NO. 19-1910

United States Court of Appeals

for the

Fourth Circuit

JOHN DOE 4, by and through his next friend, NELSON LOPEZ, on behalf of himself and all persons similarly situated,

Plaintiff-Appellant,

– v. –

SHENANDOAH VALLEY JUVENILE CENTER COMMISSION,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA HARRISONBURG DIVISION

BRIEF FOR PLAINTIFF-APPELLANT

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DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of this Court's Rules, Plaintiffs-Appellants John Doe 4, *et al.*, make the following disclosures:

1. Is party a publicly-held corporation or other publicly-held entity? No.
2. Does party have any corporate parents? No.
3. Is 10% or more of the stock of party owned by a publicly-held corporation or other publicly-held entity? No.
4. Is there any other publicly-held corporation or other publicly-held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? No.
5. Is party a trade association? No.
6. Does this case arise out of a bankruptcy proceeding? No.

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STATEMENT REGARDING JURISDICTION

Appellants, unaccompanied immigrant children detained at the Shenandoah Valley Juvenile Center in Staunton, Virginia, brought this case seeking declaratory and injunctive relief with respect to an ongoing pattern of unconstitutional mistreatment they experienced in detention. The district court had jurisdiction to address and adjudicate Appellants' claims below pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

The district court issued a decision on December 13, 2018, granting Defendant-Appellee's motion for summary judgment in part and denying the motion in part. Joint Appendix ("J.A."), 786. Thereafter, Appellants sought voluntarily dismissal of the claims at to which the district court denied summary judgment and, following proper notice to the class and the conducting of a Fairness Hearing, the district court approved the dismissal of the unresolved claims and entered an Order of Final Judgment on the claim as to which summary judgment had been granted on July 23, 2019. J.A. 808-09.

A timely Notice of Appeal was filed on August 21, 2019. J.A. 810-12. This Court has jurisdiction of the appeal pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred in holding that Appellants' claim that Appellee failed to provide constitutionally-adequate care and treatment to address

Appellants' recognized serious mental health needs should be determined on the basis of a "deliberate indifference" standard rather than a "professional judgment" standard?

2. Whether, irrespective of the governing legal standard, the district court improperly disregarded a substantial volume of material factual evidence which should have precluded the entry of judgment as a matter of law in Appellee's favor on the denial of constitutionally-adequate mental health care claim?

STATEMENT OF THE CASE

A. Procedural Background

This case was initiated in October 2017 as a proposed class action, brought on behalf of unaccompanied immigrant children in the legal custody of the Office of Refugee Resettlement (ORR) of the U.S. Department of Health and Human Services and detained at Shenandoah Valley Juvenile Center (SVJC), a secure detention facility owned and operated by the Defendant. The Complaint, seeking declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and the Due Process Clause of the Fifth Amendment to the U.S. Constitution, alleged that Plaintiff John Doe 1 and members of a putative class of others similarly situated were subject to an ongoing pattern of unlawful discipline and punishment imposed by correctional staff at the facility, including unnecessary and excessive use of physical force and

restraints and excessive imposition of solitary confinement. In addition, the Complaint alleged that the Plaintiffs, as children severely traumatized by exposure to extreme violence and other harmful experiences that caused them to flee their native countries and make their way to the U.S. border on an unaccompanied basis, routinely manifested significant mental health problems that were recognized by Defendant's personnel. However, despite this knowledge, Defendant failed to provide a constitutionally-adequate level of care with respect to the Plaintiffs' acknowledged serious mental health needs. J.A. 26.

In February 2018, Plaintiff John Doe 1 filed a Motion for Preliminary Injunction seeking immediate relief with respect to the claims asserted on behalf of the class based on excessive force, restraints and solitary confinement and denial of adequate mental health care. Dkt. Nos. 33, 34. Following the completion of full briefing on Plaintiffs' Motion, however, it became clear that, due to the preexisting demands on its available time, the district court would be unable to afford the Parties the time that both sides agreed was needed for an evidentiary hearing on the Motion at any point sufficiently in advance of the accelerated December 2018 trial date to make any affirmative relief granted as a result of the hearing meaningful. As a result, the Motion was withdrawn by mutual agreement of the Parties and an Order of the Court entered August 22, 2018. Dkt. No. 82.

In the meantime, the district court entered an Order on June 27, 2018, granting the Plaintiffs' Consent Motion for Class Certification – Dkt. No. 53 – defining the class, pursuant to Fed. R. Civ. P. 23(b)(2), as "Latino unaccompanied alien children (UACs) who are currently detained or will be detained in the future at Shenandoah Valley Juvenile Center [and] who either: (i) have been, are, or will be subject to the disciplinary policies and practices used by SVJC staff; or (ii) have needed, currently need, or will in the future need care and treatment for mental health problems while detained at SVJC." J.A. 24 (footnotes omitted). Thereafter, Doe 1 was transferred from the facility, substitute plaintiffs Does 2 and 3 were "voluntarily" removed, and Doe 4 became the substituted class representative. Dkt. Nos. 70-72.

After the conduct and completion of extensive discovery and voluminous briefing of dispositive and pre-trial motions, the Parties, by counsel, appeared for a combined motions hearing and pretrial conference on December 3, 2018. See Dkt. No. 163. Following additional briefing, the district court issued a Memorandum Opinion and Order on December 13, granting the Defendant's Motion for Summary Judgment in part and denying the Motion in part. J.A. 761-86. The court held that the existence of genuine issues of disputed material fact dictated the denial of the Defendant's Motion with respect to the Plaintiffs' use of excessive physical force and restraints and excessive imposition of solitary confinement

claims. J.A. 762-63. However, the court agreed with the Defendant: (i) that Plaintiffs' denial of adequate mental health care claim should be determined in accordance with a "deliberate indifference" standard, rather than a "professional judgment" standard; and (ii) that Plaintiff John Doe 4's evidence was insufficient as a matter of law to establish that the Defendant was deliberately indifferent to the Plaintiffs' serious mental health needs. J.A. 751.

In the aftermath of these rulings and ensuing communications among the Parties and between the Parties and the district court, the Plaintiffs decided to abandon the claims in regard to which summary judgement was denied, while preserving their opportunity to seek appellate review of the court's dismissal of their denial of adequate mental health care claim. See Dkt. Nos. 180, 181. Following proper and complete notice to the class concerning this determination and proposed course of action and the completion of Fairness Hearing proceedings pursuant to Fed. R. Civ. P. 23(e)(1), the district court entered Final Judgment on July 23, 2019. J.A. 808-09. Plaintiffs timely filed their Notice on Appeal on August 21, 2019. J.A 810-12.

B. <u>Statement of Facts</u>

Appellants are immigrant children between the ages of 12 and 17 who fled their native countries (primarily Honduras, Guatemala, Mexico and El Salvador) as unaccompanied minors, after witnessing, experiencing or being threatened with

unspeakable violence, facing severe economic privation and desperate for a better life. They report abuse by family members or strangers, witnessing murders of friends and relatives, being exploited for their labor, and enduring assaults. J.A. 1092, ¶ 19 (cataloguing traumatizing experiences of unaccompanied immigrant children).[1] Given the horrors most of these children have endured, the existence of serious mental health problems is eminently predictable. J.A. 1129, ¶ 167 ("UACs, asylum seekers, and other displaced persons experience mental health problems at higher rates than the general population" (footnote omitted))]. Most of the children detained at SVJC[2] have not been adjudicated delinquent or convicted of a crime.

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[1] Dr. Gregory Lewis is a clinical psychologist who served as plaintiffs' expert. He has extensive experience working with traumatized youth and unaccompanied minors. J.A. 1089-91, ¶¶ 7, 8, 12, 13. He examined Does 1 and 4 and reviewed copious documentation regarding all four successive named plaintiffs in developing his report. The district court excluded Dr. Lewis's expert opinions related to the mental health care provided at SVJC because it granted summary judgment in Defendant's favor on the failure to provide adequate mental health services claim. *See* J.A. 800. However, the district court did not exclude Dr. Lewis' opinions "about harm to members of the class and the cause of that harm from any unconstitutional custom or practice." J.A. 801.

[2] From at least 2009 through most of 2018, SVJC has housed a population of up to 34 immigrant children at any given time. J.A. 1965-69. Approximately 92 immigrant children per year, aged 12 to 17, are detained at the facility while they await resolution of their status, transfer to another facility, placement in the community, or deportation. *Id.*

The four successive class representatives in this case are traumatized boys who arrived at SVJC with known, serious mental health issues.[3] Without exception, their mental health conditions deteriorated markedly during their detention.[4] The deterioration was not simply an inevitable consequence of their confinement. Rather, it was directly attributable to SVJC practices that (1) intentionally sought only to control their behavior and failed to treat their underlying mental illness; and (2) re-traumatized them through the use of coercive and disproportionate punitive practices, including the use of restraints and solitary

[3] Doe 1 fled serious abuse inflicted by his father. He was diagnosed with various mental health disorders and exhibited a high degree of behavioral and emotional maladjustment. J.A. 1094-95, ¶¶ 25-26, 30-31. Doe 2 was brought to the U.S. as an infant and placed in detention after he was picked up in a traffic stop. He, too, was diagnosed with a variety of mental health disorders. J.A. 1101, ¶¶ 54, 56. At the age of 14, Doe 3 fled gang violence and the threat of conscription. J.A. 1108, ¶ 77. He is among the children Appellee identified as "self-harming." J.A. 1085-86, No. 12. Doe 4 fled similar violence and endured exploitation and abuse in his journey to the United States, causing serious trauma with complex psychological consequences. *Infra* at 12.

[4] For example, Doe 1 reported that he was prone to self-harm within two weeks of his arrival at SVJC and, according to his clinician, "became more and more frequently self-harming while at [SVJC]," *see* J.A. 1661. Dr. Lewis concluded that SVJC's responses to Doe 2 were "harmful" and "led him to further act out aggressively and to eventually become demoralized and depressed." J.A. 1108, ¶ 76. Doe 2 eventually agreed to a voluntary deportation to Mexico, where he had not lived since he was an infant. Meanwhile, ". . . Doe 3's behavior needlessly deteriorated" after he was not stepped down to a less secure facility following a long record of good behavior. J.A. 1108, ¶ 91. Doe 3 eventually opted for voluntary departure, returning to the violence he had tried to escape. Doe 4's experience at SVJC caused him to experience serious retraumatization. J.A. 1126, ¶ 159; 1127, ¶ 162.

confinement. Those practices caused them additional, avoidable and potentially irreparable mental health damage.

1. SVJC's Obligations as a "Care Provider"

The children are transferred to SVJC by ORR from less secure facilities when their behaviors, primarily aggression and self-harm, often arising from their pre-existing trauma, appear to make them a danger to themselves or others or suggest that they are a flight risk. *See, e.g.,* J.A. 1119, ¶ 128 (Doe 4 transferred to SVJC because of behavior). The Cooperative Agreement between ORR and SVJC designates SVJC as a "care provider," *see,* J.A. 1845-46, 1849, 1851, required to provide, *inter alia*, "[p]roper physical care and maintenance," "[a]ppropriate routine medical and dental care . . . appropriate mental health interventions when necessary," "[a]n individualized needs assessment," "[e]ducational services appropriate to the unaccompanied child's level of development and communication skills," "[a]t least one individual counseling session per week conducted by trained social work staff with the specific objective of reviewing the child's progress, establishing new short term objectives, and addressing both the development and crisis-related needs of each child," and "[g]roup counseling sessions at least twice a week." J.A. 1847.

As Appellant's expert explained, it is well-established that any detention carries harmful consequences for juveniles. J.A. 1128 (detention "has a significant

detrimental effect on the mental health of all children"). However, because of the trauma unaccompanied immigrant children have experienced, they "are members of a particularly at-risk population that is in need of specialized mental health services including comprehensive clinical assessments that consider both their early traumas as well as their current hardships and stressors." J.A. 1131, ¶ 174 (footnote omitted). Subjecting these juveniles to punitive conditions exacerbates that trauma and causes serious, lasting damage. *See, e.g.,* J.A. 1126, ¶ 159; 1129, ¶ 167.

2. SVJC's Awareness of Its Immigrant Detainees' Serious Mental Health Needs

SVJC staff knows that the immigrant children for whom it cares have experienced serious trauma, which carries severe mental health consequences. Deputy Director of Programs Kelsey Wong explained to a Senate Subcommittee on Investigations that "[t]he majority of unaccompanied children in a secure setting [such as SVJC] have histories of repeated and various forms of abuse and neglect; life-threatening accidents or disasters; and interpersonal losses at an early age or for prolonged periods of time." J.A. 1967. SVJC's Lead Case Manager Elizabeth Ropp, as well as Lead Clinician Melissa Cook, acknowledge the "high need for mental health treatment" for the children at SVJC "given the background of these [immigrant] minors." J.A. 1807; *see also* 1455 ("[a] high percentage" of children at SVJC have experienced trauma).

SVJC learns of a child's mental health conditions from the youth's medical, disciplinary, and mental health records sent from the child's prior facility. J.A. 1041, 1298-1300, 1463-65. SVJC typically is notified of a particularly severe problem, such as a child's prior acts of self-harm. J.A. 1464-65. SVJC thus learns about a child's social or experiential history, presenting behaviors, history of trauma, evaluation and treatments, if any, and history of significant incidents in advance of the child's arrival. J.A. 1300-01. SVJC can decline transfer to it of a youth for whom it does not believe it is able to provide adequate care. J.A. 547, 1042.

Once at SVJC, a child's mental health problems are often evident to even non-clinically trained intake personnel, J.A. 1206-07, and may be further revealed by the battery of standardized tests that SVJC administers. J.A. 571, 573-74. Clinicians have access to other mental health documentation that may be created during a child's detention at SVJC, including psychological evaluations and summaries, recommendations, evaluations from a child's psychiatric hospitalization, clinical progress notes, and the facility's own documentation of a child's acts of self-harm. J.A. 1288, 1307, 1322-23, 1675.

SVJC clinical staff knows that aggressive or self-harming behaviors – the very activities that cause a child to be placed at SVJC – are often the manifestations of trauma. J.A. 1455-56, (trauma "can manifest itself in self-harm,

anger . . . [and] [o]ppositional defiance, so many ways"); 1456 (trauma symptoms "could be" misinterpreted as behavioral issues"); 1803-04 ("the trauma that is leading to the self-harming behavior is also leading to acting out behaviors and aggression…"); 1290 (the signs that a child may be experiencing trauma can sometimes include "aggression or anger" or acting "withdrawn")]. And they see such behavior regularly. For example, Doe 1, whose abuse at the hands of SVJC staff triggered this lawsuit, cut himself repeatedly, and talked about or attempted suicide on several occasions. J.A. 1096, ¶ 37. His SVJC clinician observed that his self-mutilation efforts increased over the course of his detention. J.A. 1661-62. Similarly, staff were well aware that Doe 4 engaged in self-harm, including cutting, head-banging and suicide attempts. *See infra at* 12. Between June 2015 and May 2018, of the children with mental health issues, at least 45 children were so severely ill that they engaged in often gruesome displays of self-harm. J.A. 1085-86, No. 12.[5]

3. SVJC's Services to Address the Children's Known Mental Health Needs

[5] Does 1, 2, 3 and 4 were among the overtly self-harming children. J.A. 1085-86, No. 12. The record includes additional examples. For example, Ms. Wykes, a former floor staffer, watched a youth, who was "kind of . . . happy-go-lucky" when he first arrived at SVJC, "completely go downhill." J.A. 1188-89. The youth "started to self-harm ,. . . [and] started exhibiting behaviors like writing – his own blood." *Id*. SVJC's records document attempted suicides, repeat visits to local hospitals following serious self-inflicted injuries, and self-mutilation. J.A. 1484.

Despite its knowledge of the immigrant children's trauma and mental health conditions, SVJC does not treat the children's mental health conditions. The clinicians at SVJC are the only staff members who purportedly provide day-to-day mental health-related services. J.A. 1651-53, 1815.[6] Yet, SVJC's Lead Clinician admitted that SVJC clinicians do not treat or discuss the trauma underlying a child's mental health issues, asserting that "it would be unethical and inappropriate" for SVJC clinicians to "dig . . . up" a child's trauma. J.A. 1491 (discussing a resident who had recently returned to SVJC following a psychiatric hospitalization). She further explained that a child's serious mental health issues – such as visual hallucinations or suicidal ideations, even when documented as occurring at SVJC as recently as the prior week -- are simply not discussed or worked through with the child in an individual session. J.A. 1482-83. A clinician will help a child manifesting such issues only if the child is, while sitting in front of the clinician during a session, actually presenting with those mental health symptoms. *Id.* In fact, even when clinicians receive diagnoses or treatment recommendations from a child's occasional psychological evaluation, they do not provide counseling specific to individual diagnoses. Indeed, they may be

[6] SVJC contracts with psychologists for occasional psychological evaluations. J.A. 1653 (psychologists are "not a part of the everyday" provision of mental health care); 1449-50. Only those whose detentions are long are taken to Washington, D.C. for a psychological evaluation. J.A. 1229-31.

unqualified to provide the therapeutic services recommended by the psychologist. J.A. 1487-88 (no one at SVJC is qualified to provide exposure therapy for PTSD); 1497-98 (Cook "do[es not] know" whether any of the clinicians at SVJC are qualified to provide cognitive behavior therapy interventions to the children because "[SVJC] [is] not a therapeutic setting"); 1500 (SVJC does not provide services that amount to a social skills support group); 1503 ("We don't do specific treatment for specific diagnoses."). Since they do not provide treatment, it is not surprising that there are no individual treatment plans for the children at SVJC. J.A. 1683. *Compare* J.A. 1847 (requiring individualized needs assessment for every child).

Although the clinicians testified to the contrary, Dr. Kane, the psychiatrist who visited periodically to oversee the medication management of the symptoms children were experiencing (such as insomnia) was under the impression that the clinicians were providing mental health treatment. J.A. 669. He is not expected to, and does not provide "talk therapy." *Id*. The clinicians and facility leadership know that Dr. Kane does not address the children's therapeutic needs. J.A. 1325 (Dr. Kane's role is limited to "medication management"); *see also* 1384-85, 1689-90, 1819.[7]

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[7] SVJC's Lead Case Manager also acknowledged that relying solely on these clinicians, who at times have caseload rations of thirteen children to one clinician, J.A. 1647, is "challenging, given the [immigrant] population that [SVJC] serve[s]."

All of the clinicians agree that regular group therapy, required under SVJC's contract with ORR, does not really happen. Instead, the clinicians offer informal, voluntary group meetings, sometimes lasting no more than 15 minutes, at which subjects such as Christmas, colds, flu and sinus infections, may be discussed. J.A. 1718 (group discussions led by Aleman or other staff "do[n't] exist"); 1814 (sessions "informal"); 1471, 1473, 1474; 1318 (acknowledging that there have been times that a group session did not occur because no child wanted to participate). These voluntary meetings may be led by non-clinical staff. J.A. 1677, 1680-81.

Other staff are not able to identify or effectively address the mental health needs of the children for whom they care. A member of SVJC's "floor staff" – the personnel who primarily deal with the children's daily programming, *see* J.A. 1655 – candidly acknowledged he "d[id]n't have th[e] type of training" required to "calm ... down" a child who "seem[ed], you know, reluctant or mad." J.A. 1942. These guards are not provided information about the child's prior trauma or experiences. J.A. 1943. They do not know which children have mental health issues nor the kinds of mental health issues the children have experienced; this information is kept "confidential" from them. J.A. 1941-42, 1947-48, 1959-60.

J.A. 1815. The Lead Case Manager also described the counseling sessions between clinician and child as "not a lot of clinical time." J.A. 1814.

There is little discussion between floor staff and clinicians about a child's mental health needs. *See* J.A. 1387-88 (such discussions occur "very informally").[8]

In sum, SVJC's staff testimony reflects how their engagement with the children for whom they care does not encompass treatment of the prevalent mental health disorders among the children, but are rather focused on subduing the behaviors to which those disorders give rise. J.A. 1469, 1482-83, 1487-88, 1491, 1497-98, 1500, 1503.

Clinical and non-clinical senior staff members acknowledge that more is needed to adequately care for these children. *See, e.g.,* J.A. 1805 (certain children "need more individualized care"); *see also* J.A. 1303-04 (certain children "need a higher level of care"; discussing a specific child, clinician Mayles noted that SVJC's services "w[ere] not working" for him). SVJC's Lead Case Manager knows that many of these children "need[]" higher levels of care, such as that provided in a residential treatment center. *See, e.g.,* J.A. 1803-05 (SVJC is unable to provide a

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[8] Lacking other tools to address children engaging in self-harm or other troubling behavior, guards demeaned the children. For example, Ms. Wykes testified that, when shift supervisors learn of a child self-harming, they have responded with cruel and disparaging comments, such as "[l]et them cut themselves" and "[l]et them go bleed out." J.A. 1176, 1178. A supervisor once "laughed in [Ms. Wykes'] face" upon hearing her report of a child's suicidal thoughts, and he refused to complete a check on the child. J.A. 1237. She saw staff "pok[e] fun" at a child in the emergency restraint chair while he "bl[eeds] from his arm" or "jok[e]" about a child who, in a moment of crisis, smeared ejaculate on his face. J.A. 1186, 1189.

child with the services of a residential treatment center or hospital despite recognized need for such services); 1357-58; 1609; 1826-27.

4. John Doe 4's Experiences with Mental Health Services at SVJC

Like many other SVJC children, class representative Doe 4 arrived at the United States-Mexico border in May 2017, after enduring severe trauma in his home country of Honduras as well as during his long journey to the United States. J.A. 1116-18, ¶¶ 110-19. Over the course of an extensive, 1.5-day interview, he revealed to Dr. Lewis that he was the victim of gang violence when he was as young as eight or nine years old, describing being "hit many times with rocks, hacked with a machete… and cut with a switchblade on his arm…" *Id.*, ¶ 113. He described seeing the murder of many friends in Honduras by gangs, and recounted that "[s]ome [he] saw get hacked with a machete." *Id.*, ¶ 110. Fearful for his life, he fled Honduras and traveled through Guatemala and Mexico to reach the United States, only to experience and witness further horrors during the journey, such as assault (Doe 4 was shot), robbery, and frequent hunger. *Id.*, ¶ 116-119. His experiences, Dr. Lewis concluded, left him angry, distrustful, and hyper-vigilant. J.A. 1126, ¶ 156.

Following his apprehension by immigration, Doe 4 was detained at multiple facilities. Because of behavioral problems at his prior facility, he was transferred to SVJC in December 2017, months after this lawsuit was filed. J.A. 1120-21, ¶

135. At SVJC, he was evaluated by Dr. Joseph Gorin, who diagnosed him with post-traumatic stress disorder and attention deficit hyperactivity disorder based upon clinical records provided by SVJC. J.A. 894. Based on a 10-hour examination and review of voluminous records conducted in 2018, Dr. Lewis diagnosed Doe 4 with Posttraumatic Stress Disorder (PTSD), Chronic and Adjustment Disorder with Mixed Disturbance of Emotions and Conduct. J.A. 1136, ¶ 190.

SVJC knew that Doe 4 had struggled with mental health problems, and SVJC's own records note his "past history of attempted self-injurious behavior." J.A. 2004. For example, SVJC documented that, while in isolation, Doe 4 "continued behaving in an aggressive manner by punching his sink and engaging in self-harming behaviors (scratching his arms on his bunk and making marks on his wrists)." J.A. 2014. On another occasion, SVJC described an incident when "Doe 4 punch[ed] the door and the sink in his room" after being placed in room isolation due to "non-compliance" and "aggressive behavior." J.A. 2055-56. Doe 4 told Dr. Lewis that staff placed him in a suicide blanket after he tied his shirt around his neck following an altercation and placement in isolation – self-harming conduct that Dr. Lewis described as a "suicide attempt." J.A. 1124, ¶ 150; 1982. Doe 4 also described how he injured himself by slamming his fist against the wall, J.A. 1121, ¶ 139; 1718, and admitted that he had tried to cut himself. J.A. 1121, ¶

139. There were likely other instances, since, as the district court noted in its opinion, Doe 4 could not always remember what he had done while he was angry. J.A. 765 n.6, *citing* J.A. 871-72.

When Doe 4 met with the SVJC clinicians, they focused on behavior control to manage the symptoms of his problems, not to treat them. Doe 4 described how his second clinician at SVJC, Evenor Aleman, only spoke with him "about behaving properly." J.A. 1714. The clinician, he testified, "doesn't help [him];" "doesn't give [him] the resources [he] need[s]," including "[t]reatment" and "psychological" resources; and did not talk to him about his "[p]roblems with anger" or experiences "in the past." J.A. 1714-16. Doe 4 reported that Dr. Kane, the visiting psychiatrist who only managed the children's medications in brief consultations, only saw him for one or two minutes at a time and did not ask him about whether he has harmed himself. J.A. 1712. Doe 4 repeatedly sought to speak with a psychologist concerning his anger and frustration, but that those requests were ignored. J.A. 1126, ¶ 159; 1762-64.

SVJC's response to Doe 4 was coercive and punitive. Staff reacted to Doe 4's outbursts and anger with punishment, triggering his increased anger and even a suicide attempt. His punishments included placement in isolation – often for extended periods of time – and at times involved the use of physical force and mechanical restraints. Over the course of approximately seven months, he was

removed from programming approximately 21 times for incidents that were, or at worst started off as, minor infractions. J.A. 741-43. For example, the incident of solitary confinement which triggered his suicide attempt arose when Doe 4 was upset, didn't want to eat his food, allegedly refused several requests to return to his room and then struggled and tried to kick staff when they removed him. He was physically restrained by two guards and kept in isolation for 15 hours thereafter. J.A. 1129, ¶ 150; 1735-37, 1979 [9]. He was placed in isolation for over six hours for sitting in a chair after a verbal disagreement with a guard and calmly asking to speak with his clinician. J.A. 1737-38; 1996.

The record is replete with other such examples of "fairly minor" interactions escalating into punishment and violence. *See, e.g.,* J.A. 1615-17. A disagreement about cutting his fingernails, J.A. 2004, escalated and resulted in an altercation in which Doe 4 punched a staff member, being placed in physical restraints and, subsequently, in mechanical restraints, as well as almost 24 hours of isolation and three days of "modified programming"[10]; an attempt to "talk[] calmly" to staff

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[9] Although Appellants do not concede the accuracy of the incident accounts set forth in SVJC's records, they refer to these accounts for the purpose of demonstrating the nature and extent of Doe 4's exposure to the conduct of which Plaintiffs complain in this action.

[10] "Modified programming" is another form of confinement, during which a child is confined to his room for the majority of the day and gains back additional privileges with each day on this programming if sufficiently compliant. J.A. 1188.

members about a point loss, J.A. 205, 1721-22, 1742-43, 1759, escalated into a physical altercation where SVJC staff punched and hit Doe 4 in the ribs, face, and hand, restricted him from breathing (and informed him it was "good" he could not breathe), and ultimately placed him in isolation for almost 8 hours; and a question about receiving a beverage or deodorant, J.A. 1749-51, 1759, 2148, resulted in staff restraining Doe 4 with such force that he felt staff might "break or pull [his] arm off," hit him with metal handcuffs, and marked him with bruises, Doe 4 punching staff after staff members grabbed him, and Doe 4 ultimately spending almost 17 hours in isolation. In total, Doe 4 spent 176 hours in solitary confinement. J.A. 741-43. Appendix to Supp. Brief. When combined with approximately 34 days of "modified programming," in which his contact with others and his mobility were severely limited, the time he spent alone or severely constrained from contact with others totaled well over 800 hours.[11] *Id.*

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[11] Doe 4's experience was not unique. The record shows that SVJC relied on coercion and punishment, rather than treatment of their mental health problems, to control the behavior of the children in its care. Between June 2015 and May 2018, children at SVJC were placed in solitary confinement for periods in excess of an hour on over 930 occasions. J.A. 1785. The most seriously mentally ill children were disproportionately subjected to isolation: almost 40% of instances involving solitary confinement of over 7 hours involved self-harming children, J.A. 1791, including Doe 1 (well over 2400 hours in solitary for over 74 incidents), Doe 2 (confined over 15 times, for over 175 hours), and Doe 3 (confined over 21 times for a total of over 280 hours in seclusion). J.A. 1787.

The widespread use of solitary confinement for significant periods of time, often at least as long as those experienced by Doe 4, as well as the resort to unnecessary

Dr. Lewis found that SVJC not only failed to respond to his prior trauma and mental health needs, but exacerbated Doe 4's PTSD. Staff's punitive responses contributed to Doe 4's increased distrust of others, anger, hyper-vigilance, depression and caused him "substantial emotional suffering." J.A. 1126-27, ¶¶ 159, 162. Dr. Lewis further opined that placing Doe 4 in isolation "may have unnecessarily provoked" his self-harming behavior. J.A. 1124, ¶ 150. His view is far from speculative; it is well established that isolation causes profound physiological and psychological harm, particularly for juveniles.[12] J.A. 1129 ¶ 167.

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physical force to which he and others were subjected, reflect the depth of SVJC's failure to respond to the mental health needs of the children entrusted to its care. By the time Doe 4 came to the facility and this lawsuit had been filed, SVJC had curtailed immobilizing children, including those who were self-harming, in a "restraint chair" in which he was not placed. This practice, which, combined with the use of solitary confinement at SVJC, Appellant's expert characterized as torture, J.A. 1136, ¶ 193, nonetheless retains relevance as it, too, reflects a culture of indifference to the mental health needs of the children. Two of many examples reinforce the point: one child who had attempted self-harm by, *inter alia*, swallowing screws, head-butting walls, and threatening suicide, and who had a history of hospitalization due to his self-harming behavior, was left in the restraint chair for nearly 3.5 hours, nearly 6.5 hours, and nearly 9 hours in three separate incidents over the span of two weeks. *See* J.A. 1511, 1520, 1539. Doe 1 was placed in the chair approximately 10 times for a total of approximately 12.5 hours, *see* J.A. 1412. In sum, the use of force and punishment reflects, and are themselves consequences of, the failure to respond to children's mental health needs.

[12] Solitary confinement causes brain damage in juveniles. They may have "difficulties with thinking, overt paranoia, panic attacks, illusions and hallucinations, self-injurious behavior, hopelessness, sleep disturbances,

In sum, Dr. Lewis concluded that SVJC's "inadequate mental health services all served to create an environment that was unsafe, unpredictable, and substantially harmful" to Doe 4 and fell "well short of the standards of care expected in the juvenile justice system." J.A. 1127, ¶¶ 161-63.

SUMMARY OF ARGUMENT

Based upon regrettably superficial analysis and conclusions, the district court held that Appellee was entitled to judgment as a matter of law with respect to Appellants' claim that the mental health services provided to detained immigrant children at SVJC were and are constitutionally deficient, in breach of the "professional judgment" standard that Appellants contend should govern this issue as well as the "deliberate indifference" standard for which Appellee argued below.

The district court's judgment should be reversed and this case remanded for further proceedings for at least two reasons. First, the court below should have determined that the adequacy of the mental health services provided by Appellee should be governed by the "professional judgment" standard applicable to civil detainees in a non-punitive environment. Moreover, the court abused its discretion

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headaches, heart palpitations, and dizziness." J. A. 1129, ¶ 168 (citation omitted). Frequent or prolonged periods of isolation can cause juveniles to "become depressed and suicidal, self-injurious, acutely anxious or psychotic, and aggressive." *Id*. ¶ 169. They are at a heightened risk of having psychological problems if they have a history of trauma and abuse. *Id*.

in rejecting Appellant's expert evidence that trauma-informed care constitutes the applicable standard of care governing the treatment of traumatized children – such as the class members here – in a juvenile detention setting as a matter of established professional judgment.

Second, while the district court erred in applying a "deliberate indifference" standard on the basis of virtually no independent analysis, the evidentiary record below, most of which the court simply ignored, reflects – at a minimum – numerous disputed material facts concerning the issue of whether Appellee was deliberately indifferent to Doe 4's acknowledged serious mental health needs. These facts necessarily precluded the entry of summary judgment in Appellee's favor.

For these reasons, fully elaborated below, reversal of the district court's judgment is required.

ARGUMENT

I. STANDARD OF REVIEW

Grants of summary judgment are reviewable by this court *de novo*, "applying the same standard as the trial court and without deference to the trial court." *Dash v. Mayweather,* 731 F.3d 303, 310 (4th Cir. 2013) (citations omitted). Under Fed. R. Civ. P. 56(a), a court may grant summary judgment only if "the movant shows that there is no genuine dispute as to any material fact and

the movant is entitled to judgment as a matter of law." A dispute is "genuine" if a "'reasonable jury could return a verdict for the non-moving party,'" and a fact is "material" if, taken as true, "'it might affect the outcome of the suit under the governing law.'" *Variety Stores, Inc., v. Wal-Mart Stores, Inc.*, 888 F.3d 651, 659 (4th Cir. 2018), *quoting Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562, 568 (4th Cir. 2015).

When considering a motion for summary judgment, the trial court "must 'view the evidence in the light most favorable to the' non-moving party." *Jacobs*, 780 F.3d at 568, *quoting Tolan v. Cotton,* 572 U.S. 650, 657 (2014), and "[s]ummary judgment cannot be granted merely because the court believes that the movant will prevail if the action is tried on the merits." *Variety Stores*, 888 F.3d at 659. Accordingly, the trial judge "cannot weigh the evidence or make credibility determinations" to "resolve disputed issues in favor of the moving party." *Jacobs*, 780 F.3d at 568 (citation omitted). The court has "improperly weigh[ed] the evidence where it fails to credit evidence contradicting the moving party's proposed factual conclusions, or where it fails to draw reasonable inferences, as it must, in the light most favorable to the non-moving party." *Variety Stores*, 888 F.3d at 659-60 (citations omitted).

The district court's determinations with respect to the admissibility of proffered expert testimony is subject to review for abuse of discretion. *EEOC v.*

Freeman, 778 F.3d 463, 466 (4th Cir. 2015), *citing Westberry v. Gislaved Gummi AB*, 178 F.3d 257, 261 (4th Cir. 1999). A lower court abuses its discretion if it relies on an error of law or a clearly erroneous factual finding. *Id.* This Court will reverse the district court if it forms a "definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." *Westberry*, 178 F.3d at 261, *quoting Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 506 (4th Cir. 1977).

II. THE DISTRICT COURT ERRED IN RULING THAT APPELLANTS' CLAIM BASED ON DENIAL OF ADEQUATE MENTAL HEALTH CARE IS GOVERNED BY A "DELIBERATE INDIFFERENCE" STANDARD RATHER THAN A "PROFESSIONAL JUDGMENT" STANDARD

A critical threshold question in this case concerns the applicable legal standard by which the conduct of a juvenile facility required to provide "appropriate mental health interventions" to detained children is to be measured. Relying on *Youngberg v. Romeo*, 457 U.S. 307 (1982), and its progeny, Appellants contend, as they have throughout this case, that defendant's obligation to provide care constitutionally adequate to meet their serious mental health needs as civil detainees, is governed by the "professional judgment" standard, under which "liability may be imposed only when the decision by the [mental health] professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not

base the decision on such a judgment." Dkt. No. 34 at 29-30, *quoting Youngberg*, 457 U.S. at 323 (citations omitted). Appellee countered that the fact that SVJC is a secure detention facility rather than a health-care provider or a treatment facility for children who pose a safety risk to themselves or others in a less-secure setting means that the applicable standard is "deliberate indifference." Dkt. No. 45 at 30.

In entering summary judgment for Appellee, the district court, engaging in no independent analysis, held "that the deliberate indifference standard applies to plaintiffs' claims," noting that "courts have repeatedly applied the deliberate indifference standard to civil detainees, including immigrant detainees." J.A. 779 (footnote omitted). In so holding, the court below erred.[13]

A. As Juvenile Detainees Entrusted To The Custody Of A "Care Provider" Appellants' Mental Health Care Claim Is Subject To The "Professional Judgment" Standard

In accordance with the Supreme Court's observation in *Youngberg* that "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish," 457 U.S. at 321-22, this Court and districts courts within this Circuit focus on the essential purpose of the detention at issue in

[13] As addressed in Argument Section III, *infra*, Appellants' position that the trial court chose and applied the wrong legal standard is without prejudice to their position that summary judgment on their denial of adequate mental health claim was improper even if the "deliberate indifference" standard governs.

determining the standard by which a claim alleging unconstitutional conditions is to be evaluated. Furthermore, where, as here, the purpose of the detention is not punitive and the individuals being detained are children, the "professional judgment" standard is required to meet SVJC's obligations under applicable federal statute and to pass constitutional muster.

This Court's leading decision involving this important threshold issue is *Patten v. Nichols*, 274 F.3d 829 (4th Cir. 2001). *Patten*, a Section 1983 action brought by the estate of a psychiatric patient involuntarily committed to a Virginia state hospital for the mentally ill who died while hospitalized on the basis of allegedly deficient medical care, required this Court to determine whether a "professional judgment" or "deliberate indifference" standard would govern resolution of the plaintiffs' claims premised upon the substantive due process principles embodied in the Fifth and Fourteenth Amendments.

Following an exhaustive analysis of the facts and circumstances presented in *Youngberg*, this Court concluded that "[b]ecause there is no constitutionally significant difference between the nature of the protection-from-harm claims specifically addressed by the Supreme Court in *Youngberg* and the denial-of-medical-care claim asserted by the Estate in this case, we believe that the Estate's claim must be measured against the professional judgment standard articulated by the Court in *Youngberg*." *Id*. at 838. In so ruling, the Court specifically

considered and firmly rejected state hospital defendants' effort to analogize the circumstances of the Estate's decedent to those of pre-trial detainees alleging improper deprivation of adequate medical care.

> The most obvious and important difference is the reason for which the person has been taken into custody. A person may be involuntarily committed in Virginia if there is probable cause to believe that the person "presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for oneself," and the person "is incapable of volunteering or unwilling to volunteer for treatment." Va. Code Ann. § 37.1-67.01. One of the main purposes of such commitment is, of course, treatment. . . . A pre-trial detainee, however, is taken in custody because the state believes the detainee has committed a crime, and the detainee is kept in custody to ensure that he appears for trial and serves any sentence that might ultimately be imposed. . . . Therefore, even though pre-trial detainees and involuntarily committed patients both look to the Fourteenth Amendment for protection and neither group may be punished (in the Eighth Amendment sense), it can hardly be said that the groups are similarly situated.

Id. at 840-41 (internal citations omitted).

Applying this functional analysis to a case involving a Section 1983 claim on behalf of an immigrant detainee based on allegations of denial of adequate medical care to the detainee while in custody awaiting deportation, the federal district court, in *Newbrough v. Piedmont Regional Jail Auth*., 822 F. Supp. 2d 558 (E.D. Va. 2011), held that "deliberate indifference" rather than "professional

judgment" was the governing decisional standard. Finding that the circumstances of the German national arrested, taken into custody by federal immigration officials and detained at the regional jail pending deportation were more closely analogous to those of the pre-trial detainees described and distinguished in *Patten* than of mentally-ill persons confined due to their need for treatment as in *Youngberg* and *Patten*, the court in *Newbrough* found "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).

Without further examination of the purposes of detention of these children, or whether a different standard is mandated because of their status as civilly-committed children, the court below uncritically endorsed the overbroad proposition that "courts have repeatedly applied the deliberate indifference standard to civil detainees, including immigrant detainees" and ruled accordingly. J.A. 779. Appellants submit that proper application of the *Patten/Newbrough* analytical framework to the facts of this case should have led the court to the conclusion that "professional judgment" – not "deliberate indifference" – governs the substantive due process claims presented here.

First, the purposes of the detention is not punitive. These youth are not in ORR detention on the basis of pending criminal charges; nor are they in custody at SVJC simply awaiting imminent removal from the U.S. Nor, in the capacity that it is functioning in the context of this case, is SVJC a "correctional" facility. Rather, SVJC has an entirely different mandate under the terms of its contract with ORR, in keeping with the directives of federal law. As noted *supra* at 6, as a "care provider," SVJC is charged by ORR with express responsibilities to provide the minor immigrant detainees entrusted to its 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." J.A. 1846 (emphasis added).

The federal framework governing the treatment of unaccompanied minors focuses on the non-punitive, protective responsibilities of the custodian to whom the child is entrusted. Without regard to their removal status, all unaccompanied minor immigrant children entrusted to ORR's custody are to be "promptly placed in the least restrictive setting" that is in their best interests, and such children may not be designated for detention in a secure facility such as SVJC "absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense." *See generally* 8 U.S.C. § 1232(c)(2)(A). Any such secure facility placement must be reviewed on a monthly

basis "to determine if such [restrictive] placement remains warranted." *Id.* Importantly, the entity with whom a child is placed must be "capable of providing for the child's physical and mental well-being." 8 U.S.C. § 1232(c)(3)(A). In light of these requirements and the significant, known psychological trauma and adverse mental health problems which are characteristic of the children sent by ORR to SVJC, as well-recognized by SVJC's staff – *see supra* at 7; J.A. 1966-69 – the class members' placement in a secure ORR "care provider" facility such as SVJC is far more closely analogous to the circumstances of those mentally ill persons involuntarily committed for treatment, like the claimants in *Youngberg* and *Patten*, than to the circumstances of pretrial detainees being held after their arrest on criminal charges or immigrant detainees held in anticipation of imminent deportation, as in *Newbrough*.

A second compelling reason for the application of the "professional judgment" standard is the fact that appellants are children. As was emphasized by Appellants' expert psychologist, Dr. Lewis, in the proceedings below, 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." J.A. 560, ¶ 9. Relatedly, the purpose of juvenile facilities is also fundamentally different from adult correctional facilities:

> 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.

J.A. 560, ¶ 8. These distinct needs are even more acute in the case of traumatized, mentally ill juvenile detainees, particularly those who have not been charged with the commission of crimes. *See supra* at 7.

This distinction is also well established in the caselaw. The Supreme Court has recognized that biological and developmental differences between adults and youth require different constitutional thresholds for the treatment of children in confinement. *See generally Montgomery v. Louisiana*, 136 S. Ct. 718, 733 (2016), and precedents discussed therein.

Thus, a "professional judgment" standard responds both to the inherently more fragile condition of juveniles and to the purposes of juvenile detention, whether within or outside of the criminal justice system. By contrast, a "deliberate indifference" standard, applicable to the adjudication of conditions claims of convicted criminals incarcerated for purposes of punishment, ignores these constitutionally-mandated considerations. *See Alexander S. ex rel. Bowers v. Boyd*, 876 F. Supp. 773, 797-98 (D.S.C. 1995) (holding that unconstitutional

conditions claims asserted by a class of juveniles detained in facilities the stated objectives of which were "treatment or rehabilitation" were governed by *Youngberg* "professional judgment " standard); *see generally A.M. ex rel. J.M.K. v. Luzerne Cty. Juv. Deten. Ctr.*, 372 F.3d 572, 579 (3d Cir. 2004); *A.J. by L.B. v. Kierst*, 56 F.3d 849, 854 (8th Cir. 1995); *Winston ex rel. Winston v. Children & Youth Servs. of Delaware Cty.*, 948 F.2d 1380, 1390 (3d Cir. 1991); *Garry H. v. Hegstrom*, 831 F.2d 1430, 1432 (9th Cir. 1987); *Santana v. Collazo*, 793 F.2d 41, 43 (1st Cir. 1986); *Milonas v. Williams*, 691 F.2d 931, 942 & n.10 (10th Cir. 1982); *Jordan v. District of Columbia*, 161 F. Supp. 3d 45, 52, 56-58 (D.D.C. 2016); *Kenny A. ex rel. Winn. v. Perdue*, No. 1:02-cv-1686-MHS, 2004 WL 5503780, at *3 (N.D. Ga. Dec. 13, 2004) (all applying or endorsing the "professional judgment" standard in cases involving claims arising in the context of juvenile detention). The court below erred in holding otherwise.

B. A Trauma-Informed Approach Constitutes The Applicable Standard Of Care As A Matter Of Established Professional Consensus

Appellants' clinical psychologist expert, Dr. Lewis, opined that "[t]rauma-informed approaches are the standard of care in all stages of the juvenile justice system," and that the class representatives and other class members, in light of their established and acknowledged "substantial histories of trauma and loss," were

especially in need of mental health services at SVJC utilizing a trauma-informed perspective. J.A. 1131, ¶ 174 (footnotes omitted).

The district court dismissed the significance of Dr. Lewis' "opinions regarding trauma-informed care and [SVJC's] failure to apply this approach to its treatment of UACs" on the grounds that "this simply is not the minimum constitutional standard," and its characterization of the trauma-informed approach to mental health care as "cutting edge" and "aspirational" in nature. J.A. 800-01.

Because the district court chose – wrongly, Appellants submit – to apply the "deliberate indifference" standard rather than the "professional judgment" standard in assessing the viability of Appellants' contention that SVJC provided constitutionally-deficient mental health care, it did not fully evaluate the merits of Appellants' contention, informed by Dr. Lewis' opinions, that trauma-informed approach represents the accepted standard of professional judgment under *Youngberg*. Moreover, the trial judge's suggestion that "at least one court has recognized that trauma-informed care is a 'cutting edge' standard" is demonstrably wrong. J.A. 800, citing *Willis v. Palmer*, No. C12-4086, 2018 WL 3966959, at *12 (N.D. Iowa Aug. 17, 2018). In reality, the characterization of trauma-informed care services as "cutting edge" to which the court below made reference clearly appears in *Willis* in a quotation from an expert's report submitted in that case, and

neither represents a finding nor a conclusion of the court itself. *See* 2018 WL 3966959, at *12.

The district court was also incorrect in her conclusion that trauma-informed care is merely an "aspirational" standard for mental health treatment of juveniles. As Dr. Lewis explained, although a truly trauma-informed approach to mental health care contemplates employment of a variety of steps and elements, the approach, in essence, is designed "(1) to screen, assess for and treat the consequences of prior trauma; and (2) to avoid correctional practices that retraumatize juveniles." J.A. 522 (citations omitted). It achieves those objectives through treatment geared to addressing the experienced trauma and through implementation of detention practices that include ensuring that all staff understand how to recognize the signs of past trauma and to avoid exacerbating trauma through punishment-based responses. J.A. 557, ¶ 2; 1137, ¶ 194.[14]

The trauma-informed approach was hardly new or novel; its development preceded the formulation of Dr. Lewis' opinions proffered in the proceedings below by at least 20 years and, as attested to in his proposed testimony, was

[14] Dr. Lewis' evaluations of Doe 1 and Doe 4 and his review of voluminous records regarding Does 1-4 led him to conclude that SVJC does not employ a trauma-informed approach to mental health care and that Doe 4 and his predecessor class representatives all suffered significant harm as a result. J.A. 562, ¶ 17; 1100, ¶ 50; 1101, ¶¶ 52-53; 1107-08, ¶¶ 74-76; 1114, ¶ 102; 1127-28, ¶¶ 161-163.

expressly endorsed in a 2012 Report of the U.S. Attorney General's National Task Force on Children Exposed to Violence and prescribed therein as the operational standard for juvenile justice facilities, hospitals and all other social services agencies serving the needs of children exposed to violence. J.A. 522 n.9; *see generally* J.A. 1098-99, 1131-33, ¶¶ 44-47 & nn.27-34. The National Child Traumatic Stress Network, established by Congress in 2000 to raise the standard of care and improve access to services for children who have experienced trauma, particularly those in the juvenile justice system, has developed evidence-based standards to guide care providers. *See* https://www.nctsn.treatments-and-practices/trauma_treatments (last visited Jan. 6, 2020). Numerous other prominent national organizations closely connected with the juvenile justice system long ago embraced trauma-informed care as the governing professional standard, including the National Commission on Correctional Healthcare, the National Council of Juvenile and Family Court Judges, the National Juvenile Defenders Center and the National Center for Mental Health and Juvenile Justice. *See* Julian D. Ford, *et al.*, *Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions*, Nat'l Ctr. For Mental Health & Juvenile Justice 1-8 (2007), *available at* https://www.ncmhjj.com/wp-content/uploads/2013/07/2007_Trauma-Among-Youth-In-The-Juvenile-Justice-System.pdf.

In sum, given Dr. Lewis' well-documented opinions and other significant support reflecting the reality that trauma-informed care is a concept developed, endorsed and implemented by a wide array of professionals, including academics, practitioners, professional associations and juvenile detention facilities as referenced above, the district court abused its discretion in perfunctorily dismissing Dr. Lewis' submissions out of hand. *See, e.g., Kopf v. Skrym,* 993 F.2d 374, 378 (4th Cir. 1993) (district court's exclusion of expert testimony from excessive force case on grounds that "objective reasonableness" standard was comprehensible to lay jurors constituted an abuse of discretion); *cf. Columbia Gas Transmission, LLC v. 76 Acres, More or Less, In Balt. and Harford Ctys.,* MD, 701 F. App'x 221, 229-30 (4th Cir. 2017) (choice of information upon which expert based opinions went to credibility and weight, not admissibility, of opinions).

Accordingly, because the district court both adopted the wrong standard against which the constitutional sufficiency of Appellee's mental health practices were to be measured and incorrectly excluded expert opinion evidence giving content to the "professional judgment" standard as it should have been applied in the proceedings below, a remand for further proceedings is required, in order to allow for the lower court's reconsideration of the merits of Appellants' denial-of-adequate-mental-health-care claim under the proper analytical standards.

III. EVEN IF THE "DELIBERATE INDIFFERENCE" STANDARD WERE CORRECTLY APPLIED, DISPUTED ISSUES OF

MATERIAL FACT REGARDING THE MENTAL HEALTH CARE PROVIDED BY APPELLEE PRECLUDED THE ENTRY OF SUMMARY JUDGMENT

In a recent case presenting a prisoner's Eighth Amendment action for damages and other relief attributed to alleged denial of adequate medical and mental health care, this Court had occasion to address the applicable analytical framework governing claims of "deliberate indifference" and stated as follows:

> Under the Eighth Amendment, prisoners have the right to receive adequate medical care while incarcerated. *See Scinto v. Stansberry*, 841 F.3d 219, 236 (4th Cir. 2016). When a prison official demonstrates "deliberate indifference" to an inmate's serious medical needs, a constitutional violation occurs under the Eighth Amendment. *See id.*; *Estelle v. Gamble*, 429 U.S. 97, 101-06 (1976). *Courts treat an inmate's mental health claims just as seriously as any physical health claims*. *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1977).
>
> To state a claim under Section 1983 for deliberate indifference to serious medical needs, a prisoner must show that he had a serious medical need, and that officials knowingly disregarded that need and the substantial risk it posed. King [*v. Rubenstein*], 825 F.3d 206, 218-20 [(4th Cir. 2016)]; *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 2019-11 (4th Cir. 2017). A "serious medical need" is a condition "diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Heyer*, 849 F.3d at 210 (citation omitted). An official acts with deliberate indifference if he had actual knowledge of the prisoner's serious medical needs and the related risks, but nevertheless disregarded them. *Scinto*, 841 F.3d at 225-26.

DePaola v. Clarke, 884 F.3d 481, 486 (4th Cir. 2018) (emphasis added).

In the proceedings on remand following this Court's reversal of the district court's decision granting motions to dismiss in *DePaola*, the district court denied a motion for summary judgment filed by certain individual mental health care providers at the subject prison, holding, in pertinent part:

> Viewing the evidence in the light most favorable to DePaola, the evidence shows that DePaola repeatedly asked for help, that his records showed his serious mental health history and attempted suicide via starvation, and that the defendants ignored his pleas and his history, instead choosing to believe that he was malingering and not actually impaired. DePaola has declared that he told each of these [Qualified Mental Health Professional] defendants about his mental health history and current mental health needs. Dr. Kupers [DePaola's expert] has opined that DePaola's serious mental health needs would have been apparent to anyone who spoke to him within a matter of minutes. Despite this evidence that they knew of his need for treatment, Fletcher, Huff, and Trent did not themselves provide any treatment, and they did not refer him to a psychiatrist for treatment. The expert witnesses agree that DePaola essentially received no treatment at all. I conclude that DePaola has created a genuine issue of material fact as to whether Fletcher, Huff, and Trent knew of his serious mental health need and exhibited deliberate indifference to the substantial risk posed by that need in failing to provide any mental health care.

DePaola v. Clarke, 394 F.Supp.3d 573, 591 (W.D. Va. 2019). Upon an appropriate review of the record, as illustrated by the analysis of the district court

on remand in *DePaola*, the district court in the case at bar should have reached a similar conclusion based upon closely analogous facts. Viewing the record in light most favorable to Doe 4 and drawing all reasonable inferences in his favor as the law requires, the court below was obligated to find material facts genuinely in dispute concerning: (i) SVJC's subjective knowledge and awareness of Doe 4's serious mental health needs; and (ii) SVJC's deliberate indifference to the substantial risks of harm to Doe 4 posed by its failure to treat those needs.

As a threshold matter, while "it is essential to show actual knowledge or awareness on the part of the alleged inflictor" – *Newbrough*, 922 F.Supp.2d at 581, *citing Brice v. Va. Beach Corr. Ctr.*, 58 F.3d 101, 105 (4th Cir. 1995) – the record leaves no room or doubt that SVJC was aware of Doe 4's serious mental health concerns and needs. Apart from SVJC's generalized awareness that all or most of the immigrant children entrusted to its care by ORR had experienced significant trauma resulting in a "high need for mental health treatment" – J.A. 1807, 1966-69 – SVJC was specifically informed of Doe 4's mental health issues as a result of the psychological evaluation he underwent in connection with his transfer to SVJC. The district court expressly noted in this regard the "[w]hen Doe 4 arrived at [SVJC], he underwent a psychological evaluation and, although he was uncooperative, he was diagnosed with post-traumatic stress disorder and attention deficit hyperactivity disorder based on his history" and that "[t]he psychologist that

conducted the investigation recommended that Doe 4 be placed in residential treatment," – *i.e.*, *not* at SVJC. J.A. 772. Moreover, Doe 4's observed conduct at SVJC reinforced its awareness of his mental health challenges. *See supra* at 11-16. In short, the subjective knowledge element of the deliberate indifference analysis was clearly satisfied, and Appellants do not understand Appellee to have argued otherwise.

In addition to the undisputed evidence as to SVJC's awareness that Doe 4 had serious mental health needs, Appellants also presented additional evidence regarding Doe 4's mental health concerns in the form of the findings that their expert, Dr. Lewis, derived from his 1.5 day, 10-hour psychological evaluation of Doe 4 and exhaustive review of Doe 4's records. *See* J.A. 1115-20, ¶¶ 103-134. Based on his analysis, Dr. Lewis diagnosed Doe 4 with "1) Posttraumatic Stress Disorder (PTSD), Chronic[,] and 2) Adjustment Disorder with Mixed Disturbance of Emotions and Conduct [.]" J.A. 1120, ¶ 133. The district court wholly disregarded Dr. Lewis' proffered opinion testimony concerning Doe 4, ostensibly on the grounds that "[b]ecause the court is granting summary judgment in defendant's favor on the failure to provide adequate mental health services claim, Dr. Lewis' opinions related to the mental health care provided at [SVJC] are irrelevant and therefore excluded." J.A. 800. But this reasoning makes no sense and constitutes plain error. Absent a definitive determination that Dr. Lewis'

opinions regarding Doe 4's mental health issues and how SVJC responded to them were categorically incompetent and inadmissible – and the district court made no such finding[15] – then they should have at least been considered along with Appellants' other evidence by the court in determining whether genuine issues of material fact foreclosed the entry of judgment as a matter of law in SVJC's favor. By granting summary judgment in SVJC's favor without considering Dr. Lewis' opinions, and then declaring those opinions "irrelevant" on the basis of that ruling, the court below incorrectly put the cart before the horse in a manner plainly prejudicial to the Appellants' case.

On the question of whether SVJC was deliberately indifferent to Doe 4's serious mental health needs of which it was clearly well aware, Appellee, in the proceedings below, touted Doe 4's one-on-one meetings with his assigned clinician for one hour on a weekly basis; his access to two group counseling sessions per week; and his "treatment" by a psychiatrist, Dr. Timothy Kane, once every three-to-six weeks, as evidence of the facility's attentiveness to Doe 4's need for mental health care. J.A. 67-68, 644-46. The district court was apparently persuaded that these services were sufficient to defeat any inferences of deliberate indifference.

[15] The district court held that "Dr. Lewis' expert testimony will be permitted to the extent that he has opinions about harm to members of the class and the cause of that harm from any unconstitutional custom or practice." J.A. 801. Thus, it is plain that his proffered testimony was not completely rejected.

J.A. 781. But the court failed to conduct any inquiry regarding the *sufficiency* of SVJC's services in light of the serious nature of Doe 4's mental illness. "[J]ust because Appellees have provided [the plaintiff] with some treatment . . . it does not necessarily follow that they have necessarily provided her with *constitutionally adequate* treatment." *DePaola*, 394 F.Supp.3d at 592-93, *quoting De'lonta v. Johnson*, 708, F.3d 502, 526 (4th Cir. 2013) (emphasis in original).

Here, as explicated in Subpart 3 of Appellants' Statement of Facts, SVJC's own staff members' testimony casts substantial doubt on the value or efficacy of *any* of the facility's various services as actual *treatment* for the mental health needs of the immigrant children detained there. See Statement of Facts, *supra*, at 9 (SVJC witnesses' testimony as to the shortcomings of the one-to-one counseling sessions); at 10 (indicating that sessions characterized as "group therapy" are no such thing); at 10 (undercutting notion that Dr. Kane, the psychiatrist, does anything to address the children's therapeutic needs). And, of particular relevance with respect to Doe 4, in light of the results of his psychological evaluation upon arrival at SVJC, are the clear admissions of both SVJC's Deputy Director of Programs and its Lead Case Manager that SVJC is incapable of providing the

"higher levels of care" that would be provided in a residential treatment center, as they knew had been recommended for him. *Id*. at 11.[16]

And, lastly, although completely disregarded by the district court based upon circular reasoning described above, Dr. Lewis opined, based on fully supported and reasoned analysis, that SVJC not only failed to provide any type of effective treatment for Doe 4's serious mental health needs but, on the contrary, actually exacerbated his trauma and heightened his need for such treatment by retraumatizing Doe 4 through its reflexive use of physical force, restraints and imposition of solitary confinement in response to any perceived misconduct in which Doe 4 engaged. J.A. 1126-27, ¶¶ 156-63. Given that the district court expressly found that genuine issues of material fact foreclosed the granting of summary judgment to Appellee on Doe 4's claims that SVJC engaged in the use of excessive physical force and restrains and imposition of excessive room confinement – *see* J.A. 777-79 – its failure to consider the adverse effects of those

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[16] The district court held that SVJC was not deliberately indifferent to the recommendation that Doe 4 be placed in a residential treatment facility rather than placed into detention at SVJC, because SVJC tried, albeit without success, on several occasions to transfer Doe 4 and that this was ultimately a matter of ORR's responsibility. J.A. 781. But SVJC provided no evidence that it undertook any different, additional or otherwise meaningful measures to address Doe 4's greater mental health treatment needs in light of its recognition that he could not be transferred.

practices on Doe 4 as an indication of the facility's deliberate indifference to his serious mental health needs defies rationalization.

This body of evidence, much of which was simply never addressed by the district court, unambiguously establishes genuine issues of material fact with respect to both elements of the "deliberate indifference" standard, the existence of which should have caused Appellee's motion for summary judgment to be denied.

CONCLUSION

Based upon all of the foregoing, the judgment below granting summary judgment to the Appellee on the grounds that Appellants failed to establish the existence of genuine issues of material fact requiring a trial on the claim that Appellee failed to provide constitutionally-adequate mental health care to the unaccompanied immigrant children detained there must be reversed and remanded for further proceedings to be conducted under the properly-applicable "professional judgment" legal standard.

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Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

Plaintiffs-Appellants request oral argument and respectfully submit that oral argument would be helpful to the Court in resolving the important issues presented with respect to the standards governing the obligations of state actors charged with responsibility to provide mental health care to children in civil detention presented in this case.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), I hereby certify that this Opening Brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B)(i), because it contains 12,467 words, excluding the parts of the Brief exempted by Rule 32(f).

I further certify that this Opening Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it was prepared in a proportionally-spaced typeface using Microsoft Office Word in Times New Roman 14-point font.

Theodore A. Howard

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January 2020, I caused a true and correct copy of the Opening Brief of Plaintiffs-Appellants John Doe 4, *et al.*, to be filed with the clerk of the U.S. Court of Appeals *via* the appellate CM/ECF system, which will send notice of the filing to all participants in this case including counsel for the Defendant-Appellee.

Theodor A. Howard