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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ELDON G. SAMUEL, III, Petitioner, v. **BEN WOLFINGER, in his official capacity as Kootenai County Sheriff,** Respondent.	Case No. CV-14-5614 **MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF IDAHO FOUNDATION FOR LEAVE TO APPEAR AS AMICUS CURIAE**

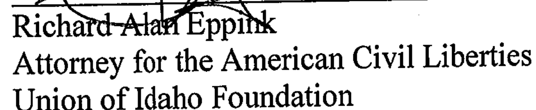
The American Civil Liberties Union of Idaho Foundation ("ACLU") respectfully moves this Court for an order allowing it to participate in this case as *amicus curiae*. If granted leave, the ACLU would file a brief supporting the petition for a writ of *habeas corpus* filed on July 11, 2014, in this case. A copy of the brief the ACLU would file is appended to this motion. This motion is based the proposed brief of *amicus curiae* and the affidavit of Leo Morales, both filed along with this motion.

The ACLU's participation would support the petitioner in this case. The ACLU's interest

is as a defender of principles protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the guarantee against cruel and unusual punishments arising out of the Eighth Amendment, as well as the chief public interest law firm engaged in litigation to ensure Idaho's jails and prisons are safe and humane.

DATED this 18th day of July, 2014, at Boise, Idaho.

AMERICAN CIVIL LIBERTIES UNION
OF IDAHO FOUNDATION



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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2014, I caused a true and correct copy of the foregoing to be served on the following persons via **first class U.S. mail, postage prepaid**:

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

ELDON G. SAMUEL, III, Petitioner, v. **BEN WOLFINGER, in his official capacity as Kootenai County Sheriff,** Respondent.	Case No. CV-14-5614 **BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF IDAHO FOUNDATION AS AMICUS CURIAE**

Isolating youth in jail is dangerous, harmful, and counterproductive, and the damaging impact of incarcerating children is nowhere more obvious than when it involves solitary confinement.[1] The U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention's own study into juvenile suicide in confinement found that youth have "little to focus on" when placed in solitary confinement, "except all of their reasons for being depressed and the

[1] *See* REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 178 (2012), http://1.usa.gov/UeeYUm.

various ways that they can attempt to kill themselves."[2] Adolescents like Eldon Samuel, the petitioner here, are in particular danger of adverse reactions to prolonged isolation and solitary confinement.[3] As the U.S. Department of Justice recently told the ACLU: "isolation of children is dangerous and inconsistent with best practices," and prolonged solitary confinement of youth, as Eldon is now enduring, "can constitute cruel and unusual punishment."[4]

The courts agree. "Courts that have considered this issue have . . . concluded that the use of isolation for juveniles, except in extreme circumstances, is a violation of Due Process." *R.G. v. Koller*, 415 F. Supp. 2d 1129, 1155 (D. Haw. 2006) (collecting cases). Experts, too, are virtually unanimous in condemning solitary confinement of children. *See id.*; *Lollis v. New York State Dept. of Social Services*, 322 F. Supp. 473, 480–482 (S.D.N.Y. 1970) (noting that experts are "unanimous in their condemnation of extended isolation as imposed on children, finding it not only cruel and inhuman, but counterproductive to the development of the child"). Plus, all of the experts involved in this case agree as well: the adult jail officials, the Sheriff, the Juvenile Detention Center administrators, the guardian *ad litem*, the County's legal department, and even the Idaho Department of Juvenile Corrections all believe that Eldon should be returned to integrated housing at the Juvenile Detention Center.

This Court should defer to the unanimous expert opinion and the great weight of precedent

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[2] DEPT. OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE SUICIDE IN CONFINEMENT: A NATIONAL SURVEY 36 (2009), http://1.usa.gov/Uefb9P.

[3] AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (2012), http://bit.ly/1p0LtQS.

[4] Letter from Robert L. Listenbee, Administrator, U.S. Department of Justice, Office of Justice Programs, to Jesselyn McCurdy, Senior Legislative Counsel, American Civil Liberties Union 1 (Jul. 5, 2013), http://bit.ly/1nETB5l.

and issue a writ to end Eldon's unconstitutional solitary confinement.

INTEREST OF AMICUS CURIAE

The American Civil Liberties Union of Idaho Foundation ("ACLU") is a statewide, nonprofit, nonpartisan public interest organization dedicated to the principles of liberty and fairness embodied in the U.S. and Idaho constitutions. Since its founding in 1993, the ACLU has frequently appeared before Idaho state and federal courts in cases involving constitutional questions, both as direct counsel and as *amicus curiae*. This case raises important, harrowing questions about the treatment of children, the humaneness of conditions of confinement in Idaho's jails and detention centers, and the constitutionality of the use of solitary confinement. The proper resolution of this case is, therefore, a matter of significant concern to the ACLU and its members throughout Idaho.

CONDITIONS OF ELDON'S SOLITARY CONFINEMENT

For more than 70 days altogether, Kootenai County, Idaho, has kept a child locked in solitary confinement, under conditions like those we hold terrorists and enemy combatants in. The Watch Commander at the adult jail even admits that it is not fair to hold a boy in these conditions.[5] Eldon cannot see out of his cell's windows, which are covered with dark blinds.[6] For nearly every hour, every day, 15-year-old Eldon is alone by himself in the small locked

[5] 7/2/14 hearing audio at 9:26:10 a.m. Most of the information in this brief about the conditions of Eldon's solitary confinement is taken from the testimony given at the June 6, 2014, and July 2, 2014, hearings in *State v. Samuel*, Kootenai County no. CR-2014-5178. Wherever possible, this brief provides a citation to the timestamp near the beginning of pertinent testimony, as it is the ACLU's understanding that a verbatim transcript has not yet been prepared of either hearing. The ACLU gathered additional information about Eldon's solitary confinement via his attorneys, and some of that information is recounted here (without a citation).

[6] 6/6/14 hearing at 3:10:10 p.m.; 7/2/14 hearing at 9:19:20 a.m. and 9:20:18 a.m.

cinderblock medical holding cell that jail officials have turned into a makeshift child isolation cell, with only a steel bunk and a steel toilet-sink for amenities.[7] Allowing Eldon out of his cell requires placing the entire facility on lockdown, because Eldon is the only child confined in the jail.[8] He is allowed out each day only for showers, exercise on a cement slab, and legal and religious visits.[9] Were he back and integrated at the Juvenile Detention Center, Eldon would attend year-round school Monday through Friday,[10] but in his solitary confinement at the adult jail he will receive no education during the summer at all.[11]

No ambient light comes in his cell.[12] He is isolated completely from any social interaction with other children and the rest of the world besides guards, a spiritual counselor, and his attorneys.[13] Guards slide his meals to him through a slot in his door, and he eats all alone.[14] He must shout or bang on the door to get the attention of guards (who he must ask even to find out the time of day) or else wait for them to conduct their twice-hourly checks. Nobody can see in to monitor Eldon at any other times.[15] There is no natural light.[16] He hardly ever sees sunlight at

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[7] 6/6/14 hearing at 3:19:10 p.m. and 3:31:30 p.m.; 7/2/14 hearing at 9:19:20 a.m.

[8] 6/6/14 hearing at 3:18:00 p.m.; 7/2/14 hearing at 9:23:15 a.m.

[9] 6/6/14 hearing at 3:31:12 p.m.; 7/2/14 hearing at 9:21:52 a.m.

[10] 7/2/14 hearing at 9:34:10 a.m.

[11] 6/6/14 hearing at 3:32:11 p.m.

[12] 7/2/14 hearing at 9:19:20 a.m.; 6/6/14 hearing at 3:19:10 p.m. and 3:31:40 p.m.

[13] 7/2/14 hearing at 9:19:20 a.m.

[14] 7/2/14 hearing at 9:21:52 a.m.

[15] 7/2/14 hearing at 9:19:20 a.m.

[16] 6/6/14 hearing at 3:19:10 p.m. and 3:31:40 p.m.; 7/2/14 hearing at 9:20:18 a.m.

all. Unlike the adult prisoners, his only outdoor time is in a cement block with an opening to the sky, but no plant life or soil. He is all alone, locked up, for most of the hours of each day.[17]

Eldon's guardian *ad litem* told this Court that the child was being held in conditions worse than at the Guantánamo Bay detention camp[18]—"our nation's most notorious prison" according even to the U.S. Army Major General who supervised its construction.[19] The guardian *ad litem* might be right. At Guantánamo, solitary confinement is reserved only for men who are "non-compliant" prisoners.[20] Food there, too, is delivered through metal slots in the cell doors and, like Eldon, prisoners eat their meals alone. At least the Guantánamo detainees, however, are held in cells near each other, and so can communicate with each other through their meal slots.[21] Plus, Guantánamo detainees get two to four hours outdoors every day, compared to the hour or so that Eldon can request while the rest of the adult jail is under lockdown.

Eldon has done nothing to deserve this punishment. Though jail officials shackled him when moving him from his solitary confinement cell to shower when he first arrived, after only 10 days a Classification Officer reviewed his behavior and lifted the shackling order because there was no need for it.[22] The Watch Commander has assured this Court that Eldon is always quiet

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[17] 6/6/14 hearing at 3:31:12 p.m. and 3:31:40 p.m.; 7/2/14 hearing at 9:19:20 a.m. and 9:21:52 a.m.

[18] 7/2/14 hearing at 9:47:42 a.m.

[19] Michael Lehnert, *Here's why it's long past time that we close Guantanamo*, DETROIT FREE PRESS, Dec. 12, 2013, http://on.freep.com/1kCWBP1.

[20] CENTER FOR CONSTITUTIONAL RIGHTS, CURRENT CONDITIONS OF CONFINEMENT AT GUANTÁNAMO: STILL IN VIOLATION OF THE LAW 4 (2009), http://bit.ly/WkwQym.

[21] *Id.* at 5.

[22] 6/6/14 hearing at 3:22:27 p.m.

and has never presented a behavior problem.[23] He is always polite and respectful to jail staff.[24]

Juvenile Detention Center staff had the same experience with Eldon during the month and a half he spent there. When he first arrived there, he was initially separated from all of the other children there.[25] After reviewing his behavior, JDC officials integrated Eldon into the others, and he was soon attending school five days a week with other children and participating in P.E. seven days a week with them.[26] He was no more trouble there, the JDC Operations Manager testified to this Court, than any other 14-year-old would be.[27] The Operations Manager had no hesitation in confirming that Eldon was not a threat to any of the other detainees and that JDC staff are confident that they can protect Eldon's safety and all of the other detainees' safety,[28] even with Eldon integrated in activities.[29] Publicity of Eldon's charges would not cause any additional security threats, she said.[30] She testified that there is no need, even at the juvenile facility, to put Eldon in solitary confinement, or isolate him from other children.[31] Idaho Department of Juvenile Corrections officials agree. When they toured the jail and found Eldon held in solitary confinement, they recommended that he be moved to the JDC, where he can interact with his peers

[23] 6/6/14 hearing at 3:22:52 p.m.

[24] 6/6/14 hearing at 3:22:52 p.m.

[25] 6/6/14 hearing at 3:28:21 p.m.; 7/2/14 hearing at 9:30:28 a.m.

[26] 6/6/14 hearing at 3:12:23 p.m.; 7/2/14 hearing at 9:30:28 a.m.

[27] 7/2/14 hearing at 9:31:50 a.m.

[28] 6/6/14 hearing at 3:10:10 p.m., 3:10:48 p.m., 3:15:15 p.m., and 3:29:50 p.m.

[29] 7/2/14 hearing at 9:33:50 a.m.

[30] 7/2/14 hearing at 9:44:40 a.m.

[31] 6/6/14 hearing at 3:30:18 p.m. and 3:15:15 p.m.; 7/2/14 hearing at 9:38:21 a.m., 9:39:15 a.m., 9:42:30 a.m., and 9:43:50 a.m.

and get proper schooling alongside them.[32]

Nobody who deals with Eldon and the security of the jail or JDC says he should stay in solitary confinement. All of the experts handling his custody agree he should be at the JDC.

HABEAS CORPUS RELIEF

The writ of habeas corpus is a vital remedy protected by the Idaho Constitution. IDAHO CONST. art. I, § 5. The Idaho Habeas Corpus and Institutional Litigation Procedures Act, I.C. §§ 19-4201 to 19-4226, do not limit that remedy, but rather add further efficacy to the writ. *Dopp v. Idaho Commission of Pardons and Parole*, 139 Idaho 657, 660 (Ct. App. 2004). The "Great Writ" of habeas corpus "is a time-honored method of testing the authority of one who deprives another of his liberty." *Gawron v. Roberts*, 113 Idaho 330, 333 (Ct. App. 1987). Its purpose is to end confinement that violates constitutional protections. *Id.* Accordingly, it is to be applied to preserve constitutional safeguards, as an avenue for relief from detention in violation of a fundamental right. *Id.* A prisoner is eligible for relief if he demonstrates that he has been adversely affected by unconstitutional conditions. *See Coleman v. State*, 114 Idaho 901, 902 (1988). That relief is not limited to complete discharge from custody, but is instead flexible to prevent injustice. *Mahaffey v. State*, 87 Idaho 228, 280 (1964); *cf.* I.C. § 19-4217. This Court cannot dispute the veracity of the petitioner's allegations; it must accept them as true. *Mahaffey*, 87 Idaho at 280, 281.

ARGUMENT

In fashioning habeas corpus relief, this Court is required to give substantial deference to the judgment of the jail and Juvenile Detention Center officials managing Eldon's custody. *See* I.C. §

[32] 6/6/14 hearing at 3:08:06 p.m.; 7/2/14 hearing at 9:21:05 a.m. and 9:42:49 a.m.

19-4217(2)(e). They all agree that Eldon should not be held in solitary confinement at the adult jail. Their judgment is wise: the conditions of Eldon's confinement there are not only "atrocious," to use the words of the boy's guardian *ad litem*, but unconstitutional as well.

"[T]he use of isolation for juveniles, except in extreme circumstances, is a violation of Due Process." *R.G.*, 415 F. Supp. 2d at 1155. Because Eldon has not been convicted of any crime, and is instead only a pretrial detainee, his petition is entitled to Fourteenth Amendment Due Process scrutiny—a "more protective" standard than that employed under the Eighth Amendment's "cruel and unusual punishments" clause—when analyzing the conditions of his solitary confinement. *Gary H. v. Hegstrom*, 831 F.2d 1430, 1432 (9th Cir. 1987); *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979).

Under Due Process scrutiny, "the proper inquiry is whether [the] conditions amount to punishment of the detainee." *Bell*, 441 U.S. at 535; *see also Santana v. Collazo*, 714 F.2d 1172, 1179–1181 (1st Cir. 1983). Eldon's solitary confinement clearly amounts to punishment for two reasons. First, because Eldon is only 15 years old, the excruciating psychological torment of social isolation and solitary confinement is "inherently punitive." *R.G.*, 415 F. Supp. 2d at 1155. Second, that the JDC administrator testified that isolating Eldon is not appropriate and that he and the other children at that facility are safe together *and* that the adult jail's Watch Commander agrees that it is "not fair" to hold the boy under these conditions are substantial evidence that Eldon's solitary confinement is not reasonably related to the County's interest in maintaining security and order. *Bell*, 441 U.S. at 540 n.23.

I. Holding Children in Solitary Confinement is Inherently Punitive and Unconstitutional.

Expert evidence "uniformly indicates that long-term segregation or isolation of youth is

inherently punitive and is well outside the range of accepted professional practices." *R.G.*, 415 F. Supp. 2d at 1155. Conditions of confinement are unconstitutional when they are "a substantial departure from accepted professional judgment, practice, or standards." *Youngberg v. Romeo*, 457 U.S. 307, 323 (1982). Courts have been recognizing for decades that solitary confinement of children is "psychologically damaging, anti-rehabilitative, and, at times inhumane." *Inmates of Boys' Training School v. Affleck*, 346 F. Supp. 1354, 1372 (D.R.I. 1972). As the *Affleck* court noted in reaching that holding: "Isolation [of children] as a 'treatment' is punitive, destructive, defeats the purposes of any kind of rehabilitative efforts and harkens back to medieval times. There is no justification for such treatment unless one wants to dehumanize a young person in trouble and wants to create more trouble with such a person in the future." *Id.* Experts unanimously, unconditionally agreed as long ago as 1970 that "extended isolation as imposed on children" is "not only cruel and inhuman, but counterproductive to the development of the child." *Lollis*, 322 F. Supp. at 480–481.

That unanimous expert sentiment has, if anything, become even more unequivocal since then. Examining evidence from the past decade about solitary confinement of children, a federal court adopted expert observations that "[p]rolonged isolation or seclusion is punitive in nature and can cause serious psychological consequences," that "[s]uch segregation practice is not generally accepted and falls outside of professional standards," and that social isolation of children is "inherently punishing . . . ." *R.G.*, 415 F. Supp. 2d at 1155. The court held that "long-term segregation or isolation of youth is inherently punitive and is well outside the range of accepted professional practices." *Id.* Indeed, recent research on the impact of solitary confinement shows that even adults exhibit extreme negative physiological and psychological effects from it,

including hypersensitivity to stimuli,[33] perceptual distortions and hallucinations,[34] increased anxiety and nervousness,[35] revenge fantasies, rage, and irrational anger,[36] fears of persecution,[37] lack of impulse control,[38] severe and chronic depression,[39] appetite loss and weight loss,[40] heart palpitations,[41] withdrawal,[42] blunting of affect and apathy,[43] talking to oneself,[44] headaches,[45] problems sleeping,[46] confusing thought processes,[47] nightmares,[48] dizziness,[49] self-mutilation,[50]

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[33] Stuart Grassian, *Psychopathological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450, 1452 (1983).

[34] *Id.*; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 134 (2003); Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8, 15 (1988).

[35] Grassian, *supra* note 8, at 1452–1453; Haney, *supra* note 9, at 130, 133; Holly A. Miller, *Reexamining Psychological Distress in the Current Conditions of Segregation*, 1 J. OF CORRECTIONAL HEALTHCARE 39, 48 (1994).

[36] Grassian, *supra* note 8, at 1453; Holly A. Miller & Glenn R. Young, *Prison Segregation: Administrative Detention: Remedy of Mental Health Problem?*, 7 CRIM. BEHAV. & MENTAL HEALTH 85, 91 (1997); Haney, *supra* note 9, at 130, 134.

[37] Grassian, *supra* note 8, at 1453.

[38] *Id.*; Miller & Young, *supra* note 11, at 92.

[39] Miller & Young, *supra* note 11, at 90; Haney, *supra* note 9, at 131, 134; Korn, *supra* note 9, at 15.

[40] Haney, *supra* note 9, at 130, 133; Korn, *supra* note 9, at 15.

[41] Haney, *supra* note 9, at 133.

[42] Miller & Young, *supra* note 11, at 91; Korn, *supra* note 9, at 15.

[43] Korn, *supra* note 9, at 15.

[44] Haney, *supra* note 9, at 134.

[45] *See id.* at 133.

[46] *See id.*

and lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement.[51] Children are at even greater risk of harm like this from solitary confinement, due to their "developmental vulnerability."[52] *See also H.C. v. Jarrard*, 786 F.2d 1080, 1088 (11th Cir. 1986) (holding that "[j]uveniles are even more susceptible to mental anguish than adult convicts" and, accordingly, "compensatory damages are appropriate where juveniles have wrongfully received solitary confinement"). As the First Circuit observed, long-term isolation of children in detention probably "accomplishes nothing more than the unnecessary infliction of pain." *Santana*, 714 F.2d at 1181.

In the face of such unanimous professional agreement about the harrowing impacts of solitary confinement, especially on children, courts have unsurprisingly found the practice unconstitutional time and time again. Solitary confinement of children is "at best, an excessive, and therefore unconstitutional response to legitimate safety needs of the institution," the *R.G.* court held. *R.G.*, 415 F. Supp. 2d at 1155–1156. "Solitary confinement of young adults is unconstitutional," as another federal court succinctly put it. *Feliciano v. Barcelo*, 497 F. Supp.

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[47] *See id* at 137.

[48] *See id* at 133.

[49] *See id.*

[50] Grassian, *supra* note 8, at 1453; Eric Lanes, *The Association of Administrative Segregation Placement and Other Risk Factors with the Self-Injury-Free Time of Male Prisoners*, 48 J. OFFENDER REHABILITATION 529, 539–540 (2009).

[51] Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 J. OF ABNORMAL PSYCHOL. 54, 57–58 (1972).

[52] AMERICAN ACADEMY OF CHILD & ADOLESCENT PSYCHIATRY, POLICY STATEMENTS: SOLITARY CONFINEMENT OF JUVENILE OFFENDERS (2012), http://bit.ly/1p0LtQS.

14, 35 (D.P.R. 1979). The Tenth Circuit upheld an injunction prohibiting the isolation of children even for less than 24 hours. *Milonas v. Williams*, 691 F.2d 931, 941, 945 (10th Cir. 1982). Where children were, like Eldon, "confined alone in their cells for the entire day" except for showers and exercise, with "meals eaten in the cells," a federal court found that the confinement violated both the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment. *Morgan v. Sproat*, 432 F. Supp. 1130, 1138, 1140 (D. Miss. 1977). The courts in *Pena v. New York State Division for Youth*, 419 F. Supp. 203, 210–211 (S.D.N.Y. 1976), and *Morales v. Turman*, 364 F. Supp. 166, 174 (E.D. Texas 1973), held likewise. *See also D.B. v. Tewksvury*, 545 F. Supp. 896, 905 (D. Or. 1982) (holding that placement of younger juvenile detainees in isolation cells as a means of protecting them from older children is unconstitutional). In *Nelson v. Heyne* the court held that extended isolation of children, even for disciplinary violations in a correctional setting, "is emotionally and psychologically debilitating and serves neither treatment nor punitive goals." 355 F. Supp. 451, 456 (N.D. Ind. 1972). It held such solitary confinement of youth to be "both cruel and unusual punishment and totally devoid of the most rudimentary notions of procedural due process." *Id.*

Eldon's solitary confinement at the Kootenai County adult jail just as punitive, and it is no less harmful and or unconstitutional. This Court should issue a writ that ends these unlawful conditions immediately.

II. Because Eldon's Solitary Confinement Goes Against the Unanimous Judgment of Jail and Public Safety Officials, it is Unconstitutionally Excessive.

To be constitutional, restrictions on detainees, even those far less extreme than solitary confinement, must be reasonably related to the government's interest in maintaining security and order. *Bell*, 441 U.S. at 540. Restrictions that are "excessive" or "exaggerated" in relation to

that government interest, on the other hand, are unconstitutional. *Id.* at 538, 540 n.23. In Eldon's case, we do not have to guess whether solitary confinement at the adult jail is excessive. Eldon was held the JDC for nearly a month and a half. The JDC Operations Manager testified towards the beginning and again at the end of that period that both Eldon and all the other detainees there were safe while Eldon was at the JDC.[53] She said that he was no different than any other 14-year-old when it came to following the rules.[54] He presented no risk that JDC staff could not routinely manage.[55] In fact, although he was initially separated from the rest of the children there, soon after his arrival JDC officials integrated him with everyone else for school, P.E., and other activities.[56] The other children are not threatened by Eldon, and JDC staff can adequately protect both Eldon and everyone else at the facility.[57] The only restriction reasonably related to the County's interest in maintaining security and order is the meal-time separation that the JDC efficaciously imposed.[58] Anything more, including isolation, is not only excessive and therefore unconstitutional, *see id.* at 540, but would actually *increase* the risk of harm, according to the JDC administrator's own testimony.[59] It is best to keep juveniles like Eldon active and engaged, she

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[53] 6/6/14 hearing at 3:10:10 p.m., 3:10:48 p.m., 3:15:15 p.m., and 3:29:51 p.m.; 7/2/14 hearing at 9:33:50 a.m. and 9:38:21 a.m.

[54] 6/6/14 hearing at 3:10:48 p.m.

[55] 6/6/14 hearing at 3:10:10 p.m.; 7/2/14 hearing at 9:33:50 a.m. and 9:38:21 a.m.

[56] 6/6/14 hearing at 3:12:23 p.m.; 7/2/14 hearing at 9:30:28 a.m.

[57] 6/6/14 hearing at 3:15:15 p.m. and 3:29:51 p.m.; 7/2/14 hearing at 9:38:21 a.m.

[58] 7/2/14 hearing at 9:31:07 a.m. and 9:37:23 a.m.

[59] 7/2/14 hearing at 9:39:15 a.m., 9:42:30 a.m., and 9:43:50 a.m.

explained, not isolated.[60]

The JDC administration's judgment that Eldon is best housed at JDC is corroborated by the adult jail administration. The Watch Commander testified not only that Eldon's solitary confinement at the jail presents serious logistical issues,[61] but that Eldon's life is not very good at the jail and that it is not fair to keep a boy of his age there under those conditions.[62] Eldon has presented no security problems at the jail and has been completely compliant throughout the time he has been held there.[63] He is not under any heightened security watch, and his security classification has in fact decreased since his arrival.[64] The Sheriff, jail officials, and the County's legal counsel all concur with the JDC administration that the JDC is the better place for Eldon.[65] As the Watch Commander testified, the JDC is simply better able to take care of Eldon's needs.[66] What is more, State officials from the Idaho Department of Juvenile Corrections also observed Eldon's solitary confinement at the adult jail and recommended that he be moved to the JDC because it was a better placement.[67]

This unanimous concurrence among jail, JDC, corrections, and public safety officials has

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[60] 6/6/14 hearing at 3:30:18 p.m.; *see also* 6/6/14 hearing at 3:12:09 p.m.; 7/2/14 hearing at 9:42:30 a.m. and 9:43:50 a.m.

[61] 6/6/14 hearing at 3:18:00 p.m. and 3:21:30 p.m.

[62] 6/6/14 hearing at 3:32:05 p.m.; 7/2/14 hearing at 9:26:10 a.m.

[63] 6/6/14 hearing at 3:22:52 p.m.; 7/2/14 hearing at 9:31:50 a.m.

[64] *See* 6/6/14 hearing at 3:22:27 p.m.

[65] *See* 7/2/14 hearing at 9:27:12 a.m.

[66] 7/2/14 hearing at 9:12:12 a.m.

[67] 6/6/14 hearing at 3:08:06 p.m.; *see also* 7/2/14 hearing at 9:21:05 a.m. and 9:42:49 a.m.

great constitutional significance. Under both Idaho habeas corpus law and federal constitutional law, this Court must ordinarily defer to the expert discretion of jail and detention officials. *Bell*, 441 U.S. at 540 n.23; I.C. § 19-4217(2)(e) ("The court shall give substantial deference to the discretion of administrators of the institution or the state, local or private correctional facilitiy."). The considerations involved in deciding where to house Eldon "are peculiarly within the province and professional expertise of [those] officials . . . ." *Bell*, 441 U.S. at 540 n.23. Thus, although this Court has apparent statutory authority to keep a juvenile held in an adult jail under I.C. § 20-509(2), under the Due Process Clause of the Fourteenth Amendment, it cannot do so against the reasonable and expert judgment of the professionals who must manage Eldon and other County detainees on the ground. *See Bell*, 441 U.S. at 540 & n.23.

This court should follow the unanimous recommendations of the guardian *ad litem*, Eldon's attorneys, the Kootenai County's legal counsel, the Kootenai County Sheriff, the adult jail, the Juvenile Detention Center, and the Idaho Department of Juvenile Corrections, and return Eldon to the JDC, where officials have already demonstrated their ability manage his custody with appropriate restrictions.

CONCLUSION

Only this Court now stands in the way of preventing unconstitutional solitary confinement of a 15-year-old child in Kootenai County. The "time-honored" writ of habeas corpus is available for just that purpose. *Gawron*, 113 Idaho at 333. This Court should grant the petition and return Eldon Samuel to the Juvenile Detention Center and the wise discretion of the officials there.

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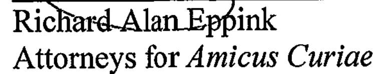
Respectfully submitted this 18th day of July, 2014.

AMERICAN CIVIL LIBERTIES UNION
OF IDAHO FOUNDATION



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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2014, I caused a true and correct copy of the foregoing to be served on the following persons via **first class U.S. mail, postage prepaid**:

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