the Constitution and laws of the United States. First and foremost, these conditions of confinement violate the

Due Process Clause of the Fifth Amendment because they create unsafe conditions that are irreparably harming Mr. Almarri and jeopardizing his ability to participate meaningfully in his legal defense and because they exceed the permissible limits of whatever justification the government has for Mr. Almarri's purportedly non-punitive detention as an "enemy combatant." Indeed, Mr. Almarri's continued isolation and other conditions of confinement would violate due process even if they were imposed on a convicted prisoner, and not on someone who is merely being detained in protective custody as a "simple war measure," as the government insists Mr. Almarri is. Further, the restrictions on Mr. Almarri's access to news and books violate his rights under the First Amendment while the restrictions on Mr. Almarri's access to religious texts also violate his rights under the Religious Freedom Restoration Act. In light of the irreparable harm to Mr. Almarri, the balance of hardships, Mr. Almarri's likelihood of success on the merits, and the public interest at stake, Mr. Almarri easily meets the test for the modest interim relief requested here.

I. Mr. Almarri's Prolonged Isolation and Other Conditions of Confinement Violate the Due Process Clause of the Fifth Amendment.

As a resident alien, Mr. Almarri is entitled to the protections of the U.S. Constitution. *See, e.g., Sanchez-Llamas v. Oregon*, 548 U.S. 331, 126 S. Ct. 2669, 2681-2682 (2006); *Plyer v. Doe*, 457 U.S. 202, 210 (1982); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886); *Wong Wing v. United States*, 163 U.S. 228, 237-238 (1896). Though the United States has deprived Mr. Almarri of his liberty at the Brig for almost five years, it has not charged him with, let alone convicted him of, any offense. Mr. Almarri is

accordingly entitled to significantly greater constitutional protections than convicted prisoners who are being punished for their misdeeds or detainees charged with crimes and awaiting trial. *See, e.g., Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982); *Rhodes v. Chapman*, 452 U.S. 337, 347, (1981); *Haitian Ctrs. Council, Inc. v. Sale*, 823 F. Supp. 1028, 1043-1044 (E.D.N.Y. 1993) (persons in nonpunitive detention have the right to a “demonstrably higher” level of care than under the Eighth Amendment deliberate indifference standard that protects convicted prisoners); *see also* 10 U.S.C. § 813 (2006) (pretrial detainee may not be subjected to confinement “any more rigorous than the circumstances required to ensure his presence” at trial). Mr. Almarri’s *incommunicado* detention, mistreatment, continued isolation and denial of meaningful social and familial contact, and denial of access to news, books, and religious texts create unsafe conditions and grossly exceed any justifiable limits for his non-punitive detention in violation of the Due Process Clause. Indeed, these conditions would be unconstitutional even if they were imposed on convicted prisoners confined for the express purpose of punishment.⁷ They are certainly unconstitutional when imposed for the purportedly non-punitive purpose of Mr. Almarri’s detention here.

A. Mr. Almarri’s Continued Isolation and Other Mistreatment Create Dangerous Conditions of Confinement.

Mr. Almarri’s continued isolation and other conditions of confinement deny him safe conditions in violation of the Due Process Clause. *See Youngberg*, 457 U.S. at 315;

⁷ Mr. Almarri continues to press the other claims raised in his Complaint. But resolution of the narrow issues presented to the Court on this motion for interim relief does not require decision of those matters.

see also DeShaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189, 200 (1989); *Cameron v. Toomes*, 783 F. Supp. 1511, 1515 (D. Mass. 1992).

As the Supreme Court recognized more than a century ago, isolation is “punishment of the most important and painful character.” *In re Medley*, 134 U.S. 160, 171 (1890); *see also Chambers v. Florida*, 309 U.S. 227, 237 (1940) (prolonged isolation itself is a technique of “physical and mental torture”); *United States v. Stiles*, 9 U.S.C.M.A. 384, 386 (C.M.A. 1958) (invalidating U.S. Navy’s practice of sentencing convicted sailors to solitary confinement). The reasons are obvious and well-documented. “[T]he pain and suffering caused by extreme levels of psychological deprivation are equally, if not more, cruel and unusual than a lashing by a cat-o’-nine tails. The wounds and resulting scars, while less tangible, are no less painful and permanent when they are inflicted on the human psyche.” *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 914 (S.D. Tex. 1999).

Modern medical and scientific research overwhelmingly confirms the severe and irreparable harms prolonged isolation can inflict:

Social science and clinical literature have consistently reported that when human beings are subjected to social isolation and reduced environmental stimulation, they may deteriorate mentally and in some cases develop psychiatric disturbances. These include perceptual distortions, hallucinations, hyperresponsivity to external stimuli, aggressive fantasies, overt paranoia, inability to concentrate, and problems with impulse control. This response has been observed not only in the extreme case where a subject in a clinical setting is completely isolated in a dark soundproofed room or immersed in water, but in a variety of other contexts. For example, similar effects have been observed in hostages, prisoners of war, patients undergoing long-term immobilization in a hospital, and

pilots flying long solo flights. While acute symptoms tend to subside after normal stimulation or conditions are returned, some people may sustain long-term effects. . . . There is also an ample and growing body of evidence that this phenomenon may occur among persons in solitary or segregated confinement—persons who are, by definition, subject to a significant degree of social isolation and reduced environmental stimulation.

Madrid v. Gomez, 889 F. Supp. 1146, 1230 (N.D. Cal. 1995); *see also Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988) (“[I]solating a human being from other human beings year after year or even month after month can cause substantial psychological damage, even if the isolation is not total.”); *Ruiz*, 37 F. Supp. 2d at 910 (prisoners in prolonged solitary confinement “begin to decompensate not only in the sense of not being able to control themselves but also not to be able to control their actions”); Grassian Decl. at 2-6.

This isolation has already harmed Mr. Almarri severely and, as his recent deterioration makes clear, is placing him in danger of further permanent harm with each passing day. According to Dr. Grassian, Mr. Almarri “clearly is suffering quite profoundly from increasingly severe symptoms related to his prolonged incarceration in solitary.” Grassian Decl. at 16. In particular, Mr. Almarri’s “increasing inability” to tolerate ordinary stimuli like the buzzing of a fluorescent light, his worsening perceptual problems, his “increasing difficulty with obsessive preoccupations,” and his growing manifestation of paranoid thoughts are all the result of his continued isolation at the Brig. *Id.* Mr. Almarri’s resilience has already “eroded to a worrisome degree,” and his “ability to tolerate this confinement is clearly eroding severely.” *Id.* at 16-17. Unless the situation is remedied, Mr. Almarri will likely “become more agitated, more impulsive,

and more distrustful and isolative,” eroding any remaining psychological resilience he still has. *Id.* at 16. And these harms can be irreparable, permanently impairing Mr. Almarri’s mental and physical health long after his current isolation has ended. *Id.* at 17.

Moreover, Mr. Almarri’s continued isolation is impairing his ability to work with his attorneys. *Id.* And as Mr. Almarri inevitably becomes “more irritable, distrustful, and withdrawn,” he will increasingly be deemed “non-compliant” by Brig staff, leading to yet further environmental deprivation, further damage, and further obstacles to his meaningful participation in his legal defense. *Id.* at 16-17. Such unlawful and dangerous conditions of confinement should be remedied forthwith.

B. Mr. Almarri’s Prolonged Isolation and Other Conditions of Confinement Exceed the Permissible Limits of Non-Punitive Detention.

Even assuming the validity of the government’s justification for Mr. Almarri’s detention as an “enemy combatant” (the issue now before the full Fourth Circuit), his continued isolation and other conditions of confinement are also unlawful because they exceed the permissible limits of non-punitive detention. The Supreme Court has made clear that “captivity in war is neither revenge, nor punishment, but solely protective custody, *the only purpose* of which is to prevent the prisoners of war from further participation in the war.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plurality opinion) (internal quotation marks, citation omitted, and emphasis added). And the government itself claims that Mr. Almarri is being detained merely as a “simple war measure” to “prevent his return to the battlefield.” Answer to Petition for Writ of Habeas Corpus 8, *Almarri v. Hanft*, No. C/A No. 02:04-2257-26AJ (D.S.C.). But preventing a

combatant's "return to the battlefield" does not require imprisoning him in virtual isolation for years on end or denying him access to news and religious texts. On the contrary, Common Article 3 of the Geneva Conventions mandates that detainees "in all circumstances be treated humanely" and categorically prohibits cruel treatment of any kind. *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2795 (2006). This bedrock guarantee prohibits not only the egregious abuses to which Mr. Almarri has been subjected at the Brig, but also any act that "seriously endanger[s]" his health, including prolonged isolation. Geneva Convention Relative to the Protection of Prisoners of War, art. 13, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 ("Third Geneva Convention"); Army Regulation 190-8, *Enemy Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees* ("AR 190-8"), § 3.4e (prisoners of war "shall in no case" be subjected to conditions "prejudicial to their health"); AR 190-8, § 5.1a(6)(a) (prohibiting any measure that causes a detainee's physical suffering); Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), U.N. Doc. HRI/GEN/1/Rev.6 at 151 (2003)) ("prolonged solitary confinement" can constitute inhumane treatment).

The law of war also permits isolation of combatants only "in execution of penal or disciplinary sanction." Third Geneva Convention, art. 21. Yet, Mr. Almarri's nearly five-year-long isolation has not been imposed as a result of any alleged misbehavior at the Brig. It is instead a permanent, unchanging, and irreducible condition of his

confinement.⁸ It therefore contradicts the law of war principles the government invokes to justify Mr. Almarri's detention for that reason as well.

In addition, the law of war mandates "respect for...[a detainee's] family rights." *See id.* art. 27. Among other things, the Geneva Conventions require that family letters be delivered "by the most rapid method" available. *Id.* art. 71; *see also* Geneva Convention Relative to the Protections of Civilian Persons in Time of War, Aug. 12, 1949, art. 25, 6 U.S.T. 3516, 75 U.N.T.S. 287 ("Fourth Geneva Convention") (family "correspondence shall be forwarded speedily and without undue delay"). The government's failure to provide Mr. Almarri anything approaching meaningful communication with his family flouts those rules. That Mr. Almarri is being held in a state of complete social isolation makes his denial of meaningful family contact that much more egregious.

Making matters worse, the government maintains that everything Mr. Almarri receives is a "privilege" that it can remove at will. And the government has done so repeatedly in the past. *Savage Cert.* ¶¶ 65-69. Treating everything as a privilege not only

⁸ Interrogation, of course, can never justify the prolonged isolation and other mistreatment to which Mr. Almarri has been subjected at the Brig. The Due Process Clause prohibits indefinite detention for purpose of interrogation under any circumstances, let alone under the conditions Mr. Almarri has had to endure there. *Hamdi*, 542 U.S. at 521 (plurality opinion). Indeed, the Army Field Manual on Human Intelligence Collector Operations itself imposes a 30-day cap on the initial application of isolation when used for purposes of interrogation and requires approval for any additional periods, while also establishing specific limits on its duration. *See* Army Field Manual 2-22.3 (FM 34-52): Human Intelligence Collector Operations, Appendix M: Restricted Interrogation Technique—Separation; *see also* MG George R. Fay, AR 15-6 Investigation of the Abu Ghraib Detention Facility and 205th Military Intelligence Brigade (2004) (describing the use of prolonged isolation at the Abu Ghraib prison as an "abuse" and illegal under the Geneva Conventions and AR 190-8), *available at* <http://news.findlaw.com/hdocs/docs/dod/fay82504rpt.pdf>.

facilitates manipulation of basic conditions for unlawful purposes, *Hamdi*, 542 U.S. at 521 (plurality opinion), but also imposes unbearable psychological pressure. Mr. Almarri lives from day to day with heavy doubt as to what any given day will bring in terms of new and more onerous conditions. Due process prohibits this kind of lawless vacuum.

In short, Mr. Almarri's prolonged isolation, which already exceeds 1,700 days, bears no resemblance to the law of war principles the government has invoked to justify his purportedly non-punitive detention. Mr. Almarri remains alone day after day, without any contact with the outside world, except his attorneys and occasional visits from the ICRC. Mr. Almarri has not spoken with his wife, five children, or parents since before he was declared an "enemy combatant" almost five years ago. Meanwhile, letters between Mr. Almarri and his immediate family—the only form of communication with them he is allowed—often take up to a year to reach the intended recipient (and sometimes more) because of the excessive delays from the government's review process, rendering that communication meaningless. Last year, moreover, the government took more than five months to review and deliver a DVD to Mr. Almarri from his family which contained pictures of Mr. Almarri's wife and children and news about his family's life back home. *Savage Cert.* ¶¶ 57-58.

In addition, Mr. Almarri remains subject to arbitrary and senseless censorship which severely restricts his access to news of the world outside, heightening his sense of isolation and feelings of despair. And there is no limit on how long this confinement may continue. On the contrary, the government recently indicated that Mr. Almarri's detention at the Brig "could go on for a long time." *See* Unofficial Transcript of Oral Argument,

Almarri v. Pucciarelli, at 85 (4th Cir. en banc, Oct. 31, 2007), available at http://brennan.3cdn.net/e75ca720b7416fd646_bym6vjh5i.pdf.

If anything, Mr. Almarri's continued isolation, denial of meaningful family contact, and censorship of news and books resembles an extreme form of punishment that the government may not impose even on convicted criminals, let alone those in non-punitive detention like Mr. Almarri. Indeed, courts have found violations of due process where convicted prisoners as well as pre-trial detainees were isolated for significantly shorter periods of time than Mr. Almarri. *See, e.g., Lock v. Jenkins*, 641 F.2d 488, 494 (7th Cir. 1981) (confining pretrial detainee in a 37-square-foot cell for 22 hours a day amounts to punishment); *Iqbal v. Hasty*, 490 F.3d 143 (2d Cir. 2007) (keeping prisoner in prolonged isolation sufficient to allege confinement punitive in nature); *McClary v. Kelly*, 4 F. Supp. 2d 195 (W.D.N.Y. 1998) (four-year isolated confinement of prisoner for security reasons and not misbehavior violates due process); *United States v. King*, 61 M.J. 225 (2005) (segregated confinement of pretrial detainee in isolation for two weeks constitutes impermissible punishment); *Magluta v. Samples*, 375 F.3d 1269 (11th Cir. 2004) (confining pretrial detainee in solitary confinement for 500 days violates due process). Mr. Almarri's continued isolation and other conditions of confinement exceed any justifiable limit, and flout the purported non-punitive justification for his continued confinement at the Brig.

C. Mr. Almarri's Prolonged Isolation and Other Conditions of Confinement Would Violate the Fifth Amendment Even Under the Heightened Standard Applicable to Convicted Prisoners.

Mr. Almarri's prolonged isolation and other mistreatment would still be unconstitutional *even under* the standard applicable to convicted prisoners who are being punished for wrongdoing and not merely being detained in "protective custody" as a "simple war measure," as the government insists Mr. Almarri is. Restrictions on convicted prisoners must still be "reasonably related to legitimate penological objectives." *Turner v. Safley*, 482 U.S. 78, 87 (1987) (internal quotation marks omitted); *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003). In evaluating constitutional challenges in this context, courts must determine: (i) whether there is a "valid rational connection between the prison regulation and the legitimate governmental interest put forward to justify it"; (ii) whether there are "alternative means" of exercising the right at issue that remain open to the inmate; (iii) what impact "accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prisoner resources generally"; and (iv) whether there are "ready alternatives" for furthering the government interest available. *Turner*, 482 U.S. at 89-90 (internal quotation mark and citations omitted). Here, all four factors point to the violation of Mr. Almarri's due process rights through his continued isolation and other mistreatment.⁹

First, the government has not advanced any legitimate interest to justify Mr. Almarri's prolonged isolation and other mistreatment, nor could it. There is no legitimate justification, for example, for holding Mr. Almarri *incommunicado* for sixteen months, subjecting him to abusive interrogations and extreme sensory deprivation, denying him

⁹ Mr. Almarri's right to meaningful contact with his family is also protected by the First Amendment right of association. *Overton*, 539 U.S. at 131-132; *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984); *Feeley v. Sampson*, 570 F.2d 364, 372 (1st Cir. 1978).

adequate recreation and basic hygiene items, denying him all books, news, and contact with the outside world, and preventing him from practicing his religion and degrading his religion. Compl. ¶¶ 53-56, 74-87, 89-99; Savage Cert. ¶¶ 16, 18-21, 30-31. Nor is there any legitimate justification for continuing to hold Mr. Almarri in virtual isolation, denying him regular phone calls with immediate family members, and taking up to—and sometimes more than—a year to review letters between him and those family members. Savage Cert. ¶¶ 56-58. Such restrictions are grossly excessive in relation to any legitimate government interest, let alone the non-punitive ones the government invokes here.¹⁰

Second, there are no other means open for Mr. Almarri’s exercise of his right to be free from the harmful effects of prolonged isolation, his right to meaningful family contact, and his right of access to news and books. There is simply no substitute for the meaningful human and social contact that Mr. Almarri has been denied for almost five years and that he may continue to be denied potentially for the rest of his natural life. Mr. Almarri’s prolonged isolation, moreover, is causing severe harm from which he may

¹⁰ Indeed, federal regulations require that convicted prisoners must be provided at least one non-legal phone call per month. *See* 28 C.F.R. § 540.100 (“Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate’s personal development.”); *id.* § 541.12 (“[Inmates] have the right to visit and correspond with family members, and friends.”). Those regulations also guarantee convicted prisoners “the right to a wide range of reading materials” including “magazines and newspapers.” *Id.* § 541.12; *see also id.* § 540.71 (prohibiting prison officials from rejecting publications based upon their political, religious, or social content). Convicted prisoners, moreover, cannot be subjected to prolonged isolation without a hearing and further review. *Id.* § 541.43 (hearing required before placement in most restrictive non-disciplinary housing); *id.* § 541.20 (hearing required upon placement in disciplinary segregation); *id.* § 541.23 (hearing required for placement in protective custody).

never recover and which is impeding his ability to vindicate his rights. Grassian Decl. at 16-17.¹¹

Finally, as to the third and fourth prongs, there are “ready alternatives” to mitigate the harmful effects of Mr. Almarri’s continued isolation with only *de minimis* cost to the government. *Turner*, 482 U.S. at 90. Brig staff members have indicated that accommodating Mr. Almarri’s request for frequent and regular telephone calls with immediate family members from those family members’ home in Saudi Arabia would present no problem from a financial, operational, or security perspective. Savage Cert. ¶ 86. The government has also been notified that the International Federation for the Red Crescent will verify the identity of Mr. Almarri’s immediate family members so that these calls (which would be monitored) can take place from the family’s home. *Id.* ¶ 60.¹² Also, review of family letters and DVDs (of Mr. Almarri’s family) should be expedited in light of his precarious situation so that they take only weeks to be approved and not months (or years, as has sometimes been the case). *Id.* ¶ 57. Brig staff have suggested that Mr. Almarri’s family mail be reviewed in Norfolk, Virginia, rather than

¹¹ The government has indicated that, in its discretion, it would allow Mr. Almarri one family phone call every six months. But the government would compel Mr. Almarri’s family to travel approximately 175 miles to a U.S. embassy to make the call. As undersigned counsel have explained to the government, Mr. Almarri’s parents are elderly and in poor health, and cannot make the trip without putting their lives in jeopardy. Savage Cert. ¶ 60. The trip would also constitute a severe burden on Mr. Almarri’s wife and five young children. Further, a call once every six months hardly constitutes meaningful communication between intimate family members and is far too little even to begin to compensate for Mr. Almarri’s virtual isolation from the outside world and complete absence of any social contact at the Brig.

¹² In Saudi Arabia, where Mr. Almarri’s family is located, the Red Crescent serves the same function as the Red Cross, which does not operate there.

sent to Guantánamo, where it is reviewed now, but the Defense Department has rejected this alternative. *Savage Cert.* ¶ 59.¹³

In short, there is no valid justification for Mr. Almarri's continued isolation and other unlawful conditions of confinement, and the government has never offered one. And the availability of straightforward alternatives suggested by Brig staff only underscores that Mr. Almarri's conditions of confinement at the Brig serve no legitimate interest, penological or otherwise.

II. Restrictions on Mr. Almarri's Access to News and Books Violate the First Amendment.

The First Amendment "right to receive information and ideas . . . is fundamental to our free society." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). Yet, for more than two years, Mr. Almarri was denied all access to any news, books, television, or magazines. And, after almost five years in the Brig, he still remains virtually cut-off from the world outside. Although Mr. Almarri was finally allowed access to some books and news after he filed this lawsuit, that access remains severely restricted. The news that Mr. Almarri receives is heavily censored, and he is prohibited from watching any news on television. Further, Mr. Almarri's requests for approval for books routinely take more than six months to decide and then are sometimes denied arbitrarily and without explanation. The government has refused even to state what, if any, criteria, govern Mr.

¹³ Detainees at Guantánamo Bay, Cuba, appear to receive family mail typically within four to six weeks.

Almarri's access to these books.¹⁴ Recently, the government inexplicably refused to allow Mr. Almarri access to four religious texts written from approximately 500-700 years ago that Mr. Almarri needs for his religious study and observance.¹⁵ As usual, the government provided no explanation for its action. And as usual, there was no legitimate basis for its decision. Compl. ¶¶ 55-56; Savage Cert. ¶¶ 63-64.

III. Restriction on Mr. Almarri's Access to Religious Texts Violates the Religious Freedom Restoration Act.

The government must respect and accommodate the free exercise of religion by all individuals in the United States. In 1993, Congress enacted the Religious Freedom Restoration Act ("RFRA"), which provides that the "[g]overnment shall not substantially burden a person's exercise of religion." 42 U.S.C. § 2000bb-1(a). The law was enacted to restore the compelling interest test set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963), to "*all cases* where free exercise of religion is substantially burdened." See 42 U.S.C. § 2000bb(b)(1) (emphasis added); see also *Goodall v. Stafford County School Bd.*, 60 F.3d 168, 171 (4th Cir. 1995); cf. *Rasul v. Myers*, 512 F.3d 644, 671-672 (D.C. Cir. 2008) (recognizing RFRA's applicability to all persons within the United States). RFRA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A); see also *Madison v. Riter*, 355 F.3d 310,

¹⁴ As a result, the books must be purchased in advance (either by Mr. Almarri or the ICRC) without knowing the standards under which they will be reviewed.

¹⁵ The texts are: *Sahi Mawaridh al Dahman* (a book containing the Hadith or oral traditions relating to the words and deeds of the Prophet Mohammed); *Al Nihaya Fighareeb al Hadith* (an Arabic-Arabic dictionary used for difficult words in the Hadith); *Al Bath al Hadith* (a book used to determine the authenticity of Hadith); and *Bidayat al Mujtahid* (a comparison of the four major schools of Islam on disputed issues in Islamic jurisprudence).

315 (4th Cir. 2003). The government, however, has failed here to adhere to Congress's unequivocal command to protect religious freedom.¹⁶

The government has previously committed gross violations of RFRA, denying Mr. Almarri water to purify himself when he prays; prohibiting him from wearing a *kofi* to cover his head when praying (and then punishing him for using his shirt as a substitute); preventing him from knowing the time of day or the direction of Mecca and thus from praying properly; denying him any contact with an Imam or spiritual advisor; and taking away his Koran to facilitate interrogation as well as abusing and degrading it. Savage Cert. ¶¶ 19-21; Compl. ¶¶ 74-87.

The government, moreover, continues to violate RFRA by delaying and denying Mr. Almarri access to religious texts that are important to his exercise, study, and observance of Islam. Savage Cert. ¶ 64. These texts often take many months to review and are then sometimes denied without basis or justification. Although these restrictions substantially burden Mr. Almarri's religious freedom, they do not further "a compelling governmental interest" or represent "the least restrictive means" of furthering any such interest, as RFRA requires. 42 U.S.C. § 2000bb-1(b); *Goodall*, 60 F.3d at 171; *Kikumura v. Hurley*, 242 F.3d 950, 962 (10th Cir. 2001); *see also Jolly*, 76 F.3d at 479 (simply because prison officials "brandish the concepts of public health and safety" does not insulate their actions from RFRA's protections); *Charles v. Verhagen*, 220 F. Supp. 2d 937, 948-949 (W.D. Wis. 2002) (ban on Islamic prayer oil was not justified by

¹⁶ Although declared unconstitutional under the Fourteenth Amendment as applied to states and localities, *City of Boerne v. Flores*, 521 U.S. 507 (1997), RFRA still applies to the federal government, and encompasses every "branch, department, agency, instrumentality, and official . . . of the United States." 42 U.S.C. § 2000bb-2(1).

defendants' "security concerns," which were "not related to any specific difficulties presented by the possession of prayer oil").

IV. Interim Relief Is Necessary to Prevent Mr. Almarri's Further Deterioration and Irreparable Harm and to Preserve His Ability to Participate Meaningfully in His Legal Defense.

Mr. Almarri's request for interim relief easily meets the familiar test. *See, e.g., Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353 (4th Cir. 1991); *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189 (4th Cir. 1977). First and foremost, Mr. Almarri will suffer further irreparable harm from his continued isolation. He is already "suffering quite profoundly from increasingly severe symptoms related to his prolonged incarceration in solitary," and his "ability to tolerate this confinement is clearly eroding severely." Grassian Decl. at 16. Unless the situation is remedied, Mr. Almarri will "become more agitated, more impulsive, and more distrustful and isolative." *Id.* In addition to causing long-term damage from which Mr. Almarri may never recover, his continued isolation will make him increasingly unable to work with his attorneys, "potentially hobbling his ability to pursue any appropriate legal remedy." *Id.* at 17. Making matters worse, the government continues to use Mr. Almarri's "non-compliant" behavior as a basis for making his conditions harsher even though that "non-compliance" is itself the direct product of his prolonged isolation. *Id.* at 15-17.

Any harms suffered by the government, by contrast, would be *de minimis*, as Mr. Almarri is merely asking not to be held in virtual isolation, denied meaningful family contact, and denied access to books and news—rights that the government affords even to prisoners who have been tried and convicted on terrorism charges.

Mr. Almarri is also likely to succeed on the merits of his claim that the government cannot continue to imprison him in virtual isolation, particularly where he

has not even been accused of any crime, let alone convicted of any offense. *See supra* Points I-III. At a minimum, however, Mr. Almarri has “raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation,” which is all that is required when the balance of hardships “tips decidedly” in the plaintiff’s favor, as it does here. *Rum Creek*, 926 F.2d at 359 (internal quotation marks omitted).

Finally, the public interest overwhelmingly favors granting the interim relief requested here. The government continues to maintain that it can designate more individuals in the United States “enemy combatants,” including American citizens, and there is every reason to believe such persons will be held in conditions as bad as or worse than those Mr. Almarri has endured. Moreover, given the importance of the legal issues at stake in Mr. Almarri’s challenge to his detention as an “enemy combatant”—issues the Fourth Circuit deemed sufficiently important to hear *en banc*—it is certainly of public interest to help prevent Mr. Almarri from deteriorating beyond repair before those issues can be definitively resolved.

At the same time, there is no public cost to such relief. The government has failed to advance a single reason why it is appropriate, let alone necessary, to continue imprisoning Mr. Almarri in virtual isolation in the face of the demonstrated and established harms such isolation causes. By contrast, if the Court does not grant relief, it virtually invites the government to detain other individuals under conditions similar to Mr. Almarri’s, whether by the current administration or by future administrations, thus leaving in place “a loaded weapon ready for the hand of any authority that can bring

forward a plausible claim of an urgent need.” *Korematsu v. United States*, 323 U.S. 214, 246 (1944) (Jackson, J., dissenting).

CONCLUSION

Mr. Almarri is a human being. But the United States has not treated him like one for the last five years. Instead, it has abused him by forcing him to endure conditions that are dangerous, damaging, and inhuman. Today, Mr. Almarri remains virtually isolated from the world (including from his own family), and that isolation is jeopardizing what remains of his health and safety as well as his ability to participate in his own legal defense. Mr. Almarri’s continued isolation and other conditions of confinement are unacceptable, unlawful, and un-American, and should be redressed through the modest interim relief requested here.

Respectfully submitted,

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