IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

JOHN DOE 1, *et al*., by and through their next friend, NELSON LOPEZ, on behalf of themselves and all persons similarly situated, *Plaintiffs,* v. SHENANDOAH VALLEY JUVENILE CENTER COMMISSION, *Defendant*.	Civil No. 5:17-cv-00097-EKD/JCH Judge Elizabeth K. Dillon

REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Christine T. Dinan (VSB No. 84556)
Hannah M. Lieberman (admitted *pro hac vice*)
WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS
11 Dupont Circle, NW, Suite 400
Washington, D.C. 20036

Theodore A. Howard (admitted *pro hac vice*)
Bradley C. Tobias (VSB No. 88046)
WILEY REIN LLP
1776 K Street, NW
Washington DC 20006

Attorneys for Plaintiffs

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Plaintiffs John Doe 1, *et al*., by and through their next friend, Nelson Lopez, by their undersigned attorneys, submit this Reply Memorandum of Law in response to the Brief in Opposition to Plaintiff's Motion for Preliminary Injunction filed by Defendant Shenandoah Valley Juvenile Center Commission on March 21, 2018. *See* ECF Docket No. 45.

INTRODUCTION

Plaintiffs' Motion for Preliminary Injunction asks this court to curb the use of excessive force and restraints against the traumatized immigrant children in Defendant's custody, and to require Defendant to provide them with necessary and appropriate mental health care during the pendency of this litigation. *See* ECF Dkt. Nos. 33, 34. In its Brief in Opposition to the Plaintiffs' Motion, ECF Dkt. No.45, Defendant primarily challenges the factual accuracy of the accounts provided by the Plaintiffs and other former immigrant detainees concerning the mistreatment to which they were subjected while residing at Shenandoah Valley Juvenile Center ("SVJC" or "the Facility"). It also takes issue with the Plaintiffs' articulation of the substantive legal standards which they contend govern this Court's disposition of the Motion, and dismisses the expert opinions supporting the Motion on the grounds that Plaintiffs' experts are simply misguided or insufficiently informed.

However, Defendant openly concedes that Plaintiffs have recounted facts that, if true, make out a violation of their Constitutional rights: "Without question, the use of force *alleged* by Plaintiffs is not objectively reasonable". ECF Dkt. No. 45 at 25. Thus, disposition of this Motion largely requires resolution of the parties' competing facts. As set forth below, the Plaintiffs reject the Defendant's presentation, as well as its conclusion, based on the consistent narratives of current and former children detained at SVJC, the Declaration of a former SVJC employee concerning its practices, the opinions of the only experts designated in this case and, in some instances, admissions contained in Defendant's own records.

ARGUMENT

I. THE PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

A. Excessive Physical Force

The Declarations provided by Plaintiffs Doe 1, Doe 2, and Doe 3 and additional Declarants J.A., D.M. and R.B. are replete with disturbing allegations concerning physical assaults and abuse these children routinely suffered at the hands of staff at the Juvenile Facility. *See* Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction (ECF Dkt. No. 34) at 25-27 and citations therein (summarizing excessive force claims). It is noteworthy, in this regard, that Plaintiff Doe 1's period of detention at SVJC overlapped with those of Plaintiffs Doe 2 and Doe 3 for only a few months in late 2017.[1] Declarant J.A.'s detention at SVJC overlapped for several months in 2016 with the early part of Plaintiff Doe 1's time there, but J.A. left SVJC well in advance of when Plaintiffs Doe 2 and Doe 3 arrived.[2] Declarants R.B. and D.M. were detained at SVJC in 2014, and thus did not overlap with any of the Plaintiffs, or with J.A.[3] Defendant does not suggest that the Plaintiffs and Declarants knew each other or had any opportunity to confer with one another about their experiences or coordinate their stories. Yet, the consistent, coherent nature of their respective accounts of violent encounters with SVJC staff and subjugation to physical restraints and isolation is undeniably clear.

The parties agree that, in order to prevail on their claim that the punitive disciplinary practices employed at SVJC of which they complain violate their substantive due process rights under the Fifth Amendment, Plaintiffs must show conduct of such nature as to "shock the

---

1 ECF Dkt. No. 34-1, ¶ 5; *compare* ECF Dkt. No. 34-2, ¶ 12 *and* ECF Dkt. No. 22, ¶¶ 27-29.

2 *See* Ropp Aff. (ECF Dkt. No. 45-4), Ex. D-1 at 1.

3 ECF Dkt. No. 34-4, ¶ 3; Wong Aff. (ECF Dkt. No. 45-1), ¶ 75.

conscience" of the Court, and that in assessing whether the conduct alleged meets the "conscience-shocking" level required to merit relief, the Court must apply the "objective reasonableness" standard articulated in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015). *Compare* ECF Dkt. No. 34 at 23-24 *with* ECF Dkt. No. 45 at 24-25. Significantly, Defendant expressly concedes, under *Kingsley*, that "[w]ithout question, the use of force *alleged* by Plaintiffs is not objectively reasonable." ECF Dkt. No. 45 at 25 (emphasis in original). However, Defendant simply denies that the allegations are accurate. *Id*.

Utilizing unequivocal and unabashedly categorical language, the Defendant contests the incidents or severity of excessive physical force attested to by the Plaintiffs and Plaintiffs' Declarants, and insists that such episodes did not and could not occur at SVJC, maintaining instead that its use of physical force was sequenced and justified in each instance, and that restraints were only used as a last resort. *Id*. at 27-29 (citations omitted). The Defendant posits that its employment of physical intervention and restraints, as described, is "objectively reasonable" under *Kingsley* as a matter of law and entitled to deference from the Court, thus mandating the denial of injunctive relief. *Id*.[4]

Resolution of Plaintiffs' Motion is not as simple as the Defendant wishes it to be. In a Declaration submitted in support of this Reply Memorandum and the Plaintiff's Motion, Ms. Anna Wykes, a Residential Supervisor at SVJC from August 2016 through her compelled resignation on or about October 5, 2017 -- the day after this lawsuit was filed -- corroborates the

[4] The Plaintiffs do not pretend that they or their supporting Declarants never engaged in behavior while detained at SVJC that would not have provoked some form of disciplinary response from the Facility's staff. *See, e.g.*, ECF Dkt. No. 34-2, ¶ 25. However, the Defendant's choice to portray these children -- who are beset by past trauma and, in many instances, serious mental illness significantly affecting their conduct -- as sociopaths as to whom any measure of control exercised by the Facility was necessarily justified is disingenuous, to say the least.

consistent, repeated accounts of current and former youth held at SVJC and flatly contradicts many of the factual assertions upon which the Defendant relies in arguing that injunctive relief must be denied. The obvious disconnect and conflicts between the facts concerning excessive force set forth in the Plaintiffs' and their supporting Declarants' sworn statements and the facts as to which the Defendant's Affiants have attested can only be properly resolved through credibility determinations to be made by this Court on the basis of an evidentiary hearing.

Ms. Wykes, in her Declaration dated March 28, 2018 and attached hereto as Exhibit 1 ("Wykes Decl."), based upon her personal knowledge and observations while working at SVJC for more than one year, significantly undermines the sweeping assertions that characterize the Defendant's Opposition Brief and supporting Affidavits as regards the degree of force SVJC uses with respect to immigrant detainees and the circumstances under which such force is utilized. Without a doubt, Ms. Wykes' account of her experiences on the staff at SVJC paint a radically different picture with respect to discipline and the use of force at SVJC than the pristine, sanitized portrayal the Defendant attempts to advance.

The subjugation and control of the immigrant children detained at SVJC is the principal focus of staff orientation and training at the Facility. A four-hour training session on the use of force, including how to apply physical restraints such as handcuffs and shackles, how to "take a kid down" and how to use the restraint chair, and provision of a packet containing SVJC's policies on how to respond to physical threats, were the main components of new staff orientation when Ms. Wykes commenced work at the Facility. Wykes Decl., ¶¶ 5-6. By contrast, Ms. Wykes had been employed at SVJC for more than one year before any training was provided to the staff concerning techniques to use in interacting with traumatized children, emphasizing staff's need to exercise empathy and sympathy in these interactions. Wykes Decl.

¶ 9. She notes that, to her observation, "the techniques [the trainer] suggested were not implemented, and the training did not have any effect on the procedures and practices at SVJC." *Id*.[5]

Ms. Wykes provides a description of how discipline and punishment are imposed upon immigrant detainees at SVJC quite different from the orderly process portrayed in the Defendant's papers.

> 22. The system of discipline at SVJC is all about control. My supervisors emphasized "safety," but in practice it was all about having control over the kids in custody.
>
> 23. The staff had several ways to discipline kids in order to maintain control. These methods ranged from taking away a child's points to placing them in room confinement or in the restraint chair.
>
> 24. Often discipline for small things, like losing points for back-talking or not raising a hand in class, would escalate to bigger problems. A kid would get angry when he lost points, which would then lead to removal from programming. As the kid became more frustrated, bored or angry, he would act out and would then be placed in restraints.
>
> 25. There were no written guidelines that told us how and when to use certain means of discipline or force, so it was largely left to the discretion of the residential and assistant supervisors.

Wykes Decl. at 5 (internal citation omitted).

What Ms. Wykes' Declaration, coupled with all of the youths' accounts, demonstrates, is that Defendant's practices created an inevitable continuum of escalating violence. The continuum

---

[5] Ms. Wykes observes, in this regard, that "[o]ne clear barrier to the ability to express empathy was the fact that few staff members could communicate with the kids because they didn't speak Spanish." *Id*., ¶ 9. Defendant has admitted in its Answer to the initial and amended Complaints that the majority of SVJC staff members are Caucasian and do not speak Spanish. *See, e.g.*, ECF Dkt. No. 8, ¶ 39. This admission reflects a clear violation of the terms of the Cooperative Agreement between ORR and SVJC. *See* ECF Dkt. No. 35, Ex. 3 at 7, ¶ 5 ("Shenandoah must provide services in a culturally sensitive and knowledgeable manner. *The majority of staff responsible for direct service delivery must be bilingual in English and Spanish*." (Emphasis added.)).

of force and increased restraints often starts with taking away "points" – the only and much-desired way for the youth to get a treat or perk -- for alleged minor infractions, triggering frustration and anger. [6] A youth's lashing out would prompt his "removal from programming" – i.e., being placed in isolation with restraints – which would lead to further boredom, anger and aggression, prompting the use of additional restraints, including the much-reviled and feared "restraint chair". The discretion accorded staff to use the punitive measures and their readiness to do so, which Ms. Wykes describes, and which the young Declarants and Plaintiffs experienced, is irreconcilable with the Defendant's presentation at virtually every stage of the "behavior management" continuum:

- While the Defendant extols its "behavior management policy utiliz[ing] positive reinforcement to encourage good behavior" and insists that points earned through compliance with this policy cannot be taken away (ECF Dkt. No. 45 at 3-4), Ms. Wykes attests that taking away children's points "happened all the time . . . for pretty much anything." Wykes Decl., ¶ 27. [7]

---

[6] Indeed, a theme that emerges from the youths' Declarations is that goading and harassment by staff leads to and feeds this cycle of violence. *See* ECF Dkt. No. 34-1, ¶ 10 ("They were always trying to provoke me"); ECF Dkt. No. 34-3, ¶ 16 ("I think they do things to make me angry so that I will hit them and then charges will be pressed and I will get a longer sentence"; ECF Dkt. No. 34-4, ¶ 5 ("The staff members would say ugly things about my mother and my family members. I think they did that to try to make me mad and to act out").

[7] The accounts of Plaintiffs and their supporting Declarants are in harmony with Ms. Wykes' assertions concerning the point system. *See, e.g.*, ECF Dkt. No. 34-1, ¶ 8 ("We could get points awarded for good behavior and points taken away for bad behavior. . . . I regularly got points taken away for things like not wanting to work on the mural in art class, complaining about a headache, or throwing a ball that hit the ceiling in the gym."); *see also* ECF Dkt. No. 34-2, ¶ 27; ECF Dkt. No. 34-3, ¶¶ 16-17. Notably, certain references in Defendant's own submissions are in accord. *See* ECF Dkt. No. 45-1, Ex. A-1 at 2 ("In accordance with the [SVJC's] behavioral management policy, [Declarant R.B.] . . . will be restricted to his room for losing all of his behavioral levels[.]"); ECF Dkt. No. 45-4, Ex. D-1 at 2 ("[Declarant J.A.] talked about his point loss for the day and some of his anger."). Collectively, this evidence flatly repudiates the Defendant's contention that "[o]nce earned, points may not be taken away."

- While Defendant contends that removal of detained children from educational programming and subjecting them to room confinement occurs "only when every possible alternative has been exhausted" -- *see* ECF Dkt. No. 45 at 4 (internal citations omitted) -- Ms. Wykes states that "[r]emoval from programming was sometimes done when, for example, a kid would complain of a headache and not want to come out of his room to go to class, or when a kid would not want to go back into his room after lunch, which happened frequently. [¶] *If kids disrupted the daily routine in any way, they would be removed from programming* and left alone in their rooms for the rest of the day." Wykes Decl., ¶¶ 31-32 (emphasis added). *See also* ECF Dkt. No. 34-4, ¶ 6; ECF Dkt. No. 34-5, ¶ 7.

- In its Opposition, Defendant categorically denies that children may wind up in solitary confinement for extended periods of time, asserting that "Plaintiffs' provocative, nonspecific allegations of weeks-long solitary confinement . . . [is] simply not credible" and constitute "allegations of past conduct that did not occur." ECF Dkt. No. 45 at 36. Indeed, Defendant admits that "prolonged solitary confinement of juveniles may give rise to irreparable harm". *Id*. Yet Ms. Wykes' Declaration and SVJC's own affiants agree that solitary confinement attendant to "removal from programming" could last from a few hours in some instances to many days in others. Wykes Decl., ¶¶ 34-38 (describing alternative three-day and ten-day programs of confinement); *see* ECF Dkt. No. 45 at 5 (acknowledging the possibility of room confinements of five days or more).[8] Based on the system Ms. Wykes describes, a three-day placement in isolation could quickly expand to a much longer time, as the children's ability to get out of isolation depends on their "passing" a day without offending the residential supervisor. Wykes Dec., ¶ 37(d)-(f).

- While Defendant asserts that "SVJC adheres to a strict policy that allows physical intervention by staff only as a last resort and only with the least amount of force that is reasonably necessary" (ECF Dkt. No. 45 at 7 (internal citations omitted)), Ms. Wykes recounts that "[t]he staff at SVJC would . . . use physical restraints, including handcuffs, leg shackles, and soft restraints . . . to maintain control. *Restraints were not always used as a last resort*. [¶] Many staff members, including my assistant supervisors, would have no problem going 'hands-on' with a kid if they thought they needed to. 'Going hands-on' means several adults would put a kid in restraints, often by first pinning them down on the floor or against the wall. *Some staff members would automatically go hands-on without trying any deescalation techniques as soon as a kid did not comply with an order*

[8] Although, in its pleadings, the Defendant readily admitted that "[i]solating children who are suicidal is extremely damaging and violates well-established professional standards" -- *see* ECF Dkt. No. 8 ¶ 97; *see also* ECF Dkt. No. 26, ¶ 125 -- it expressly acknowledges in its Opposition papers that immigrant detainees at SVJC are placed in room confinement for attempted or actual self-harm, *including suicide*. *See* ECF Dkt. No. 45-1, ¶ 41(b) (addressing the use of room confinement for children "on suicide watch").

to do something." Wykes Decl., ¶¶ 39-40 (emphasis added). Ms. Wykes once "saw 5 staff members use force to restrain a kid who was so small we called him 'Baby J.' He was 80 pounds." *Id*., ¶ 43.[9]

- While Defendant states that "[w]hen all other measures have proven inadequate, SVJC utilizes an emergency restraint chair for residents who are physically combative, self-destructive, or potentially violent. . . . the chair is used only for justifiable protection . . . [and] is never applied as punishment" (ECF Dkt. No. 45 at 7 (internal citations omitted)), Ms. Wykes' firsthand account differs significantly. She indicates that "[t]he chair could be used for any non-compliant behavior, such as when a kid resisted being placed in shackles. If the kid wasn't calming down, or wasn't complying with directives to stop kicking, stop struggling, or stop biting, he would be placed in the chair. [¶] Sometimes kids were placed in the chair as a result of a fairly minor behavioral issue or an attempt at self-harm once the child had been removed from programming. . . . [¶] *The kids were not placed in the restraint chair due to any real concern for their safety or staff safety*. By the time the kid was put in the chair, staff members had already taken the kid to the ground, had taken away anything threatening, such as a shank or a piece of glass, and had already placed the kid in restraints. . . . [¶] In my experience, the assistant supervisors went too quickly for the chair instead of trying to exhaust less drastic measures." Wykes Decl., ¶¶ 48-51 (emphasis added).

- Moreover, Defendant understandably omits any description of the chair from its sanitized presentation. Having been placed in the chair as part of a training exercise, Ms. Wykes provides a vivid picture of the sinister qualities of the chair and its use. She explains that kids are strapped in at the waist, chest, arms and legs. Already in shackles, the arm and leg shackles are connected to the chair. A "horror movie"-looking spit mask is sometimes placed over their face. Strapped in, the child can only move his head, fingers and toes. Wykes Decl., ¶¶ 44-46. She described feeling "trapped" while restrained in the chair, asserting that "no human would like it". *Id*., ¶ 52. Far from helping a child calm down, even Defendant's other staff members recognized that strapping a child to the chair caused increased agitation. *See, e.g*. Twigg Aff. (ECF Dkt. No 45-3), Ex. C, ¶

[9] The youth recount similar instances of being subjected to such disproportionate force. *See, e.g*., ECF Dkt. No. 34-1, ¶ 11 ("four staff members shoved me to the floor and piled on top of me"); ECF Dkt. No.34-2, ¶ 32 ("Sometimes there will be three or four of them using force against me at the same time"); ECF Dkt. No. 34-3, ¶ 10 ("two staff members slammed my body to the ground"); ECF Dkt. No. 34-4, ¶7 ("The staff members reacted by pushing me to the floor, and one of the staff members grabbed my head and forced my head down to the ground); ECF Dkt. No. 34-6,¶ 18 ("The guards were twice the size of the kids, who were 13 or 14 years old, but they would use their full weight to push them to the ground. Sometimes it was two guards doing this to a little kid").

16(i) (describing how Doe 2 "head-butted the wall and chewed a hole in the spit mask while being placed in the chair.").[10]

- Although the Defendant would have this Court believe that, as part of their "behavior management program", the youth confined at SVJC have a meaningful opportunity to contest disciplinary actions taken against them and have a viable grievance procedure available by which their concerns can be raised and resolved (ECF Dkt. No. 45 at 3, 4-5), Ms. Wykes' account makes clear that nothing is further from the truth. While youth were provided with disciplinary reports, the reports were only in English. Wykes Decl., ¶ 73. She would translate the reports into Spanish for the youth through their room door. When the youth denied the report, he was not given an opportunity to tell or record his story. The assistant supervisor would deny the appeal on the spot. It was, as she said, a "joke" that took "two minutes, tops." *Id.* She watched grievances submitted by the youth immediately get thrown in the trash. *Id.*

In sum, Ms. Wykes' detailed description of the disciplinary/punishment process at SVJC in practice on a real-world, day-to-day basis provides clear and substantial corroboration for the horrific experiences recounted by the Plaintiffs and their supporting Declarants in their sworn submissions offered in support of the Plaintiff's Motion, and flatly contradicts the orderly practices and procedures described by the Defendant's Opposition. In such circumstances, it is apparent that the outright rejection of Plaintiffs' request for injunctive relief sought by the Defendant cannot be granted. Instead, an evidentiary hearing, on the basis of which credibility determinations can be made by this Court, is required. *See Imagine Medispa, LLC v. Transformations, Inc.*, 999 F. Supp. 2d 862, 869 (S.D. W. Va. 2014), *citing Cobell v. Norton*, 392 F.3d 251, 261 (D.C. Cir. 2004) *and Blackwelder Furniture Co. v. Seiling Mfg. Co.*, 550 F.2d 189, 192 n.1 (4th Cir. 1997) (if parties' competing submissions in connection with a motion for

[10] *See also* ECF Dkt. No. 34-5, ¶ 18 (describing the chair and spit mask as "scary" and explaining, "[y]ou can't move to resist. The first thing that came to my head when they put it on me was, 'They are going to suffocate me. They are going to kill me.'"); ECF Dkt. No. 34-6, ¶¶ 11-12.

preliminary injunction implicate genuine issues of material fact, "an evidentiary hearing is required").

The Plaintiffs' evidence, if ultimately credited by the Court, establishes a purposeful, knowing use of force against detained immigrant children at SVJC that is "objectively unreasonable" -- *i.e.*, a use of force that "was not 'applied in good faith effort to maintain or restore discipline' but, rather, was applied 'maliciously and sadistically to cause harm.'" *Kingsley*, 135 S. Ct. at 2469, 2473, 2475. As such, Defendant's suggestion that Plaintiffs cannot make a "clear showing" of likelihood of success on the merits of their claim that the excessive force in use at SVJC violates substantive due process principles is without basis.

B. Denial Of Adequate Mental Health Treatment

In supporting their claim that the failure of SVJC to provide adequate care for the serious mental health needs of the Plaintiffs and other similarly-situated immigrant detainees at the Facility violates the children's substantive due process rights, the Plaintiffs invoked the "professional judgment" standard established by the Supreme Court in *Youngberg v. Romeo*, 457 U.S. 307 (1982). Under that standard, "liability may be imposed . . . when the decision by the professional is such a substandard departure from professional judgment, practice or standards as to demonstrate that the person responsible actually did not base the decision on such a [professional] judgment." *Id*. at 321 (citations omitted); *see generally* ECF Dkt. No. 34 at 29-30. Because there is no evidence suggesting that the brutal punitive measures routinely invoked by SVJC staff in response to behavior on the part of traumatized immigrant detainees that manifests their serious mental health problems took accepted and applicable professional standards for the treatment of traumatized youth into account whatsoever, Plaintiffs submit that they have a high likelihood of success on their Fifth Amendment claim in this regard. ECF Dkt. No. 34 at 30-32.

The Defendant's principal rejoinder to the Plaintiffs with respect to their denial of adequate mental health care claim is its assertion that Plaintiffs have relied on the wrong substantive standard:

> . . . SVJC is a secure detention facility rather than a health-care provider or a treatment facility. The basis upon which UAC, including Plaintiffs, are placed at SVJC is a determination by ORR that they pose a safety risk in a less secure setting. The applicable standard in a non-healthcare setting like SVJC is the "deliberate indifference" standard.

ECF Dkt. No. 45 at 30. Defendant goes on to assert that "the deliberate indifference test has been applied to civil detainees, including immigrant detainees, being held in a correctional facility as opposed to a treatment or healthcare setting." *Id*. at 31, *citing Newbrough v. Piedmont Reg'l Jail Auth*., 822 F. Supp. 2d 558 (E.D. Va. 2011) (footnote and other citation omitted). However, as shown below, the Court's analysis set forth in *Newbrough* explains why the Plaintiffs are correct and the Defendant is wrong: the *Youngberg* "professional judgment" standard governs here.

The *Newbrough* case involved a German national arrested and taken into custody by U.S. Immigration and Customs Enforcement agents and detained at the Piedmont Regional Jail while awaiting removal from the United States. While in detention, Newbrough became seriously ill and, after repeatedly but unsuccessfully seeking medical care for his illness, he died. In the lawsuit brought by a representative of the decedent's estate, the plaintiff asserted civil rights claims under Section 1983 premised upon allegations of wrongful denial of medical care. Certain named defendants filed a motion to dismiss, asserting that the complaint failed to state a claim against them for deliberate indifference to the decedent's serious medical needs, and "[p]laintiff counter[ed] that because Newbrough was a civil detainee and not a pretrial detainee, 'the "professional judgment" standard, and not the Eighth Amendment deliberate indifference standard' applies." 822 F. Supp. 2d at 570. Noting the absence of definitive Fourth Circuit

authority directly on point, the Court turned to the question whether the *Youngberg* "professional judgment" standard or the Eighth Amendment "deliberate indifference" standard should apply to the wrongful denial of medical care claim of an alien detainee. *Id*. at 574. In this regard, the Court noted:

> The Supreme Court's analysis in *Youngberg* makes clear that the purpose of the detention dictates the proper standard for assessing the detainee's denial-of-medical-care claim. In that case, for instance, the patient's commitment was intended "to provide reasonable care and safety." *Youngberg*, 457 U.S. at 320 n.27. For that reason, the plaintiff was "entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." *Id*. at 321-22. In short, *Youngberg* indicated that differently situated detainees are entitled to different standards of care from their custodians.
>
> In *Patten* [*v. Nichols*, 274 F.3d 829 (4th Cir. 2011)] . . . the Fourth Circuit observed that whereas psychiatric patients are confined for purposes of "treatment," pretrial detainees are confined "because the state believes that the detainee has committed a crime, and . . . to ensure that he appears for trial and serves any sentence that might ultimately be imposed." *Id*. at 841.
>
> * * *
>
> Applying *Patten's* analytical framework to the case at hand, this Court finds that immigration detainees are more similarly situated to pretrial detainees than to involuntarily committed patients, such that the stricter deliberate indifference standard should apply. First, the Court assesses "the reason for which the person has been taken into custody." *Id*. On close review, there is substantial similarity between the justifications for pretrial detention of the criminally accused and the detention of removable aliens. Most notably, both forms of detention serve to secure the detainee's appearance at future proceedings, and to protect the community.
>
> * * *
>
> Additionally, the Court considers the physical and durational nature of the confinement. Like pretrial detainees, immigration detainees generally are housed in jails while awaiting removal. And like pretrial detainees, pre-removal detention is generally limited in duration, whereas patients are often committed for longer periods of time. . . .
>
> . . . [T]his Court finds that pretrial and alien detainees share sufficient *similarities* to justify assessing their denial-of-medical-care claims under the same standard.

> Accordingly, this Court evaluates Plaintiff's allegations under the deliberate indifference standard.

Id. at 574-75 (emphasis in original; citations omitted).

Although Defendant is thus correct that the *Newbrough* Court held that the "deliberate indifference" standard should govern the denial of medical care claim of the immigrant detainee involved in that case, Plaintiffs submit that the analytical framework articulated and applied in *Newbrough* points to a different conclusion in the case at bar. The Plaintiffs are not detained as a result of pending criminal charges or in anticipation of imminent removal. Nor, at least in the capacity that it is functioning in the context of this case, is SVJC acting as a "correctional facility." Rather, SVJC is a "care provider," charged by ORR with express responsibilities to provide the immigrant detainees subject to ORR custody with "[p]roper physical care and maintenance, including suitable living conditions," as well as "[a]ppropriate routine medical . . . care . . . emergency health care services . . . [and] appropriate mental health interventions when necessary." ECF Dkt. No. 35, Ex. 3 at 4.

Without regard to their removal status, all unaccompanied minor immigrant children entrusted to ORR are to be "promptly placed in the least restrictive setting that is in the best interest of the child." *See* 8 U.S.C. § 1232(c)(2)(A). Children may not be placed by ORR in a secure facility "absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense." *Id*. Secure facility placements must be reviewed on a monthly basis "to determine if such placement remains warranted." *Id*.

Given these considerations and the significant psychological trauma and mental health problems which are characteristic of unaccompanied minors who have made their way from their home countries to the U.S. and find themselves subject to ORR custody, Plaintiffs submit that their placement in a secure ORR "care provider" facility is more closely analogous to the

circumstances of those involuntarily committed and in need of treatment, like the plaintiffs involved in *Youngberg* and *Patten*, rather than those of pretrial detainees being held on criminal charges or immigrant detainees held in anticipation of imminent removal. As is emphasized by Plaintiffs' expert Dr. Lewis, in his Supplemental Report in Response to Defendant's Opposition attached hereto as Exhibit 2 ("Supp. Lewis Rept."), juvenile facilities differ from adult correctional facilities in a manner directly consistent with this conclusion:

> The primary purpose of the adult prison system is to punish those convicted of crimes and to protect society from criminals. Although the juvenile justice system must also protect society, hold juveniles accountable, and effect justice, it also has the primary purpose of trying to rehabilitate juveniles by appropriately addressing their therapeutic needs. This is a major difference and requires juvenile justice systems to be in the business of restorative justice rather than punishment.

Supp. Lewis Rept., ¶ 8; *see also id*., ¶ 9 (because of their physiological, developmental and psychological differences from adults, "adolescents are in need of a juvenile justice system that accounts for these differences and functions separately and differently from the adult correctional system.").

For these reasons, Plaintiffs' claims are properly governed by the "professional judgment" standard, not the "deliberate indifference" standard applicable to the claims of those detained for purposes of punishment. *See also Alexander S. ex rel. Bowers v. Boyd*, 876 F. Supp. 773, 797-98 (D.S.C. 1995) (holding that claims of class of juvenile offenders detained in facilities whose stated objective was "treatment or rehabilitation" concerning unconstitutional conditions of confinement are governed by *Youngberg* "professional judgment" standard).

Both of the Plaintiffs' highly-credentialed, eminently qualified experts, Dr. Lewis and Dr. Weisman, have explained in their respective reports supporting the Plaintiffs' Motion, that established professional standards in the field of clinical psychology governing the treatment of traumatized, mentally ill minors, especially those in detention such as the Plaintiffs, dictate the

application of trauma-informed therapy. Both experts stressed that punitive approaches to the behavioral manifestations of traumatized children's mental illness, such as those routinely applied at SVJC, are wholly divorced from the accepted standard of care in the profession. ECF Dkt. No. 34-7, ¶¶ 83-97 & nn. 25-33; ECF Dkt. No. 34-8 at 9-13; Supp. Lewis Rept. at 1; *see also,* ¶ 6 (underscoring "the importance of stopping or greatly limiting correctional practices that further traumatize youth such as physical restraints, isolation, and shackling.")

Despite these uncontroverted expert opinions concerning what "professional judgment" entails in this context, Defendant insists that "SVJC's provision of mental health care is well above the constitutional minimum regardless of whether the deliberate indifference or the professional judgment standard applies." ECF Dkt. No. 45 at 32. But in attempting to support that assertion solely by reference to the *quantity* of mental health services provided or available to immigrant detainees at SVJC, Defendant misses the point. Thus, as Dr. Lewis has noted, "it is not sufficient to offer general mental services to youth . . . [who] have been previously traumatized." ECF Dkt. No. 34-7, ¶ 90.[11] Plaintiffs agree with Defendant's assertion that "the professional judgment standard sets a minimum constitutional threshold as opposed to a judicially-sanctioned debate between mental health professionals." ECF Dkt. No. 45 at 33 (citation omitted). But here, no such "debate" is presented. Plaintiffs' experts' opinions reflect

[11] *See* Supp. Lewis Rept., ¶¶ 13-15 (explaining why the mental health services afforded to Plaintiff Doe 1 at SVJC did not constitute effective treatment or therapy: "Although Doe 1 did, in fact receive limited mental health services while at SVJC, these were not trauma-informed and were primarily focused on why he was breaking rules and helping him to understand that there would continue to be consequences to his behaviors if he continued to act out. Indeed some of these services, such as his meetings with Dr. Kane, did not involve therapy at all. This punishment-oriented approach likely contributed to Doe 1 's further acting out at SVJC vs. a trauma-informed approach that would have helped him understand the relationship between his behaviors and past traumas and strategies to more effectively cope with his moods and behaviors when triggered by external events in his environment." *Id,* ¶ 15).

that the punitive disciplinary methods utilized by SVJC to respond to the behavior of traumatized, mentally ill children "is such a substantial departure from professional judgment, practice or standards as to demonstrate that [SVJC] did not base the decision [to employ those methods] on such a professional judgment." *Youngberg*, 457 U.S. at 321. Defendant has offered nothing to the contrary.

Even if the Court finds that the stricter "deliberate indifference" standard set forth in *Farmer v. Brennan* and its progeny applies to this case, Plaintiffs have provided sufficient evidence to demonstrate that they are likely to succeed on the merits of their claim regarding inadequate mental health care. To establish deliberate indifference, Plaintiffs must show that (1) they were exposed to a substantial risk of serious harm; and (2) the defendant knew of, and consciously disregarded, a substantial risk to their health or safety. *Thompson v. Commonwealth*, 878 F.3d 89, 97-98 (4th Cir. 2017) (citing *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)).

To prevail on such a claim, "it is essential to show *actual knowledge or awareness* on the part of the alleged inflicter." *Newbrough v. Piedmont Reg'l Jail Auth.*, 822 F. Supp. 2d 558, 581 (E.D. Va. 2011) (citing *Brice v. Virginia Beach Correctional Ctr.*, 58 F.3d 101, 105 (4th Cir. 1995)) (internal quotations omitted) (emphasis added). Here, there is no dispute that Defendant was aware that a significant proportion of the youths who were transferred to SVJC, including Does 1 and 2 and each of the three Declarants, suffered from mental illness.[12] There is also no

[12] ECF Dkt. No. 26, ¶ 107(a) (admitting that Doe 1 had been diagnosed with depression and conduct disorder); *id.*, ¶ 107(b) (admitting that Doe 2 had been diagnosed with depression, conduct disorder, and anxiety disorder); ECF Dkt. No. 45-4, (Declarant J.A. had been diagnosed with explosive anger and impulsivity); Contreras Aff. (ECF Dkt. No. 45-5), ¶ 6 (Declarant D.M. placed at SVJC in part because of "suicidal ideation at a prior lower-security placement"); ¶ 73 (Declarant

dispute that Defendant was aware that these youths were engaging in self-harm – including, in several cases, attempted suicide.[13] Such knowledge is sufficient to demonstrate Defendant's awareness that the youths faced a substantial risk of serious harm. *See Short v. Smoot*, 436 F.3d 422, 427 (4th Cir. 2006) (risk of suicide is sufficient to demonstrate a substantial risk of serious harm).

Yet Defendant indisputably and unapologetically engages in practices, including solitary confinement and the use of a restraint chair, that are known to be harmful to youths with mental illness and those who express suicidal ideation. In the face of such known risks, Defendant's actions constitute a conscious disregard for the health and safety of Plaintiffs and other youths in its custody.

Plaintiffs' experts, Dr. Lewis and Dr. Weisman, unequivocally assert that solitary confinement is harmful to youths with mental illness, and that it should never be used as a punishment. *See* ECF Dkt. No. 34-7, ¶¶ 75-76 ("Punitive approaches such as prolonged isolation, restraints, and physical abuse are harmful and ineffective. For example, 50% of all suicides in juvenile facilities occur while youth are held in isolation. . . . [Immigrant youths'] mental illnesses get worse when they are detained, especially when interventions such as solitary

---

R.B. had been diagnosed with post-traumatic stress disorder ("PTSD") and had PTSD-related nightmares and hallucinations).

[13] ECF Dkt. No. 26, ¶¶113, 114, 116 (admitting Doe 1 and Doe 2 had engaged in self-harm, and that Doe 1 had attempted suicide); ECF Dkt. No. 45-4, Ex. D-1 at p. 2 (describing incident in which Declarant J.A. cut his wrists and attempted to choke himself by tying a sweatshirt tightly around his neck, crying and stating that he wanted to die); ECF Dkt. No. 45-5, Ex. E-1 at 1-2; Ex. E-2 at 1-2 (describing incidents in which Declarant D.M. engaged in self-harm, including "banging his head forcefully against the brick wall" and "cutting his arm with a staple" and repeatedly expressed a desire to kill himself); ECF Dkt. No. 45-1, ¶ 81(Declarant R.B. had reported suicidal ideation on three separate occasions while he was detained at SVJC.)

confinement and force are utilized."); ECF Dkt. No. 34-8, ¶ 13 ("Medical professionals, including organizations like the American Medical Association, agree that juveniles with mental illnesses should not be placed in solitary confinement for longer than one hour without a comprehensive evaluation from a physician. Solitary confinement should never be used to punish people with mental illness."). Defendant has not disputed the opinions of Drs. Lewis and Weisman on this point, nor has it offered any contrary opinions in the form of competing expert testimony. Indeed, Defendant conceded in its Answer to Plaintiffs' Complaint that isolating children who are suicidal is "extremely damaging" and that it "violates well-established professional standards." ECF Dkt. No. 26, ¶ 125. And yet Defendant admits that SVJC places youths on room confinement for self-harm, or attempted self-harm, *including suicide*. ECF Dkt. No. 45-1, ¶ 41(b) (room confinement is used for children who are "on suicide watch"). Defendant also makes no effort to deny that solitary confinement is used as a punishment for any perceived violation of SVJC's rules (*See* ECF Dkt. No. 45-1, ¶¶ 35-38), or that it can last for a period spanning several hours to several days. *Id*., ¶¶ 37, 41(d)-(f).

Plaintiffs' experts are no less emphatic regarding the harms that mentally ill youths suffer from being placed in the restraint chair. *See* ECF Dkt. No. 34-1 at 1 ("The predominant approach utilized to manage youth at SVJC is punishment and behavioral control through methods such as solitary confinement, physical restraint, strapping to a chair and loss of behavioral levels. These approaches are not only ineffective, but . . . can cause or exacerbate mental health problems including panic attacks, suicidal and self-injurious behavior, psychotic symptoms, paranoia, and hopelessness."); ECF Dkt. No. 34-8 at 12 ("Placing a youth in a restraint chair because he/she expresses suicidality is not consistent with national standards.") Yet Defendant concedes that the restraint chair may be used on youths who are engaging in self-

harm. ECF Dkt. No. 45-1, ¶ 53(f); ECF Dkt. No. 34-5, ¶ 12. That the restraint chair is used by SVJC as a specific response to youths' self-mutilation or attempted suicide is supported by Ms. Wykes' Declaration and the youths' accounts. *See* Wykes Decl., ¶¶ 67-68; ECF Dkt. No. 34-5, ¶ 21 ("Every time I was in crisis, they put me in the chair. The guards never did anything less extreme than that").

Thus it is clear, on the basis of this uncontroverted evidence – including the Defendant's own admissions regarding the practices at SVJC, and the opinions of well-respected experts in the field of clinical psychology and juvenile justice – that Defendant consciously disregards excessive risks to the youths' health and safety by engaging in practices that are demonstrably harmful to youths with mental illness.

II. THE DEFENDANT'S UNLAWFUL PRACTICES HAVE CAUSED AND CONTINUE TO CAUSE IRREPARABLE HARM

In their respective reports submitted in support of the Plaintiffs' Motion, Plaintiffs' experts have set forth in clear terms that the punitive disciplinary measures to which the Plaintiffs and other similarly-situated immigrant detainees at SVJC have been and continue to be subjected causes these children harm of a character that cannot be quantified or compensated by monetary relief. ECF Dkt. No. 34 at 33-35; *see also* ECF Dkt. No. 34-7, ¶¶ 75, 76, 77, 101; ECF Dkt. No. 34-8 at 5-7. Because of their particularly vulnerable status as a result of both their lack of full physiological development and the prior psychological trauma they suffered even before arriving at SVJC, the Plaintiffs and other immigrant detainees at SVJC may suffer new, immediate and indeterminate levels of serious mental harm each time they are subjected to physical abuse, excessive restraints or solitary confinement at the hands of the Facility's staff. ECF Dkt. No. 34-7, ¶ 84 ("Recent research suggests that child abuse and neglect targets certain brain regions and pathways and can lead to brain abnormalities."); ECF Dkt. No. 34-8 at 6

("Because juveniles are still developing socially and emotionally and psychologically, they are especially susceptible to psychological and neurological harms when they are deprived of environmental and social stimulation. . . . The consequences, including actual changes in brain structure, have been demonstrated to persist into adulthood." (Footnote omitted.)).

The Defendant's response that "[n]o irreparable harm can befall Plaintiffs because they have nearly immediate access to treatment whether it be from a mental health clinician, a psychiatrist, or hospitalization for more urgent needs" (ECF Dkt. No. 45 at 35 (citation omitted)), simply fails to address or take into account the nature of the physiological and psychological harm which the Plaintiffs' experts have identified. Nor does Defendant offer any competing expert opinion evidence. Moreover, Defendant's focus on the *volume* of the mental health response available to immigrant detainees at SVJC again strays wide of the mark. As Dr. Lewis has made clear in this regard,

> Psychological treatment must address the chronic emotionally dysregulation, ruptured attachments with caregivers, and deficiencies in personal identity and competence caused by the trauma of the abuse and neglect. *Treatments and approaches that simply try to control behavior rather than working to restore the underlying brain abnormalities* and treating the "trauma" will be ineffective and likely harmful.

ECF Dkt. No. 34-7, ¶ 84 (emphasis added).

Lastly, although the Defendant readily concedes that "prolonged solitary confinement of juveniles may give rise to irreparable harm," it purports to dismiss this concern on the grounds that "the isolation or confinement of juveniles for shorter periods of time is not 'a significant hardship.'" ECF Dkt. No. 45 at 36 (citation omitted). But SVJC's own evidence acknowledges the prospect of room confinement of children at the Facility for more than five days, even putting aside: (i) Plaintiffs' experts' opinions indicating that even relatively short periods of solitary confinement can do serious harm to children, and (ii) Ms. Wykes' statement regarding use of a

"10-day program" of room confinement at SVJC. *See* ECF Dkt. No. 34-8 at 6 (¶ 3), 9 (¶ 13); Wykes Decl., ¶ 38.

In sum, rhetoric notwithstanding, Defendant's Opposition does little, if anything, to undercut the Plaintiffs' compelling showing concerning irreparable harm.

III. THE INJUNCTIVE RELIEF SOUGHT BY THE PLAINTIFF IS PRINCIPALLY PROHIBITORY RATHER THAN MANDATORY IN NATURE

Based upon a highly selective and self-serving interpretation of the Plaintiffs' Motion, supporting papers and proposed Order, the Defendant concludes that the preliminary injunction sought by the Plaintiffs is mandatory in nature, such that it can only be granted in "'the most extraordinary of circumstances.'" ECF Dkt. No. 45 at 23-24 (citation omitted). However, a fair reading of the injunctive relief that Plaintiffs are seeking indicates that the principal remedies they seek are prohibitory in nature, rather than mandatory and, in any event, the relevant case authorities favor a bifurcated analysis under the circumstances presented, rather than the categorical denial of relief for which the Defendant argues.

As articulated in the Plaintiffs' moving papers, "[h]ere, Plaintiffs submit that the preliminary injunction they seek is primarily prohibitory in nature; such injunctions 'aim to maintain the status quo and prevent irreparable harm while [the] lawsuit remains pending.'" ECF Dkt. No. 34 at 19, *quoting Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). Consistent with this representation, the principal objectives of the Plaintiffs' proposed Order are a suspension of the manner in which SVJC utilizes its "emergency restraint chair" and alterations in the manner in which it utilizes physical force, restraints and solitary confinement against the immigrant children detained at SVJC, pending the ultimate resolution of this case. *See* ECF Dkt. No. 33-1, ¶ 1.a. through f., and ¶ 2.a. through e. at 2-3. Utterly disregarding these main

objectives of the relief sought by the Plaintiffs, however, the Defendant focuses solely upon the last paragraph of Plaintiffs' proposed Order, wherein they propose that:

> Within __ days of this Order, SVJC . . . shall submit to Plaintiffs' counsel and to the court a plan to adopt and implement a fully trauma-informed environment that is consistent with national standards.

ECF Dkt. No. 33-1, ¶ 3 at 4; *see* ECF Dkt. No. 45 at 23-24.

While the Plaintiffs: (i) stand by this limited element of "mandatory" injunctive relief as warranted by the facts and circumstances of this case as set forth in their opening Motion papers and the instant Reply papers; and (ii) believe that even under a more rigorous application of the relevant standards for "mandatory" injunctive relief -- *see, e.g.*, *Pashby*, 709 F.3d at 320; *Handsome Brook Farm, LLC v. Humane Farm Animal Care, Inc.*, 193 F. Supp. 3d 556, 566 (E.D. Va. 2016) -- they should prevail in this regard, they recognize that a bifurcated analysis by the Court as to the two forms of injunctive relief requested may be required here. *See Handsome Brook Farm*, 193 F. Supp. 3d at 566 ("In cases where the request for preliminary relief encompasses both an injunction to maintain the status quo and to provide mandatory relief, the two requests must be reviewed separately, with the request for mandatory relief being subjected to a more exacting review. . . . When mandatory relief is sought 'a strong showing of irreparable injury must be made, since relief changing the status quo is not favored unless the facts and law clearly support the moving party.'" (Citations omitted.)); *see also Volvo Group North America, LLC v. Truck Enterprises Inc.*, Case No. 7:16-cv-00025-EKD, 2016 WL 1479687, at *3-*6 (W.D. Va. April 14, 2016) (addressing "prohibitory" and "mandatory" aspects of movant's request for injunctive relief separately).

Plaintiffs believe, and submit, that enjoining the Defendant's arbitrary, capricious and cruel imposition of physically abusive forms of discipline, excessive use of physical restraints and reflexive employment of solitary confinement would be prohibitory in nature, restoring the

Plaintiffs and those similarly-situated to the status quo at the time those immigrant detainees were first transferred to SVJC -- *see* ECF Dkt. No. 34 at 19-20 -- during the pendency of the case. Other than its attempted denials of Plaintiffs' underlying allegations, Defendant has done nothing to show that the curtailment of these practices is unjustified.

As for Plaintiffs' request that SVJC be required to adopt and implement current professional standards for juvenile facilities by abandoning its control/punishment-oriented mode of interaction with its traumatized immigrant detainees in favor of a trauma-informed approach to care and treatment, Plaintiffs submit that the force of its experts' opinions regarding the irreparable harm they and other immigrant children have suffered and continue to suffer as a result of the Defendant's practices at SVJC, especially in regard to solitary confinement, is sufficient to warrant mandatory relief as well under a heightened level of scrutiny. *See* ECF Dkt. No. 34 at 32-35; ECF Dkt. No. 34-7 & 34-8; *supra* at 19-20; *Handsome Brook Farm*, 193 F. Supp. 2d at 574. Moreover, Plaintiffs have demonstrated the requisite deference to the Defendant's status and capacity as a juvenile facility by suggesting that SVJC should be permitted to propose how it plans to implement a trauma-informed approach to the Facility's provision of mental health care in the first instance, rather than suggesting that the Court simply impose appropriate terms and conditions upon SVJC for this transition *ab initio*. *See* ECF Dkt. No. 45 at 37-38.[14]

[14] This distinguishes the mandatory relief sought by the Plaintiffs here from the situation addressed in *Taylor v. Freeman*, 34 F.3d 266 (4th Cir. 1994), a case upon which Defendant heavily relies, wherein, in granting a preliminary injunction ultimately vacated by the Court of Appeals, the district court not only disregarded evidence of "the numerous remedial steps undertaken or committed to be undertaken" by the officials of the youth correctional facility involved to try to address the alleged unconstitutional conditions of which the plaintiffs complained, but entered an injunctive order that wholly deprived those officials "of essentially all discretion to address the problems" found by the Court to exist. *Id*. at 270-72. In any event,

Accordingly, both the "prohibitory" and the "mandatory" elements of the Plaintiffs' request for preliminary injunctive relief are properly granted.

CONCLUSION

For the foregoing reasons, as well as those set forth in the Plaintiffs' opening Motion papers, a preliminary injunction should be granted.

DATED: April 4, 2018

Respectfully submitted,

By: /s/ Christine T. Dinan
Christine T. Dinan (VSB No. 84556)
christine_dinan@washlaw.org
Hannah M. Lieberman (admitted *pro hac vice*)
(hannah_Lieberman@washlaw.org)
WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS AND URBAN AFFAIRS
11 Dupont Circle, NW, Suite 400
Washington, D.C. 20036
(202) 319-1000 (telephone)
(202) 319-1010 (facsimile)

Theodore A. Howard (admitted *pro hac vice*)
thoward@wileyrein.com
Bradley C. Tobias (VSB No. 88046)
btobias@wileyrein.com
WILEY REIN LLP
1776 K Street NW
Washington, D.C. 20006
(202) 719-7120 (telephone)
(202) 719-7049 (facsimile)

Attorneys for Plaintiffs

---

deference of the sort the Defendant seeks to claim for itself here simply does not apply where the punitive disciplinary measures complained of are shown to have no reasonable relationship to legitimate penological interests in light of substantial evidence indicating that a facility's officials have exaggerated their response to the safety or security concern invoked. *See generally Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318, 132 S. Ct. 1510, 1515-17 (2012). Plaintiffs submit that precisely that set of circumstances will be shown to exist here.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April 2018, a true and correct copy of the foregoing Reply Memorandum of Law In Support Of Plaintiffs' Motion for Preliminary Injunction with supporting Exhibits was served via this Court's electronic case filing system upon the following:

Jason A. Botkins, Esq.
Melisa G. Michelsen, Esq.
LITTEN & SIPE, LLP
410 Neff Avenue
Harrisburg, VA 22801
jason.botkins@littensipe.com
melisa.michelsen@littensipe.com

Attorneys for Defendant Shenandoah Valley Juvenile Center Commission

/s/ Christine T. Dinan
Christine T. Dinan