UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

CLINTON NORTHCUTT, *et al.*,

Plaintiffs,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

Case No. 4:17-cv-03301-BHH-TER

Honorable Bruce Howe Hendricks
ORAL ARGUMENT REQUESTED

PLAINTIFFS' MOTION AND MEMORANDUM OF LAW FOR PRELIMINARY INJUNCTION

Plaintiffs are eighteen Death Row inmates who have been kept in solitary confinement for between nine and twenty years. The South Carolina Department of Corrections ("SCDC") has denied them any meaningful opportunity to challenge their inhumane confinement and enforced isolation, so Plaintiffs have filed suit pursuant to the Eighth and Fourteenth Amendments to the United States Constitution. *See* Complaint and Demand for Jury Trial, *Northcutt v. S. Car. Dep't of Corrs.*, No. 4:17-cv-03301-BHH-TER (D.S.C. Dec. 7, 2017), ECF No. 1 ("Compl."). This motion for preliminary injunctive relief arises in the context of Plaintiffs' challenge to SCDC's violation of their constitutional rights. While Plaintiffs' primary claims are quite serious, and relief should likewise be swift, recent events have necessitated more immediate action.

On or around September 26, 2017, SCDC moved the Death Row facility from Lieber Correctional Institution ("Lieber"), where Death Row inmates had been separately housed since

1997, to the Maximum Security Unit ("MSU") at Kirkland Reception and Evaluation Center ("Kirkland"). The MSU is typically reserved for those inmates whose behavior while incarcerated demonstrates a significant risk of harm to themselves and/or others. As one would expect, the conditions in the MSU are even harsher than those Plaintiffs were previously subject to while at Lieber. Plaintiffs bring this motion to seek immediate relief from the conditions in the MSU while their constitutional claims are being litigated.

SCDC placed Plaintiffs and their fellow Death Row inmates in the MSU without any evaluation of their individual risk or determination that such extreme confinement was penologically necessary. Defendants therefore failed to provide Plaintiffs with the due process guaranteed under the Fourteenth Amendment. *See Wilkinson v. Austin*, 545 U.S. 209, 222–24 (2005) (States may not "impose an atypical and significant hardship within the correctional context" that violates a state-created liberty interest).

Defendants have had nearly three months to provide an explanation or justification for their arbitrary decision to place Plaintiffs in the MSU. They have provided neither—nor could they, because nothing about Plaintiffs' behavior or status has changed. Even worse, SCDC has denied Plaintiffs any meaningful opportunity to contest their placement in extreme isolation. That failure violates Plaintiffs' constitutional rights and is exacerbated every day Plaintiffs remain in the MSU. Therefore, Plaintiffs respectfully request that this Court grant immediate injunctive relief and restore the status quo: Plaintiffs' only request, here and now, is that the Court order that they be confined in conditions substantially similar to those at Lieber, while the ultimate constitutionality of their solitary confinement is litigated.

BACKGROUND

Plaintiffs are all inmates who have been sentenced to death by the State of South Carolina.[1] All of them are under the control and supervision of SCDC and the individual defendants named in this suit. SCDC has unilaterally decided that every Death Row inmate, regardless of behavioral history or individual status, be kept in solitary confinement. *See* Compl. ¶¶ 45–47, 136, 273. As a result, Plaintiffs have spent between nine and twenty years in isolation. *Id.* ¶¶ 13–30.

For roughly two decades, starting in 1997, SCDC housed Death Row at the Lieber Correctional Institution in Ridgeville, South Carolina. Compl. ¶¶ 38, 41–61. The inmates were kept in solitary confinement in cells with a single door. *Id*. ¶ 44. The cells were sparse and cramped, but featured an electrical outlet that Plaintiffs could use to power approved appliances. *See id.* ¶ 43. Plaintiffs were thus able to converse with their immediate neighbors and could pass a microwave and a phone back and forth along the tier. *Id.* ¶ 44. At Lieber, Plaintiffs were allowed out of their cells to shower and, up to five times per week, Plaintiffs were allowed recreation in individual outdoor pens where they could see and interact with other Death Row inmates. *Id.* ¶¶ 50–51. Plaintiffs were allowed non-contact visitation with family and friends who were approved as visitors, and were allowed to speak with fellowship volunteers who went from cell to cell. *Id.* ¶¶ 50, 57–59.

Two months ago, the conditions of Plaintiffs' confinement changed dramatically. On or around September 26, 2017, SCDC moved the Death Row facility to Kirkland in Columbia, South Carolina. Compl. ¶¶ 62–66. Plaintiffs and their fellow Death Row inmates were placed in

[1] Two Plaintiffs, Taylor Cross and John Weik, are incarcerated on Death Row even though they are not currently serving capital sentences. *See* Compl. ¶ 144 (Ms. Cross's death sentence was reversed in 2012); *id.* ¶ 248 (Mr. Weik's death sentence was reversed and a new sentencing trial is pending).

Kirkland's MSU, which SCDC describes as "specialized housing" for "the most dangerous and violent offenders." *Id.* ¶¶ 67–69. Plaintiffs faced no disciplinary charges at Lieber before their transfer, and SCDC has provided no explanation or justification for placing Plaintiffs in the MSU. *Id.* ¶¶ 120, 131–132. Indeed, SCDC provided so little information regarding the move that Plaintiffs were not sure if the move was temporary or permanent and do not know which policies govern their new housing situation. *Id.* ¶¶ 85, 125–126, 132. Nearly three months after the move, SCDC still has not produced an official policy governing Death Row inmates' detention in Kirkland's MSU. And SCDC has certainly not followed the Death Row policy that governed Lieber or its own procedures governing the use of "restrictive housing units" such as the MSU. *See id.* ¶ 131; Exhibit A (SCDC Policy OP-22.16); Exhibit B (SCDC Policy OP-22.38).

Above and beyond the impacts of Plaintiff's previous confinement, incarceration in the MSU imposes significant hardships that threaten Plaintiffs' mental and physical health.[2] For example:

- Plaintiffs are essentially unable to communicate with their neighbors, due to the double doors on each cell, one made of solid steel. *See* Compl. ¶¶ 75–76, 140, 157, 163, 167, 179, 183, 191, 194, 206, 218, 231, 251.

- Plaintiffs have been deprived of sanitary living conditions. Their new cells are dirty, with frequent and persistent water damage and mold growth, and they have virtually no access to cleaning supplies. *Id.* ¶¶ 78–82, 89, 123–124, 171, 178, 185, 226, 232, 238, 261. Plaintiffs are likewise deprived of clean clothing and clean bedding. *See id.* ¶¶ 109, 123–124, 171, 238.

- Plaintiffs are unable to attract the officers' attention if they have time-sensitive requests, such as health emergencies or pressing maintenance issues. *See id.* ¶¶ 76–77, 94–97, 129, 168, 183, 203, 209, 221, 233–234, 241, 259–261. And the procedure

[2] Plaintiffs by no means admit that the conditions at Lieber were acceptable. Here, however, Plaintiffs seek only a return to the decades-long status quo—and an alleviation of the new restrictions imposed by SCDC—while the court rules on the merits of Plaintiffs' underlying constitutional claims.

for opening the multiple doors to each cell impedes officers' abilities to respond to any time-sensitive requests. *See id.* ¶¶ 75–77.

- Plaintiffs are deprived of effective phone access, making it extremely difficult to communicate with family, friends, and legal counsel. *See id.* ¶¶ 95–103, 150, 163, 183–184, 192, 250, 260.

- Plaintiffs experience difficulties scheduling visits with friends, family, and legal counsel, because they are unable to obtain any formal visitation policies. *See id.* ¶¶ 112–113, 150, 184, 222, 249.

- Plaintiffs are deprived of contact with previously approved visitors, including fellowship volunteers. *See id.* ¶¶ 105–107, 222, 249.

- Plaintiffs have been denied regular access to recreation. *See id*. ¶¶ 108–109, 151–152, 158, 255. When they have been allowed access to the recreation area, many have not been able to use the space due to the unsanitary conditions. *See id*. ¶¶ 152, 255. And even when Plaintiffs do receive recreation, it is in an isolated pen where they cannot see or interact with others recreating at the same time. *See id*. ¶ 83.

- Plaintiffs are deprived of access to natural light, except on the limited occasions in which they receive recreation, because the cells at Kirkland do not have windows. *See id.* ¶ 72.

- Plaintiffs have no ability to control the lights in their cell and no electrical outlets. *See id*. ¶¶ 74, 92–93, 104, 169, 172, 182, 207, 253.

- Plaintiffs have been deprived the opportunity to heat or to chill their food. *See id.* ¶¶ 116, 118, 169, 212, 257.

- Plaintiffs are barred from possessing items which were previously allowed under SCDC's Death Row policy. *See id*. ¶¶ 117, 121, 143, 146, 153–155, 228, 256.

- Plaintiffs' limited expectation of privacy is threatened. Correspondence, including legal materials, is searched and confiscated. *See id.* ¶ 122.

- Plaintiffs' cells are interspersed with those of the inmates who were actually placed on MSU for disciplinary problems, limiting the officers' ability to respond to the needs of Plaintiffs and preventing Plaintiffs from sleeping due to other inmates' behavior. *See id.* ¶¶ 126–131, 185–186, 194, 210.

These hardships are in addition to the baseline harms caused by solitary confinement, *see* Compl. ¶¶ 45–61, and pose a real threat to Plaintiffs' physical and emotional wellbeing, Compl. ¶¶ 133–137, 263–272.

STANDARD OF REVIEW

Preliminary injunctions provide relief to a party seeking to enjoin another from committing an irreparable injury prior to a final determination on the merits. *See* Fed. R. Civ. P. 65. To secure preliminary injunctive relief, Plaintiffs must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary injunctive relief; (3) that the balance of equities tips in favor of providing preliminary injunctive relief; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also United States v. South Carolina*, 840 F. Supp. 2d 898, 914 (D.S.C. 2011).

ARGUMENT

SCDC's decision to move Death Row inmates into the Kirkland MSU without affording them any process has resulted in confinement conditions that impose an atypical and significant hardship on Plaintiffs in violation of their Fourteenth Amendment rights under the United States Constitution. Preliminary injunctive relief is thus warranted to restore the status quo and protect Plaintiffs from this hardship during the pendency of this litigation.

Plaintiffs meet all of the factors warranting injunctive relief: (1) they are likely to succeed on the merits of their Fourteenth Amendment claim; (2) they are likely to suffer irreparable harm in the absence of relief, due to the violation of their constitutional rights and their lack of access to basic services and humane living conditions; (3) the balance of equities weighs in their favor; and (4) an injunction would serve the public interest by upholding

Plaintiffs' constitutional rights. *See Winter*, 555 U.S. at 20; *South Carolina*, 840 F. Supp. 2d at 914.

I. PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO PREVAIL ON THE MERITS.

A district court "has no discretion to deny relief by preliminary injunction to a person who clearly establishes by undisputed evidence that he is being denied a constitutional right." *Henry v. Greenville Airport Comm'n*, 284 F.2d 631, 633 (4th Cir. 1960). "While plaintiffs seeking preliminary injunctions must demonstrate that they are likely to succeed on the merits, they 'need not show a certainty of success.'" *League of Women Voters of N. Car. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (quoting *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013)).

There can be no dispute that Plaintiffs are entitled to due process under the Fourteenth Amendment. "Although lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a prisoner's right to liberty does not entirely disappear." *Incumaa v. Stirling*, 791 F.3d 517, 526 (4th Cir. 2015), *as amended* (July 7, 2015) (alterations and quotation omitted). To determine whether Plaintiffs are likely to succeed on a procedural due process claim, this Court should consider: (1) whether Plaintiffs have a "protectable liberty interest" in avoiding arbitrary detention in the Kirkland MSU, and (2) whether SCDC failed to afford Plaintiffs "minimally adequate process to protect that liberty interest." *Id*. at 526. Here, Fourth Circuit precedent confirms that Plaintiffs, who lived subject to SCDC's established Death Row policies for years—and in some instances, for decades—have a state-created liberty interest in being free from arbitrary detention in the MSU and that they were not provided with minimally adequate process to protect that interest.

A. Plaintiffs Have an Established Liberty Interest in Maintaining the Baseline Confinement Conditions Set Out in the State's Death Row Policy.

"[P]risoners have a liberty interest in avoiding confinement conditions that impose atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Incumaa*, 791 F.3d at 526 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)) (internal quotations omitted). To determine whether confinement conditions are considered atypical and significantly harsh, courts in this Circuit use a two-part analysis. First, the Court must "determine what the normative 'baseline' is: what constitutes the 'ordinary incidents of prison life' for this particular inmate." *Id*. at 527 (quoting *Prieto v. Clarke*, 780 F.3d 245, 253 (4th Cir. 2015)) (emphasis omitted). Second, the Court should consider "whether the prison conditions impose atypical and substantial hardship in relation to that norm." *Id.*

Neither the Supreme Court, nor the Fourth Circuit, has yet fixed a bright line for what, precisely, constitutes the baseline condition of confinement for any particular inmate. Instead, that baseline determination is made on a case-by-case basis. *See Prieto v. Clarke*, 780 F.3d 245, 253 (4th Cir. 2015) (noting that the "ordinary incidents of prison life" may vary significantly from one inmate to another). Whether a prisoner's confinement conditions are atypical and significantly harsh "is a 'necessarily . . . fact specific' comparative exercise." *Incumaa*, 791 F.3d at 527 (citing *Beverati v. Smith*, 120 F.3d 500, 502–503 (4th Cir. 1997)). Where, as here, inmates' living conditions are changed as the result of a transfer without an accompanying status adjustment, the baseline for analysis is the original set of living conditions. *See, e.g.*, *Starling v. Stirling*, No. C.A. 4:15-3636-TLW-TER, 2016 WL 4697357, at *8 (D.S.C. Aug. 2, 2016), *report and recommendation adopted*, No. 4:15-CV-03636-TLW, 2016 WL 4613396 (D.S.C. Sept. 6, 2016) ("This case is presented in an unusual posture. Plaintiff contends that his due process

rights were violated when he was transferred from KCI to PCI without a Committee evaluation. Thus, Plaintiff's 'baseline' is KCI.").

Plaintiffs' confinement in the Kirkland MSU imposes atypical and significant hardships relative to the conditions of their previous confinement at Lieber, where Death Row inmates were confined for decades. Indeed, as the Supreme Court has held, assignment to a maximum-security prison with highly restrictive conditions "imposes an atypical and significant hardship under *any plausible baseline*." *Wilkinson*, 545 U.S. at 223 (emphasis added). The *Wilkinson* Court held that the maximum-security facility at issue imposed an atypical and significant hardship in light of a prohibition on almost all human contact, 24-hour lighting, the limitation of exercise to a small indoor room, indefinite placement subject only to an annual review, and disqualification of eligible inmates for parole consideration.[3] *Id.* at 223–224.

The current conditions at the Kirkland MSU are just as restrictive as those at issue in *Wilkinson*. Plaintiffs' access to human contact, reasonable lighting conditions, recreation, and placement review is severely limited. For example:

- Plaintiffs have almost no human contact, and the two solid doors between each inmate and prison staff—and the solid cell walls between prisoners—make it difficult for Plaintiffs to speak with other inmates or prison staff. *See* Compl. ¶¶ 75–76, 140, 157, 163, 167, 179, 183, 191, 194, 206, 218, 231, 251.

- Plaintiffs have minimal control over the lighting in their hall: Plaintiffs must get assistance from the guards in order to control the lights in their own cells, and when officers make rounds at night they turn on the lights in the hall, making it difficult for Plaintiffs to sleep. *See id*. ¶¶ 74, 93, 104, 172, 182, 207, 253.

- Plaintiffs were given, at most, four opportunities each for recreation in the first month since they were transferred to Kirkland and all recreation occurs in a small enclosed

[3] Because Plaintiffs are ineligible for parole by nature of their capital sentences, consideration of that fact is irrelevant to the analysis. *Cf. Incumaa*, 791 F.3d at 532 ("Appellant was already ineligible for parole by virtue of his sentence before he was transferred to the SMU[.] . . . But that fact, in itself, does not undermine the 'material and substantial similarities' that this case bears to *Wilkinson*.").

space. *Id.* ¶¶ 108–109, 151–152, 158, 255. Furthermore, in contrast to their confinement at Lieber, Plaintiffs are not allowed to change into athletic gear for recreation, meaning that any significant physical activity will dirty the only clothes the inmate has for the day and leave the inmate sweaty until the evening's (or next day's) shower. *Id.* ¶ 109.

- Plaintiffs' placement in the MSU appears to be indefinite and, as there is no longer an official policy governing the confinement of Death Row inmates, it is unclear whether Plaintiffs will ever have the opportunity to challenge their placement. *See id.* ¶¶ 85, 125–126, 132.

Furthermore, Plaintiffs are exposed to significant health risks due to unsanitary prison conditions and lack of access to critical prescription medication:

- Due to the design of the in-cell showers at Kirkland, Plaintiffs' prison cells are covered in mold and subject to daily flooding. *Id.* ¶¶ 79–81, 170, 261.

- Because Plaintiffs are unable to earn income, they have limited abilities to purchase cleaning supplies from the commissary with which to clean and maintain their cells. *Id.* ¶¶ 87, 89.

- Plaintiffs are deprived access to sanity bedding and laundry. Their clothing is thrown into the washer while still tied up in a laundry bag, preventing their clothes from actually being cleaned. *Id.* ¶ 123. Worse, the guards collect the sheets, against the inmates' wishes, and do not always return the correct sheets to each inmate. One inmate received another inmate's still-bloody sheets instead of his own. *Id.* ¶ 124. Another inmate's clothing and undergarments were returned from a cart covered in food waste and garbage. *Id.* ¶ 171. A third inmate's bedding was returned in such an unsanitary condition that he went on a hunger strike until clean bedding was returned. *Id.* ¶ 238.

- Several of the inmates are housed next to a non–Death Row inmate who throws feces through his open door and into the hall, leaving the Plaintiffs to suffer the stench of feces that are never thoroughly cleaned. *Id.* ¶¶ 129, 185, 194. Also, the outdoor recreation space is covered in bird feces. *Id.* ¶¶ 152, 255.

- Plaintiffs' inability to earn income means that they are often unable to afford the required five-dollar co-pays for their prescribed medication. *Id.* ¶¶ 87–88.

Taken together, there is no doubt that Plaintiffs are subject to atypical and significantly harsh confinement conditions.

B. Defendants Have Not Provided Meaningful Process.

Courts consider three factors to determine whether procedural protections are sufficient to protect an inmate's interests:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

Here, Defendants have not provided Plaintiffs with *any* process—let alone meaningful process—prior to their indefinite confinement in the MSU. *See* Compl. ¶¶ 45–47, 120, 125–126, 131–132, 136, 273. As such, no balancing of the traditional *Mathews* factors is necessary. *See Incumaa*, 791 F.3d at 533 (holding that "Appellant has demonstrated a triable dispute on his procedural due process claim" when the record was "bereft of any evidence that Appellant has ever received meaningful review").

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM WITHOUT IMMEDIATE INJUNCTIVE RELIEF.

The violation of a constitutional right constitutes irreparable injury. *See, e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987) (denial of a constitutional right, if denial is established, constitutes irreparable harm for purposes of equitable jurisdiction). As such, Plaintiffs' suffer an irreparable injury every day that they are confined to the MSU without having received the due process to which they are entitled under the Fourteenth Amendment.

Furthermore, as discussed at length above and in Plaintiffs' Complaint, Plaintiffs are suffering physically and mentally as a result of their confinement at the Kirkland MSU.

Plaintiffs are suffering from numerous deprivations including: a lack of human interaction with other inmates, friends, family, legal counsel, and chaplains, *see* Compl. ¶¶ 76, 95–103, 105–107, 112–113, 140, 150, 163, 167, 183–184, 192, 197, 199, 218, 220, 222, 230–231, 249–250; unsanitary conditions, including exposure to mold and inability to obtain clean clothing and sheets, *see id.* ¶¶ 79–82, 123–124, 171, 178, 185, 226, 232, 238, 255; severely limited access to recreation, *see id.* ¶¶ 108–109, 151–152, 158, 255; inadequate access to medical care and prescription medication, *see id.* ¶ 87–88, 133, 142, 147, 187, 208–209, 215, 219, 225, 241, 245, 251–252, 260; and lack of mental stimulation, *see id.* ¶¶ 121, 140, 150, 164, 194, 206, 214, 216, 243–244, 256. As a result, Plaintiffs' physical and mental health is deteriorating each day. If Plaintiffs' confinement conditions are not improved, they will continue to suffer irreparable injury.

III. THE BALANCE OF EQUITIES FAVORS PLAINTIFFS.

The purpose of a preliminary injunction is not to determine the final rights of the parties, but "to balance the equities as the litigation moves forward." *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). Here, the balance of equities favors Plaintiffs. As described above, the harms to Plaintiffs are dire and irreparable: denial of fundamental constitutional rights; deprivation of basic needs; irreversible psychological and physical injury; and denial of human dignity. By contrast, the Defendants face *no* countervailing harm if forced to remedy the atypical and significantly harsh treatment to which they are subjecting Plaintiffs. South Carolina "is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 191 (4th Cir. 2013) (quoting *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002)); *see also Carolina Pride, Inc. v. McMaster*, No. C.A. 3:08-4016-CMC, 2009 WL 238206, at *14

(D.S.C. Jan. 30, 2009), *as amended* (Feb. 17, 2009) ("Defendants do not have a legal interest in the enforcement of an unconstitutional statute."). Furthermore, Plaintiffs here are asking only that they be treated as they have been for almost twenty years—according to SCDC's own longstanding policy.

IV. RESTORING THE STATUS QUO WOULD ADVANCE THE PUBLIC INTEREST.

Granting Plaintiff's request for preliminary injunctive relief would also be in the public interest. There can be no doubt that "upholding constitutional rights surely serves the public interest." *Giovani Carandola*, 303 F.3d at 521. And the Constitution recognizes that inmates are not stripped of their constitutional rights simply by virtue of their incarceration. *Sweet v. S. Car. Dep't of Corrs.*, 529 F.2d 854, 859–860 (4th Cir. 1975) (en banc). Indeed, the Fourth Circuit has held that "[c]ourts can and should intervene when any due process, equal protection or Eighth Amendment rights of prison inmates are violated." *Id.* at 860. Courts across the country have found infringements on the constitutional rights of prisoners, like the ones at issue here. *See, e.g.*, *Wilkinson*, 545 U.S. at 223; *Sweet*, 529 F.2d at 860; *Allah v. Seiverling*, 229 F.3d 220, 223–224 (3d Cir. 2000) (upholding constitutional right of access to the courts for prisoners in administrative segregation under the Due Process Clause); *Ambrose v. Young*, 474 F.3d 1070, 1077 (8th Cir. 2007) (finding that prisoner had Eighth Amendment right to a safe work environment); *DeSpain v. Uphoff*, 264 F.3d 965, 974–975 (10th Cir. 2001) (holding that inmate's exposure to human waste as a result of flooding in the cell violated the Eighth Amendment). In so doing, courts recognize that ensuring adequate protection of prisoners' constitutional rights benefits the public interest in having a prison system that obeys the law. *See Edmisten v. Werholtz*, 287 F. App'x 728, 735 (10th Cir. 2008). And this Court can and should do precisely that here.

CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court grant their motion for preliminary injunctive relief.

LOCAL CIVIL RULE 7.05 STATEMENT

Pursuant to Local Civil Rule 7.05, counsel for Plaintiffs conferred with counsel for Defendants and attempted in good faith to resolve the matter contained in this motion.

Dated: December 22, 2017

Respectfully submitted,

/s/ Aaron S. Jophlin

Aaron S. Jophlin (Fed ID 10114)
THE JOPHLIN LAW FIRM
102 King Street
Georgetown, SC 29440
Telephone: (843) 970-1820
Facsimile: (843) 970-1818
aaron@jophlinlaw.com

Pieter Van Tol*
HOGAN LOVELLS US LLP
875 Third Avenue
New York, NY 10022
Telephone: (212) 981-3000
Facsimile: (212) 981-3100
pieter.vantol@hoganlovells.com

Brian Richichi*
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
Telephone: (202) 637-5600
Facsimile: (202) 637-5910
brian.richichi@hoganlovells.com

Counsel for Plaintiffs

*Motion to appear *pro hac vice* to be filed

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Motion and Memorandum of Law for Preliminary Injunction was served on all parties, pursuant to Fed. R. Civ. P. 5, today, December 22, 2017.

/s/ Aaron S. Jophlin
Aaron S. Jophlin