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Right to a Speedy Trial for All, Unless You're Incarcerated: How Sixth Amendment Jurisprudence Allows for Prolonged Isolation—United States v. Bailey-Snyder, 923 F.3d 289, 291 (3rd Cir. 2019)

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RIGHT TO A SPEEDY TRIAL FOR ALL, UNLESS YOU'RE INCARCERATED: HOW SIXTH AMENDMENT JURISPRUDENCE ALLOWS FOR PROLONGED ISOLATION—*UNITED STATES V. BAILEY-SNYDER*, 923 F.3D 289, 291 (3RD CIR. 2019)

"The authorities believed that isolation was the cure for our defiance and rebelliousness . . . I found solitary confinement the most forbidding aspect of prison life. There was no end and no beginning; there is only one's own mind, which can begin to play tricks. Was that a dream or did it really happen? One begins to question everything."[1]

I. INTRODUCTION

The Sixth Amendment to the United States Constitution guarantees certain rights to the criminally accused when facing prosecution.[2] Included among these rights is the right to a speedy trial, which is "as fundamental as any of the rights secured by the Sixth Amendment."[3] Courts have adopted a narrow interpretation of the term "speedy trial" and have only applied the right if the accused has been "arrested."[4] Often, the criminal justice system deprives the accused of their right to a speedy trial, and their case faces the possibility of being neglected by the criminal courts.[5]

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[1] NELSON MANDELA, LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA 274 (Back Bay Books 1995).

[2] *See* U.S. CONST. amend. VI. (listing rights of criminally accused).

[3] *See* Klopfer v. North Carolina, 386 U.S. 213, 223 (1967) (detailing origins of right to speedy trial).

[4] *See* United States v. Marion, 404 U.S. 307, 320 (1971) (declining to extend reach of right to speedy trial to period prior to arrest). "[I]t is readily understandable that it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision of the Sixth Amendment." *Id.*

[5] *See* Andrew Cohen, *The Foundational Speedy Trial Case of Our Time Has Come*, BRENNAN CENTER FOR JUSTICE (Aug. 31, 2015), https://www.brennancenter.org/our-work/research-reports/foundational-speedy-trial-case-our-time-has-come (explaining reasons for deprivation of right to speedy trial). "All over the country criminal defendants are deprived of their speedy trial rights, often for years, and then still are tried and convicted and sentenced, the results from those tainted trials then sanctioned by appellate judges who rely upon tortured constructions of law and fact to justify the result." *Id.*

The United States has approximately 2.3 million people incarcerated in its jails and prisons as of March 2020.[6] Solitary confinement holds approximately 80,000 of those 2.3 million people at any given time.[7] A common form of solitary confinement is administrative segregation, wherein corrections officers remove prisoners who pose a significant threat to safety or security from the general prison population and place them in complete isolation away from other inmates.[8] Frequently, corrections officers place an inmate in administrative segregation when the inmate is undergoing investigation for new criminal charges obtained while incarcerated.[9]

Courts have consistently denied the application of the right to speedy trial to inmates who are placed in administrative segregation for a new criminal charge.[10] The United States Court of Appeals for the Third Circuit in *United States v. Bailey-Snyder*[11] joined this trend.[12] Although the federal courts of appeals are in unanimous agreement on this principle, unanimity does not signify accuracy, and therefore the *Bailey-Snyder* hold-

[6] *See* Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020*, PRISON POLICY INITIATIVE (Mar. 24, 2020), https://www.prisonpolicy.org/reports/pie2020.html (categorizing incarcerated population).

[7] *See Solitary Confinement Facts*, AMERICAN FRIENDS SERVICE COMMITTEE, https://www.afsc.org/resource/solitary-confinement-facts (last visited Nov. 5, 2020) (explaining rough estimate of those in solitary confinement).

[8] *See* Natasha A. Frost & Carlos E. Monteiro, *Administrative Segregation in U.S. Prisons*, NATIONAL INSTITUTE OF JUSTICE, 3 (Mar. 2016), https://www.ncjrs.gov/pdffiles1/nij/249749.pdf (explaining historical use of administrative segregation); *see also* Suzanne Agha, Angela Brown & Alissa Cambier, *Prisons Within Prisons: The Use of Segregation in the United States*, VERA INSTITUTE OF JUSTICE, 24 (Oct. 2011), https://www.vera.org/downloads/Publications/prisons-within-prisons-the-use-of-segregation-in-the-united-states/legacy_downloads/prisons-within-prisons-segregation.pdf (summarizing emergence of solitary confinement in U.S. prisons); Apodaca v. Raemisch, 139 S. Ct. 5, 6 (mem. 2018) (clarifying interchanging use of administrative segregation and solitary confinement). "[T]hey were held in what is often referred to as 'administrative segregation,' but what is also fairly known by its less euphemistic name: solitary confinement." *Apodaca*, 139 S. Ct. at 6.

[9] *See* Petition for Writ of Certiorari at 22, United States v. Bailey-Snyder, 923 F.3d 289 (3d Cir. 2019) (No. 19-742) (listing reasons why prison officials choose to segregate inmates).

[10] *See* United States v. Wearing, 837 F.3d 905, 910 (8th Cir. 2016) (concluding speedy trial rights had not yet attached); United States v. Daniels, 698 F.2d 221, 223 (4th Cir. 1983) (finding segregated confinement of prison inmate is not equivalent to an arrest); United States v. Mills, 641 F.2d 785, 787 (9th Cir. 1981) (holding there was no arrest or accusation until grand jury indictment); United States v. Blevins, 593 F.2d 646, 647 (5th Cir. 1979) (holding "administrative segregation is not an 'arrest' or 'accusal' for sixth amendment purposes"); United States v. Bambulas, 571 F.2d 525, 527 (10th Cir. 1978) (finding segregation not considered "arrest" for purposes of initiating time period measuring pre-indictment delay); United States v. Duke, 527 F.2d 386, 390 (5th Cir. 1976) ("[W]e do not hold administrative segregation to constitute an arrest . . . .")

[11] 923 F.3d 289 (3rd Cir. 2019)

[12] *See id.* at 294 (holding administrative segregation is not considered "arrest" within meaning of Sixth Amendment).

ing—denying speedy trial rights to an inmate placed in administrative segregation pending a criminal investigation—deserves a close examination.[13] Judge Kelly of the Eighth Circuit agreed with this notion in her concurring opinion in *United States v. Wearing*, written three years prior to the *Bailey-Snyder* case, when she expressed that she only concurred with the majority opinion's result, but "would leave for another day . . . the question of whether being placed in administrative segregation may under any circumstances qualify for an arrest for purposes of an accused's right to a speedy trial pursuant to the Sixth Amendment."[14]

This Note aims to offer support to, and expand upon, Judge Kelly's concurring opinion by comparing an arrest to administrative segregation for a new criminal charge while incarcerated and arguing that the Supreme Court of the United States should consider administrative segregation, in this context, as an arrest within the meaning of the Sixth Amendment right to a speedy trial.[15] Further, this Note will argue that if the Court does not make such a determination, there is potential for future issues regarding a defendant's competency to stand trial, as well as their ability to adequately prepare a strong defense.[16] Lastly, this Note will argue that, generally, the courts should take a more hands-on approach to this area of carceral punishment.[17]

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[13] *See id.* at 294 (holding periods of administrative segregation are not "arrests" for purposes of Sixth Amendment); *see also* Petition for Writ of Certiorari at 17, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (reiterating necessity for court to consider this issue).

[14] *See* United States v. Wearing, 837 F.3d 905, 911 (8th Cir. 2016) (Kelly, J., concurring) (stating reservations of court's holding without hearing parties fully brief issue).

[15] *See id.* (expressing court should reconsider issue); *see also* Petition for Writ of Certiorari at 27, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (urging Court to resolve question left unanswered by previous courts).

[16] *See* Medina v. California, 505 U.S. 437, 446 (1992) (emphasizing common-law rule that incompetent defendants are not required to stand trial); *see also* Dusky v. United States, 362 U.S. 402, 402 (1960) (defining test for competency standard); Petition for Writ of Certiorari at 24, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (noting isolation's effect on defendant's ability to build strong defense). "This is not a hypothetical concern. In this case, Mr. Bailey-Snyder explained that 'he was unable to locate and interview witnesses to the search or to request that the videos at the prison be preserved in the area where he was initially confronted by the guards." Petition for Writ of Certiorari at 24, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742).

[17] *See* Petition for Writ of Certiorari at 13, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (urging Supreme Court to rule on question presented).

II. HISTORY

A. History of the Right to a Speedy Trial

The Sixth Amendment right to a speedy trial has "roots at the very foundation of the [United States'] English law heritage."[18] The Assize of Clarendon, issued in 1166, established judicial procedures regarding crime and recognized the right to "speedy justice."[19] In 1215, barons of England wrote the Magna Carta in rebellion against a tyrannical king, which enshrined the right to speedy trial, and it remains one of the most fundamental bases of English liberty.[20] The barons sought to protect their rights by formulating one of the first articulations of the right to a speedy trial, writing, "[t]o no one will we sell, to no one deny or delay right or justice."[21]

Motivated by the belief that they were entitled to the rights guaranteed by the Magna Carta, the American Founders ensured the presence of those rights in the U.S. Constitution with the Bill of Rights.[22] In 1776, founding father George Mason wrote in the Virginia Declaration of Rights that "in all capital or criminal prosecutions a man has a right to . . . a speedy trial . . . ."[23] This right was adopted by several of the states' consti-

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[18] *See* Klopfer v. North Carolina, 386 U.S. 213, 223 (1967) (detailing history of right to speedy trial).

[19] *See id.* (explaining where early evidence of recognition of right to speedy justice is found); *see also Assize of Clarendon*, EARLY ENGLISH LAWS, https://earlyenglishlaws.ac.uk/laws/texts/ass-clar/ (last visited Nov. 5, 2020) (providing purpose of Assize of Clarendon).

[20] *See* Petition for Writ of Certiorari at 12, *Bailey-Snyder*, 923 F.3d 289 (No. 19-472) (outlining history of solitary confinement's development in U.S.); *see also Magna Carta*, NATIONAL ARCHIVES (Apr. 26, 2019), https://www.archives.gov/exhibits/featured-documents/magna-carta (summarizing emergence of Magna Carta); Ben Johnson, *The History of the Magna Carta*, HISTORIC UK, https://www.historic-uk.com/HistoryUK/HistoryofEngland/The-Origins-of-the-Magna-Carta (last visited Nov. 5, 2020) (explaining English baron's disapproval of King John I). "[T]he barons focused their attack on John's oppressive rule, arguing that he was not adhering to the Charter of Liberties." Johnson, *supra*.

[21] *See Magna Carta*, NATIONAL CONSTITUTION CENTER, https://constitutioncenter.org/learn/educational-resources/historical-documents/magna-carta (last visited Nov. 5, 2020) (listing rights in Magna Carta).

[22] *See* Robert Schehr, *Essay From the Innocence Project: Shedding the Burden of Sisyphus: International Law and Wrongful Conviction in the United States*, 28 B.C. THIRD WORLD L.J. 129, 149 (2008) (explaining Magna Carta's influence on U.S. Bill of Rights). "The rights of the accused flowing from the Magna Carta . . . were adopted by the colonists and then reinterpreted and expanded to complement the other freedoms articulated in the U.S. Bill of Rights." *Id.*

[23] *See The Virginia Declaration of Rights § 8*, NATIONAL ARCHIVES, https://www.archives.gov/founding-docs/virginia-declaration-of-rights (last visited Sep. 10, 2021) (declaring rights of Virginians).

tutions and is now guaranteed in each of the fifty states.[24] "The history of the right to a speedy trial and its reception in this country clearly establish that it is one of the most basic rights preserved by our Constitution."[25]

In 1972, the Supreme Court in *Barker v. Wingo*[26] promulgated a balancing test, which courts still utilize today, to determine whether a defendant has been deprived of their right to a speedy trial.[27] The factors analyzed in making such a determination include the "[l]ength of the delay, the reason[s] for the delay, the defendant's assertion of his right, and prejudice to the defendant."[28] "Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect."[29] "This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to minimize the possibility that the defense will be impaired."[30] The most serious interest is the possibility that the defense will be impaired because "the inability of a defendant adequately to prepare his case skews the fairness of the entire system."[31] Those accused have an interest in a speedy trial because it provides them with a "fair, accurate, and timely resolution" of their case.[32] The accused's interest in having a speedy trial is specifically affirmed in the Constitution, and therefore the *Barker* balancing test should reflect the importance of these interests.[33]

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[24] *See* Klopfer v. North Carolina, 386 U.S. 213, 225-26 (1967) (stating "right [to a speedy trial] was considered fundamental at [an] early period in our history[,] [which] is evidenced by its guarantee in the constitutions of several of the States of the new nation, as well as by its prominent position in the Sixth Amendment."); *see also* BURKE O'HARA FORT ET AL., A SELECTED BIBLIOGRAPHY AND COMPARATIVE ANALYSIS OF STATE SPEEDY TRIAL PROVISIONS 181 (National Institute of Law Enforcement and Criminal Justice, 1978) (comparing speedy trial laws in various U.S. states).

[25] *See Klopfer*, 386 U.S. at 226.

[26] 407 U.S. 514(1972)

[27] *See id.* at 530 (explaining use of balancing test to determine "whether a particular defendant has been deprived of his right [to a speedy trial]").

[28] *See id.* (listing court balancing factors used to determine whether defendant was afforded their speedy trial right).

[29] *See id.* at 532 (determining how to assess prejudice toward defendants).

[30] *See id.* (listing interests of defendant in having speedy trial).

[31] *See id.* (stating most important interest of defendant is ensuring case preparation is not impaired). "If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past." *Id.*

[32] *See Speedy Trial*, AMERICAN BAR ASSOCIATION: CRIMINAL JUSTICE STANDARDS, https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_speedytrial_blk (last visited Mar. 2, 2021) (explaining benefits of a speedy trial).

[33] *See* Barker, 407 U.S. at 533 (explaining how fundamental right to speedy trial is); *see also* U.S. CONST. amend. VI. (listing rights of criminally accused).

Around the same time as the *Barker* decision, courts began to notice an alarming rise in the backlogs of federal and state court calendars, and oftentimes the result of frequent delays in bringing criminal cases to trial increasingly contributed to these backlogs.[34] Although courts used the *Barker* test to determine the timeline of a defendant's speedy trial rights, this practice only exacerbated the delays due to the ad hoc nature of the assessment.[35] These loose guidelines led to the conclusion that in order to protect the public's interests and to reduce court congestion, there needed to be a system imposed with specific guidelines for "prompt disposition of criminal cases."[36] The Speedy Trial Act of 1974 followed, and many states adopted similar speedy-trial legislation before the late 1970s.[37] The Act's purpose was to protect the public's interest in bringing the criminally accused to justice promptly and "[t]o assist in reducing crime and the danger of recidivism[.]"[38] The Act requires filing the information or indictment within thirty days from the date of arrest or service of the summons, and

[34] *See* Linda M. Ariola et al., *The Speedy Trial Act: An Empirical Study*, 47 FORDHAM L. REV. 713, 717 (1979) (pointing out spikes in backlogs of state and federal cases in late 1960s).

[35] *See id.* (explaining test used and how it failed to resolve backlogs of state and federal cases); *see also* Barker v. Wingo, 407 U.S. 514, 523 (1972) (refusing to quantify Sixth Amendment guarantee). Quantifying the right to speedy trial guarantee would require the Court "to engage in legislative or rulemaking activity, rather than in the adjudicative process . . . ." *Barker*, 407 U.S. at 523.

[36] *See* Ariola et al., *supra* note 34, at 717 (1979) (stating turning point in speedy trial legislation).

[37] *See* ANTHONY PARTRIDGE, LEGISLATIVE HISTORY OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974 11 (Federal Judicial Center, 1980) (detailing "society's interest in bringing criminals to justice promptly.") The state legislation regarding defendant's rights was concerned more with clarifying the actual rights of defendants rather than specifically focusing on their speedy trial rights. *Id.* As the 1960s counterculture and civil rights movement led to renewed calls for strong law and order, this "speedy trial legislation acquired a second purpose: it was seen as a vehicle for protecting society's interest in bringing criminals to justice promptly." *Id.*

[38] *See id.* at 15 (quoting S. REP. NO. 93-1021, at 2076 (1974)) (explaining Speedy Trial Act's purpose). "What appears to have been new in the late sixties was the idea that this interest could be protected by combining statutory time limits with a provision for dismissal if the time limits were violated." *Id.*; *see also* Ariola, *supra* note 34, at 716-17 (explaining public's interest in having speedy trials).

> The public is concerned with the effective prosecution of criminal cases, both to restrain those guilty of crime and to deter those contemplating it. Just as delay may impair the ability of the accused to defend himself, so it may reduce the capacity of the government to prove its case. Moreover, while awaiting trial, an accused who is at large may become a fugitive from justice or commit other criminal acts. And the greater the lapse of time between the commission of an offense and the conviction of the offender, the less the deterrent value of his conviction.

Ariola, *supra* note 34, at 716-17.

the trial must commence within seventy days from the date of filing the information or indictment.[39]

B. History of Solitary Confinement in the United States

The practice of isolating prisoners in the United States began during America's colonization when prison administrators separated prisoners for a myriad of organizational reasons such as gender and type (e.g., convicted criminal or unfree citizen).[40] It was not until the 1790s that the United States began specifically utilizing solitary confinement to separate prisoners.[41] Much like how it is used today, solitary confinement served as a threatening message to prisoners to follow the prison's rules or they could face an indeterminate period in an environment designed to wreak psychological pain.[42]

Beginning in the early nineteenth century, penal institutions began experimenting with many forms of solitary confinement to "achieve their goals better."[43] Overcrowding and lack of space in prisons contributed to the inmates' poor physical and mental health, and many prison reformers believed the practice of solitary confinement was cruel, inhumane, and extremely costly.[44] Solitary confinement continued only as a "minor prac-

[39] *See* 18 U.S.C. § 3161(b) (1974) (outlining timing requirements of right to speedy trial regarding summons); 18 U.S.C. § 3161(c)(1) (1974) (outlining timing requirements of right to speedy trial regarding when trial must commence).

[40] *See* Keramet Reiter & Ashley T. Rubin, Article, *Continuity in the Face of Penal Innovation: Revisiting the History of American Solitary Confinement*, 43 L. & SOC. INQUIRY 1604, 1612 (2018) (explaining administrative control was used to maintain basic control over daily institutional operation). "[P]risoners of different genders and types (recidivist or novice, convicted criminal or unfree citizen) were separated from each other to prevent the spread of disease as well as the mutual moral contamination previously wrought by congregating prisoners in jails." *Id.* at 1613.

[41] *See id.* at 1612-13 (detailing purposes of separating prisoners for nonpunitive purposes). "Distinct from colonial jails, however, these early prisons kept their convicted criminals separate from the untried, witnesses awaiting trial, debtors, vagrants, and others who also remained congregated together." *Id.* at 1613.

[42] *See id.* at 1613 (explaining advantages of early uses of solitary confinement to prison administrators). "In this regime, reformers considered solitary confinement an indispensable tool for prisoner reformation, but not one intended for all prisoners—only for the worst offenders." *Id.*

[43] *See id.* (referring to past failures for reasons to begin use of solitary confinement). "These early episodes with total solitary confinement at Western State Penitentiary, Auburn State Prison, and Maine State Prison became the first set of 'historical echoes' that would continue to haunt penal experimentation and innovation." *Id.* at 615.

[44] *See id.* at 1614-1615 (explaining penal reformers' and prison administrators' intense opposition to solitary confinement). "[R]eformers and other commentators believed solitary confinement was too expensive: prisoner labor was increasingly understood to be a central ingredient for prisoner reformation and to offset the cost of prison maintenance, but labor seemed impossible in solitary." *Id.* at 1615.

tice" throughout the United States, and in 1890 the Supreme Court, albeit in non-binding dicta, "dismissed solitary confinement as a barbaric and destructive practice no longer used in most of the United States."[45]

> As the twentieth century wore on, prisons lost their experimental sheen and became an integral part of U.S. democracy. Solitary confinement, on the other hand, continued to inspire criticism, and critics from the Supreme Court to the *Saturday Evening Post* continued to presume that the practice of solitary confinement, unlike incarceration, was far from integral to American democracy.[46]

Solitary confinement became more commonly used in American prisons during the initial period of mass incarceration.[47] In the 1970s and 1980s, litigation challenging the practice increased, arguing that "even short-term uses of solitary confinement . . . 'serve[] no rehabilitative purpose.'"[48] Super-maximum ("supermax") prisons emerged in the 1980s and 1990s and are described as "the model of incarcerating large numbers of prisoners in near total isolation."[49] The supermax model's origin can be traced to the slave plantation and convict labor systems, which both fed off the complete control of African-Americans.[50] The increased use of solitary

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[45] *See* Reiter, *supra* note 40, at 1619-20 (noting critique of solitary confinement was not legally binding).

[46] *Id.* at 1620-21.

[47] *Id.* at 1622 (describing new technologies of systematic isolation). "[P]rison systems across the United States began testing out new technologies of longer-term, more systematic isolation . . . [a]s with earlier forms of solitary confinement use, prison officials faced critique, but they defended themselves against these critiques, often with reference to historical echoes of earlier regimes." *Id*.

[48] *See id.* at 1621-22 (citing Hutto v. Finney, 437 U.S. 678, 686 n.8 (1978)) ("The *Hutto* Court, like many lower courts considering similar challenges to solitary confinement in state prisons across the United States, upheld caps of fifteen to thirty days on durations of solitary confinement, seeking to avoid lengthier stays.") "By the early 1970s, more than thirty state prison systems faced challenges to conditions of confinement in at least one facility, and sometimes the entire state system." *Id.* at 1621.

[49] *See id.* at 1623 (detailing how supermax prisons became so prevalent); Jules Lobel, Essay, *Mass Solitary and Mass Incarceration: Explaining the Dramatic Rise in Prolonged Solitary in America's Prisons*, 115 NW. U. L. REV. 159, 162 (2020) (noting rise in practice of "incarcerating large numbers of prisoners in near total isolation from each other"). "[I]nstead of designing alternatives to solitary confinement, prison administrators worked with architects to design the first 'supermax' prisons—technologically advanced facilities that institutionalized lockdown practices." *See* Reiter, *supra* note 40, at 1623. "Supermaxes. . .can be better understood as a product of [] contested origin stories: a reinvention and reinterpretation of solitary confinement, with multiple eras of critique integrated into the institution, as encrusted layers of both justification and practice." *Id.* at 1625.

[50] *See* Lobel, *supra* note 49, at 182 (describing historical origination of supermax facilities). "[T]he supermax represents a form of control different from, yet connected to, the racist practices

confinement was also racially discriminatory; the same racial disparities that characterize the general prison population are replicated in the population of those held in solitary confinement.[51]

> The rise of mass solitary confinement . . . [sprang] from the same root cause that critical theorists identify as inspiring mass incarceration: the need to develop new mechanisms of social control to replace an old order thrown into turmoil by mass protests, litigation, and changing societal attitudes. In both cases of mass isolation and removal from society, the political technique involved the imagery of a violent, predatory monster who was no longer perceived to be human.[52]

C. Historical Analysis of Psychological Issues Caused by Solitary Confinement

In 1829, the Eastern State Penitentiary in Philadelphia began a new solitary confinement experiment.[53] The so-called "'Philadelphia System' involved almost an exclusive reliance upon solitary confinement as a means of incarceration[,]" and the mental impact on inmates was catastrophic.[54] The Philadelphia System caused side effects in prisoners with no prior history of mental illness, and exacerbated the condition of those with existing mental illness.[55] The Supreme Court noted, in 1980, regarding the psychological issues endured by those placed in solitary confinement:

> A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition . . . and

used to brutalize, control, and subordinate African Americans in the plantation system and convict labor system of previous eras." *Id.*

[51] *See id.* at 185-86 (noting presence of racial discrimination in both mass incarceration and mass solitary confinement).

[52] *Id.* at 181-82.

[53] *See* Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325, 328 (2006) (summarizing beginning of experiment).

[54] *See id.* at 328-29 (describing psychological harm resulting from solitary confinement). The mental side effects included an "agitated confusional state which, in more severe cases, had the characteristics of a florid delirium, characterized by severe confusional, paranoid, and hallucinatory features, and also by intense agitation and random, impulsive, often self-directed violence." *Id.* at 328.

[55] *See id.* at 328-29 ("[S]uch confinement almost inevitably imposed significant psychological pain during the period of isolated confinement and often significantly impaired the inmate's capacity to adapt successfully to the broader prison environment.")

> others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.[56]

Throughout the twentieth century, prisons specifically utilized to isolate inmates began to emerge across the United States.[57] By the 1990s, states increased the amount of supermax or control-unit prisons, and solitary confinement became a standard practice at these carceral facilities.[58] As the use of solitary confinement expanded, so, too, did popular opposition to the practice, as knowledge of the resulting irreversible damage became widespread.[59] By this time, the American public knew that "other symptoms manifesting from isolation included 'psychiatric syndrome, characterized by hallucinations; panic attacks; overt paranoia; diminished impulse control; hypersensitivity to external stimuli; and difficulties with thinking, and concentration and memory.'"[60] Forensic psychiatrist Terry Kupers found that the conditions of supermax cells caused great harm to those who were relatively psychiatrically healthy, and even greater harm to those with pre-existing mental illness.[61] Those placed in solitary confinement are 78% more likely to die by suicide within the first year after their release, and 127% more likely to die of an opioid overdose within the first two weeks after their release.[62] Currently, public disapproval of solitary confinement lingers and is reflected by a large civil rights movement to abolish the practice altogether due to the same negative psychological ef-

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[56] *In re* Medley, 134 U.S. 160, 168 (1890) (describing psychological impact of prolonged isolation).

[57] *See* Laura Sullivan, *Timeline: Solitary Confinement in U.S. Prisons*, NAT'L PUB. RADIO, (Jul. 26, 2006) https://www.npr.org/templates/story/story.php?storyId=5579901 (summarizing historical timeline of solitary confinement prisons).

[58] *See id.* ("Oregon, Mississippi, Indiana, Virginia, Ohio, Wisconsin and a dozen other states all buil[t] new, free-standing, isolation units.") The 1990s were considered a "building boom" era of supermax or control-unit prisons throughout the century. *Id.*

[59] *See* Reiter, *supra* note 40 at 1604-05 (highlighting criticism denouncing solitary confinement as immoral and inhumane punishment).

[60] *See* Ruth Chan, Comment, *Buried Alive: The Need to Establish Clear Durational Standards for Solitary Confinement*, 53 J. MARSHALL L. REV. 235, 252 (2020) (discussing symptoms experienced due to solitary confinement).

[61] *See id.* at 252-53 ("[P]risoners who spent long periods of time in solitary confinement exhibited anxious, paranoid, and angry behavior and had difficulty with concentration, cognition, and memory.")

[62] *See* Aaron Stagoff-Belfort, *Study Links Solitary Confinement to Increased Risk of Death After Release*, VERA INSTITUTE OF JUSTICE (Dec. 4, 2019) https://www.vera.org/blog/study-links-solitary-confinement-to-increased-risk-of-death-after-release (stating statistics about placement in solitary confinement).

fects that have always been apparent.[63] In a country already suffering from a crippling mental health crisis, solitary confinement is an additional afront to the wellbeing of incarcerated Americans that inflicts long-term psychological trauma.[64]

A recent well-known, and tragic, case of solitary confinement is the story of Kalief Browder.[65] In 2010, Kalief was a sixteen-year-old boy living in the Bronx, New York, when someone accused him of stealing their backpack.[66] After his family could not afford bail, the Bronx County Criminal Court sent Kalief to Rikers Island.[67] Due to his involvement in physical altercations while at Rikers, Kalief spent the last two years of his imprisonment in solitary confinement, never having been convicted of a crime when, finally, prosecutors dropped the charges against him for lack of evidence and released him.[68]

In the years following Kalief's imprisonment on Rikers Island, he experienced psychological side effects due to his prolonged time in isolation, such as constant paranoia that people were after him.[69] He heard voices in his head, and often talked to himself.[70] Family members recall that Kalief did not seem like himself because he was always paranoid.[71] Tragically, Kalief died by suicide at his parents' Bronx home just two years after his release from Rikers.[72]

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[63] *See We Can Stop Solitary*, AM. CIVIL LIBERTIES UNION, https://www.aclu.org/issues/prisoners-rights/solitary-confinement/we-can-stop-solitary (last visited Mar. 6, 2021) ("Officials in some states that formerly relied heavily on solitary confinement are now realizing that they should use public resources on proven policies that promote safe communities and fair treatment, and are successfully reducing the use of solitary . . . .")

[64] *See* Jamie Fellner & Jeffrey L. Metzner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCH. & the L. 104, 104-5 (2010) (listing psychological side-effects of prolonged isolation); *see also The State of Mental Health in America*, MENTAL HEALTH AMERICA, https://mhanational.org/issues/state-mental-health-america (last visited, Nov. 28, 2021) (listing key findings of status of mental health in America); Alexandra Douglas, *Caging the Incompetent: Why Jail-Based Competency Restoration Programs Violate the Americans with Disabilities Act under* Olmstead v. L.C., GEO. J. LEGAL ETHICS, 525, 527 (2019) (noting population suffering from mental health issues within the prison system).

[65] *See Time: The Kalief Browder Story: Part 2 – The Island* (Netflix Mar. 8, 2017) (documenting Kalief Browder's experience at Rikers Island).

[66] *See id.* (highlighting lack of evidence involved in case against Kalief).

[67] *See id.* (detailing impact of not posting bail).

[68] *See id.* (depicting prosecutor's shortcomings in establishing case).

[69] *See id.* (showing interview with Kalief explaining paranoid thoughts).

[70] *See Time: The Kalief Browder Story: Part 5 – Injustice for All* (Netflix Mar. 29, 2017) (explaining specific paranoia symptoms).

[71] *See id.* (showing concerns from Kalief's family).

[72] *See id.* (explaining Kalief's tragic passing).

D. The Court's Role in Carceral Punishment

Historically, American courts have utilized the "hands-off doctrine[,]" which precludes judges from determining what rights survive incarceration.[73] In an effort to self-regulate and avoid the ire of the legislative or executive branches, courts proactively adopted this doctrine with a vow to simply not intervene in the operations of state penal institutions.[74] Given that "the management and control of these institutions are generally viewed as executive and legislative functions[,]" the hands-off doctrine ensured the courts were not using their federal power to dictate how states run their penal institutions.[75] Although the doctrine was eventually discredited in the mid to late 1990s, courts continued to utilize the hands-off doctrine on administrative segregation and supermax confinement.[76]

E. Case Law Preceding Bailey-Snyder

The more frequent usage of administrative segregation caused an attendant rise in litigation principally about such usage, particularly in the form of inmates asserting that prolonged isolation constituted a violation of their Sixth Amendment right to a speedy trial.[77] The first instance of this type of litigation came in the 1970s, when circuit courts held that being placed in administrative segregation for a new criminal charge pending

[73] *See Legal Rights of Prisoners: The Hands-off Period*, L. LIBR. – AM. L. AND LEGAL INFO., https://law.jrank.org/pages/1761/Prisoners-Legal-Rights-hands-off-period.html (last visited Feb. 1, 2021) (stating prisoners had no legal right to humane conditions in confinement). "Judges refused to intervene on the ground that their function was only to free those inmates illegally confined, not to superintend the treatment and discipline of prisoners in penitentiaries." *Id.*; *see also The Hands-Off Period*, LEGAL RIGHTS OF PRISONERS, https://law.jrank.org/pages/1761/Prisoners-Legal-Rights-hands-off-period.html (last visited Mar. 6, 2021) (detailing judge's utilization of hands-off doctrine).

[74] *See Legal Rights of Prisoners: The Hands-off Period*, *supra* note 73 (reasoning courts felt they did not have proper solution to these kinds of issues). "The courts believed that they lacked the expertise to become involved in prison management and the corrections officials perceived judicial review as a threat to internal discipline and authority." *Id.*

[75] *See id.* (explaining why courts used hand-off approach).

[76] *See id.* (stating that hands-off doctrine was eventually phased out). "Courts and commentators began to recognize that the separation of powers does not foreclose judicial scrutiny when the legislature or executive acts unconstitutionally." *Id.*; *see also* Lobel, *supra* note 49, at 184 ("[B]y the mid-to late 1990s, the courts had developed a largely hands-off policy on administrative segregation and supermax confinement.")

[77] *See*, *e.g.*, Rivera v. Toft, 477 F.2d 534, 535-36 (10th Cir. 1973) (holding that administrative segregation is not synonymous with "arrest"); United States v. Duke, 527 F.2d 386, 390 (5th Cir. 1976) ("[W]e do not hold administrative segregation to constitute an arrest because of what we consider to be the essential nature of that act."); United States v. Blevins, 593 F.2d 646, 647 (5th Cir. 1979) ("Blevins' confinement in administrative segregation is not an 'arrest' or an 'accusal' for sixth amendment purposes.")

criminal investigation is not the same as an arrest, and therefore refused to extend the right to a speedy trial in these instances.[78] Defendants frequently raised Sixth Amendment arguments well into the 1980s, but courts continued to refuse to extend the fundamental right to speedy trial to administrative segregation for a new criminal charge.[79] Finally, in *United States v. Bailey- Snyder*, the Third Circuit addressed the question posed by Judge Kelly's Eighth Circuit concurring opinion—whether administrative segregation for a new charge should be considered an arrest within the meaning of the Sixth Amendment right to speedy trial—but ultimately sided with their sister courts in holding that it should not.[80]

III. FACTS

A. Underlying Case

In 2015, appellant James Bailey-Snyder was incarcerated at Schuylkill, the Federal Correctional Institution in Minersville, Pennsylvania, when he was allegedly found with "a seven-inch homemade plastic weapon (shank) on his person."[81] Correctional officers then moved him to administrative segregation, where he remained in solitary confinement for twenty-three hours each weekday in the Special Handling Unit ("SHU") pending further investigation by the Federal Bureau of Investigation ("FBI").[82] In June, 2016, Bailey-Snyder was eventually indicted on one count of possession of a prohibited object in prison after having spent eleven months in the SHU.[83] Bailey-Snyder moved to dismiss the indictment

[78] *See Rivera*, 477 F.2d at 536 ("Actions of prison officials in disciplining inmates are not subject to judicial review in the absence of arbitrariness or caprice.")

[79] *See* United States v. Mills, 641 F.2d 785, 787 (9th Cir. 1981) ("Administrative segregation by the prison board is not an 'arrest' or 'accusal' for speedy trial purposes."); *see also* United States v. Daniels, 698 F.2d 221, 223 (4th Cir. 1983) ("In all the cases where this question has been directly addressed, the courts have found that segregative confinement of a prison inmate is not the equivalent of an arrest for purposes either of the Rule or of the constitutional provisions.")

[80] *See* 923 F.3d 289, 291 (3d Cir. 2019) (holding administrative segregation while under investigation for new crime does not trigger sixth amendment).

[81] *See id.* at 292 (explaining nature of accusations).

[82] *See id.* (stating Bailey-Snyder remained in isolation pending further investigation); *see also* Petition for Writ of Certiorari at 2-3, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (stating Bailey-Snyder's confinement was for 23 hours each weekday). "His isolation was typical of the modern solitary confinement regime. For 23 hours each weekday, he was confined to a single-person cell. There, he endured social and environmental isolation. Still, the government did not move quickly." *Id.*

[83] *See Bailey-Snyder*, 923 F.3d at 292 (describing cause for indictment); *see also* Petition for Writ of Certiorari at 3, *Bailey-Snyder*, 923 F.3d 289, (No. 19-742) (specifying indictment was for possession of shank).

on the grounds that his prolonged confinement in the SHU violated both his constitutional and statutory rights to a speedy trial.[84] The District Court denied the motion without holding an evidentiary hearing, and the case went to trial a month later.[85] During trial, the defense attempted to undermine the officers' credibility by pointing to possible Bureau of Prisons ("BOP") incentive programs for recovering contraband.[86] The Government rebutted this claim, but did not offer much evidence in support of their rebuttal.[87] After being convicted and sentenced to 30 months additional imprisonment, running consecutively to his underlying conviction, Bailey-Snyder appealed.[88]

B. United States v. Bailey-Snyder

On appeal, Bailey-Snyder argued that his constitutional and statutory rights had been violated.[89] As an issue of first impression for the Third Circuit, the court considered the question of "whether speedy trial rights attach when a prisoner is placed in administrative segregation[.]"[90] Nonetheless, the Third Circuit aligned with its sister courts in deciding that administrative segregation was not an arrest within the meaning of the Sixth Amendment, and therefore declined to extend the constitutional speedy trial right "to the period prior to arrest."[91]

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[84] *See Bailey-Snyder*, 923 F.3d at 292 ("Focusing on his placement in administrative segregation as the start of the speedy trial clock, Bailey-Snyder moved to dismiss his indictment, alleging violations of his constitutional and statutory rights to a speedy trial.")

[85] *See id.* ("Reasoning that placement in the SHU does not constitute an arrest or accusation that would trigger speedy trial rights.")

[86] *See id.* (explaining defense counsel cross-examined officers regarding incentive programs for recovering contraband).

[87] *See id.* ("The Government's only other witness was the FBI agent who investigated the case.")

[88] *See id.* at 293 (stating Bailey-Snyder filed a timely appeal).

[89] *See Bailey-Snyder*, 923 F.3d 289 at 294 (outlining Bailey-Snyder's arguments). Constitutionally, he argued "that SHU placement (like an arrest) . . . restrains the inmate's liberty, worries friends and family, prevents the inmate from gathering evidence, and focuses the prison population's obloquy on the segregated inmate." *Id.* Statutorily, he argued that the delay prior to his indictment violated the Speedy Trial Act, which requires the Government "to file an indictment or information against a defendant 'within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges.'" *Id.* (quoting United States v. Oliver, 238 F.3d at 473).

[90] *See id.* at 291 (stating court had never addressed this particular issue before). "This appeal presents a question of first impression in this Court: does an inmate's placement in administrative segregation while he is under investigation for a new crime trigger his right to a speedy trial under the Sixth Amendment or the Speedy Trial Act?" *Id.*

[91] *See Bailey-Snyder*, 923 F.3d at 293-94 (quoting United States v. Marion, 404 U.S. 307, 313 (1971)) (agreeing with all five circuit courts that have considered this issue on appeal). The Third Circuit held that their sister courts persuasively rebutted claims like Bailey-Snyder's for

> The court's conclusion rested on four bases. First, solitary confinement imposed for this purpose occurs in "the peculiar context of a penal institution where the curtailment of liberty is the general rule, not the exception." Second, prison officials may transfer prisoners to solitary confinement for non-prosecutorial reasons . . . . Third, other circuits had previously held that solitary confinement could not amount to an arrest. [Fourth], the Third Circuit also placed significant weight on an (erroneous) belief that Mr. Bailey-Snyder could administratively challenge his solitary confinement during the pendency of the FBI referral.[92]

The court held that the District Court correctly denied Bailey-Snyder's motion to dismiss the indictment for a speedy trial violation because being placed in administrative segregation does not constitute an "arrest" within the meaning of the Sixth Amendment.[93] The court further reasoned that "inmates like Bailey-Snyder have an opportunity to administratively challenge their segregation's length prior to arrest or accusation[.]"[94] In light of this decision, in January 2020, Bailey-Snyder petitioned to the Supreme Court for further review, arguing that precedent followed by the circuit courts regarding administrative segregation and the right to speedy trial "disregards both the foundational nature of the speedy trial right, and our present understanding of the threat of the modern solitary confinement regime."[95] The Court denied the petition for writ of certiorari.[96]

speedy trial rights to attach when placed in administrative segregation pending criminal investigation. *Id.* at 294.

[92] *See* Petition for Writ of Certiorari at 26-27, *Bailey-Snyder*, 932 F.3d 289 (No. 19-742).

[93] *See id.* at 293-96 (blaming denial of right to speedy trial on opportunity to administratively challenge segregation length).

[94] *See Bailey-Snyder*, 923 F.3d at 294 (explaining administrative remedies for inmates like Bailey-Snyder).

[95] *See* Petition for Writ of Certiorari at 26-27, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (citation omitted) (petitioning to Supreme Court). "The time has come for this court to resolve the question it left unanswered decades before the true cost of solitary confinement became known." *Id.*

[96] *See* Bailey-Snyder v. United States, 140 S. Ct. 847 (2020) (denying petition for writ of certiorari).

C. Arrest vs. Administrative Segregation

Arrests require probable cause to believe the accused committed a crime.[97] Once police establish probable cause, they have the authority to take the accused into custody for the purpose of charging the person with that crime.[98] Courts classify an "arrest" as "a public act that may seriously interfere with the defendant's liberty . . . and [] may disrupt [their] employment, drain [their] financial resources, curtail [their] associations, subject [them] to public obloquy, and create anxiety in [themselves], [their] family, and [their] friends."[99]

Administrative segregation is not clearly defined, but courts deem it as the equivalent of solitary confinement.[100] Typically, administrative segregation separates an inmate from the general population who corrections officers deem a threat to themselves, other inmates, or prison officials from the general prison population.[101] For more serious offenses, inmates must build a defense against the charges that landed them in administrative segregation.[102] Administrative segregation is commonly used as a consequence of a new "charge" against an inmate while incarcerated, resulting in

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[97] *See* U.S. CONST. amend. IV. (requiring probable cause for searches and seizures); *see also* United States v. Marion, 404 U.S. 307, 320 (1971) (detailing requirements of a lawful arrest).

[98] *See* Wayne R. LaFave, et al., *Principles of Criminal Procedure: Post-Investigation* 333-34 (Thomson Reuters, 2nd ed. 2009) (noting elements of arrest).

[99] *See Marion*, 404 U.S. at 320 (describing "restraints imposed by arrest").

[100] *See* Apodaca v. Raemisch, 139 S. Ct. 5, 6 (mem. 2018) (clarifying interchanging use of administrative segregation and solitary confinement). "[T]hey were held in what is often referred to as 'administrative segregation,' but what is also fairly known by its less euphemistic name: solitary confinement." *Id.*; *see also* Estelle v. Gamble, 429 U.S. 97, 100 n.5 (1976) (explaining interchanging use of terms "solitary confinement" and "administrative segregation"). "There are a number of terms in the complaint whose meaning is unclear, and with no answer from the State, must remain so. For example, 'administrative segregation' is never defined. The Court of Appeals deemed it the equivalent of solitary confinement." *Id.*

[101] *See* Elli Marcus, Comment, *Toward a Standard of Meaningful Review: Examining the Actual Protections Afforded to Prisoners in Long-Term Solitary Confinement*, 163 U. PA. L. REV. 1159, 1162 (2015) (explaining purpose of administrative segregation); *see also* Petition for Writ of Certiorari at 22, United States v. Bailey-Snyder, 923 F.3d 289 (3d Cir. 2019) (No. 19-742) (listing reasons prison officials segregate inmates). "Prison officials . . . segregate inmates for myriad reasons, including: investigation, discipline, protection, prevention, and transition." Petition for Writ of Certiorari at 22, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (citations omitted).

[102] *See* Woff v. McDonnell, 418 U.S. 539, 563-64 (1974) (detailing necessity of preparation time for inmates to prepare defense against new charges); James E. Robertson, Commentary, *"Catchall" Prison Rules and the Courts: A Study of Judicial Review of Prison Justice*, 14 ST. LOUIS U. PUB. L. REV. 153, 156-57 (1994) (describing how inmates are expected to build their defense). *See generally Jailbirds* (Netflix May 10, 2019) (showing inmates pleading to charges brought against them while incarcerated).

a criminal investigation by prosecutors.[103] Inmates placed in administrative segregation are typically placed in single inmate pods, and isolated for approximately twenty-two to twenty-four hours a day.[104] Most jurisdictions in the United States do not require a maximum hour limit—the point after which prisoners must be released back into the general prison population—while a global standard exists that solitary confinement should not last more than fifteen days.[105]

D. Procedure: Arrests v. Administrative Segregation

Following arrest, an accused is brought to the court to be arraigned and to respond to the charges being brought against him or her.[106] Depending on the accused's plea, trial preparation commences, hopefully, in accordance with the accused's right to a speedy trial.[107] The accused must assert this right, but he can also choose to waive it.[108] When determining whether the accused's speedy trial right has been violated, the Supreme Court in *Barker v. Wingo* balanced the following factors: (1) the length of delay, (2) the reason for delay, (3) the time and manner in which the defendant has asserted his right, and (4) the degree of prejudice to the defendant the delay has caused.[109] The Speedy Trial Act serves "to assist in reducing crime and the danger of recidivism by requiring speedy trials[.]"[110]

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[103] *See Bailey-Snyder*, 923 F.3d at 292 (stating Bailey-Snyder was indicted on charges of new crime while incarcerated); Hewitt v. Helms, 459 U.S. 460, 464 (1983) (exampling inmate charged with crime while incarcerated). *See generally Jailbirds* (Netflix May 10, 2019) (demonstrating inmates charged for crimes resulting in administrative segregation).

[104] *See* Frost, *supra* note 8, at 6 (listing distinct features of solitary confinement); *see also* Valerie Kiebala & Sal Rodriquez, *FAQ*, *Solitary Confinement in the United States*, SOLITARY WATCH, https://solitarywatch.org/facts/faq/ (Dec. 2018) (acknowledging that inmates often endure solitary confinement for twenty-three to twenty-four hours per day).

[105] *See* Kiebala & Rodriguez, *supra* note 104 (stating forty-two jurisdictions report no maximum limit); *see also* Amy Fettig, et al., *Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees*, WEIL, GOTSHAL & MANGES LLP at 11 (Aug. 2016), https://www.weil.com/~/media/files/pdfs/2016/un_special_report_solitary_confinement.pdf (explaining United Nations' call for global ban on solitary confinement exceeding fifteen days).

[106] *See* LaFave, et al., *supra* note 98, at 13 (describing arraignment process).

[107] *See id*. at 14 (outlining timeline of a criminal trial).

[108] *See id*. at 333-34 (detailing procedure of the right to speedy trial).

[109] *See* Barker v. Wingo, 407 U.S. 514, 530 (1972) (listing balancing test factors courts use to determine violation of speedy trial rights).

[110] *See* Speedy Trial Act of 1974, Pub. Law. No. 93-619 (1975) (stating purpose of Speedy Trial Act).

It is meant to regulate the time in which a trial begins after arrest, and theoretically ensure no undue delay in criminal prosecutions.[111]

When correctional authorities place inmates in administrative segregation on accusations of a major offense against *internal* rules, those authorities organize and conduct their own internal disciplinary hearing.[112] An inmate facing such a hearing is informally "charged[,]" and is subjected to a completely internal review process.[113] Inmates have the "opportunity to administratively challenge their segregation's length prior to arrest or accusation[.]"[114] Conversely, if an inmate is placed in solitary confinement while police and prosecutors build a criminal case against them, like Bailey-Snyder, the inmate cannot avail themselves of the administrative remedies previously discussed.[115] In these situations, "it is effectively the speedy trial right or nothing that stands in the way of government overreach."[116]

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[111] *See* Kerry J. Eudy & Ira K. Packer, *Speedy Trial Act of 1974*, J. OF THE A. ACAD. OF PSYCH & THE L. (Sept. 2007), http://jaapl.org/content/35/3/393 (detailing purpose of Speedy Trial Act).

[112] *See* Robertson, *supra* note 102, at 156 (explaining start of formal disciplinary process).

[113] *See id.* at 156-57 (describing each step of disciplinary process). Fellow inmates or members of the prison staff act as counsel substitutes for inmates, and their task is to "carry out the most basic, reasonable, and non-disruptive requests of the inmate." *Id.* (quoting Pino v. Dalshelm, 605 F. Supp. 1305, 1318 (S.D.N.Y. 1984). The inmate can gather witnesses and advance their defense until it is time for the impartial adjudication, which is carried out by corrections officers. *Id.*

> Even though tribunals staffed by the prison's own officers face "obvious pressure to resolve a disciplinary dispute in favor of the institution . . .," their use is not unconstitutional as long as the charging officer, witnesses, and other persons substantially involved in the circumstances underlying the charge are recused.

Id. at 157-58 (footnotes omitted).

[114] *See* United States v. Bailey-Snyder, 923 F.3d 289, 294 (3rd Cir. 2019) (pointing to alternative remedy for inmates who are administratively segregated).

[115] *See* Petition for Writ of Certiorari at 23, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (highlighting administrative remedies are for other uses of solitary confinement not resulting in criminal investigation).

> Likewise, if prison officials were to throw a prisoner in solitary confinement for some purpose other than to detain him pursuant to a criminal investigation, speedy trial rights would not attach. Instead, the prisoner could avail himself of the administrative remedies denied Mr. Bailey-Snyder. The habeas and civil rights statutes are no substitute for speedy trial rights—litigating such claims takes years, and prisoners rarely prevail.

Id. at 23.

[116] *See id.* (explaining lack of relief options "[f]or prisoners detained in solitary confinement to permit police and prosecutors to build a criminal case").

E. Building a Case After Prolonged Isolation

Prolonged isolation can lead to issues for a defendant when attempting to build a strong defense in preparation for trial.[117] The Court in *Barker* explained that "if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense."[118] If the defendant is isolated from the general population where the incident occurred, they are unable to communicate with the witnesses and examine the evidence relevant to their case while the prosecution has the luxury of building a case against the defendant.[119] These issues are considered in the *Barker* balancing test—when determining the prejudice factor—because they go to the accused's interest in maintaining a speedy trial.[120]

Additionally, prolonged isolation often causes mental health issues, which possibly leads to determinations that a defendant is incompetent to stand trial.[121] The Court "recognize[s] that a defendant has a constitutional right 'not to be tried while legally incompetent,' and that a State's 'failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial.'"[122] Although defendants have a constitutional right to competency at trial, the Court finds constitutionally the burden is on defendants to prove incompetency.[123] The Court has said that in order to be deemed competent to stand at trial, a defendant must be able to con-

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[117] *See id.* at 24 ("[U]nder the prevailing rule, the government could hold a prisoner in dangerous isolation definitely, enabling it to gradually build a case while the prisoner's ability to do the same diminishes with each passing day.")

[118] *See id.*; Barker v. Wingo, 407 U.S. 514, 533 (1972) (explaining why it could be difficult for defendants to prepare strong defenses while incarcerated).

[119] *See* Petition for Writ of Certiorari at 24, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (describing difficulty in maintaining favorable witnesses over time).

[120] *See Barker*, 407 U.S. at 530 (accepting balancing test approach).

[121] *See* Medina v. California, 505 U.S. 437, 440 (1992) (setting standard for mentally incompetent defendant). "A defendant is mentally incompetent 'if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.'" *Id.; see also* Kirsten Weir, *Alone, in 'the hole*,*'* 43 AM. PSYCH. ASSN., 54, 54 (2012) (listing extreme mental health problems inmates suffer from prolonged isolation). "[M]any segregated prisoners reportedly suffer from mental health problems including anxiety, panic, insomnia, paranoia, aggression and depression . . . ." Weir *supra*, at 54. "The rule that a criminal defendant who is incompetent should not be required to stand trial has deep roots in our common-law heritage." *Medina*, 505 U.S. at 446.

[122] *See Medina*, 505 U.S. at 449 (describing Court's recognition of legally incompetent defendants' constitutional rights not to be tried).

[123] *See id.* at 452 (placing burden on defendant to prove incompetency).

sult with their lawyer with a reasonable degree of rational understanding and be able to comprehend the facts of the proceedings against them.[124]

Procedural safeguards for defendants deemed mentally incompetent for the purposes of standing at trial exist; a defendant may file a motion for a hearing to determine the mental competency of the defendant.[125] "Where the evidence raises a 'bona fide doubt' as to a defendant's competence to stand trial, the trial judge on his own motion must . . . conduct a hearing to determine competency to stand trial."[126] If the court finds, by a preponderance of the evidence, that the defendant is suffering from a mental disease, the defendant should be sent to a "suitable facility" for treatment until their mental condition improves for trial.[127]

IV. ANALYSIS

The U.S. should no longer practice solitary confinement because of its barbaric nature and the resultant harm it wreaks on the incarcerated.[128] Because the Supreme Court remains reluctant to abolish solitary confinement, it should consider affording inmates placed in solitary confinement pending criminal investigation their fundamental right to a speedy trial.[129] This analysis will offer compelling reasons as to why the Court should reexamine the question posed by Judge Kelley's concurring opinion: whether placing an inmate in solitary confinement pending investigation for a new criminal charge should be considered an "arrest" within the meaning of the Sixth Amendment's right to speedy trial.[130] The following

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[124] *See* Dusky v. United States, 295 F.2d 743, 746 (1960) (setting legal standard for determining defendant's competency to stand at trial).

[125] *See* 18 U.S.C.S. § 4241(a) (stating procedural safeguards for defendants deemed mentally incompetent); *see also* Douglas, *supra* note 64, at 527 (referring to population of criminal defendants with mental health care needs who are deemed incompetent).

[126] *See* Torres v. Prunty, 223 F.3d 1103, 1106-07 (9th Cir. 2000) (quoting Kaplany v. Enomoto, 540 F.2d 975, 979 (9th Cir. 1976)) (describing procedure to determine competency).

[127] *See* 18 U.S.C.S. § 4241(d) (detailing procedural remedy for defendants deemed mentally incompetent to stand trial).

[128] *See* Reiter, *supra* note 40 at 1619-20 (describing Court's rejection of solitary confinement); *see also* In re Medley, 134 U.S. 160, 170 (1890) (describing severity of solitary confinement as additional punishment). "[Solitary confinement] was considered as an additional punishment of such a severe kind that it is spoken of . . . as 'a further terror and peculiar mark of infamy' . . . ." *Id.*

[129] *See* Petition for Writ of Certiorari at 13, United States v. Bailey-Snyder, 923 F.3d 289 (3d Cir. 2019) (No. 19-742) (pushing for speedy trial rights to attach to solitary confinement pending criminal investigation); *see also* Klopfer v. North Carolina, 386 U.S. 213, 223 (1967) (explaining fundamental nature of right to a speedy trial).

[130] *See* United States v. Wearing, 837 F.3d 905, 911 (8th Cir. 2016) (Kelly, J., concurring) (stating exception to overall concurrence without hearing parties fully brief issue); *see also* Peti-

sections will compare "arrests" to solitary confinement pending investigation for a new criminal charge, arguing that the latter should trigger speedy trial rights, and will discuss the failures of procedural safeguards in penal institutions.[131]

A. Solitary Confinement Pending External Investigation Should Trigger Speedy Trial Rights

Placing an inmate in solitary confinement—or administrative segregation—pending investigation for a new criminal charge should trigger Sixth Amendment speedy trial rights because similar to an arrest, it seriously interferes with the defendant's liberty.[132] For example, it is common for inmates to have jobs while incarcerated to pay for various commodities in the prison system.[133] When put in administrative segregation for long periods of time, this "may disrupt [their] employment, and drain [their] financial resources," as they would no longer be able to work due to the forced isolation.[134] Although the general public would not know about the admin-

tion for Writ of Certiorari at 24-25, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (encouraging Supreme Court to reconsider issue).

[131] *See* Petition for Writ of Certiorari at 23, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) ("[T]he *Barker* test determines whether the nearly eleven-month delay between placement in solitary confinement and indictment constitutes a violation of those rights.") In these situations, where inmates are placed in solitary confinement pending investigation for a new criminal charge, "it is effectively the speedy trial right or nothing that stands in the way of government overreach." *Id.*

[132] *See* United States v. Marion, 404 U.S. 307, 320 (1971) (listing ways arrests interfere with defendant's liberties); *see also* Petition for Writ of Certiorari at 7, *Bailey-Snyder*, 923 F.3d 289 ((No. 19-742) (applying Bailey-Snyder case facts into *Barker* test).

> Judged against the four-prong metric set forth in *Barker*, the delay between arrest and indictment violated his speedy trial rights, Mr. Bailey-Snyder argued. First, his pre-indictment solitary confinement was lengthy. Second, the government could not justify that delay because it developed no new evidence during its protracted investigation. Third, Mr. Bailey-Snyder asserted his speedy trial rights as soon as practical. Fourth, the delay was prejudicial because it was oppressive, anxiety-inducing, and impaired his defense.

Id. (citations omitted). "Mr. Bailey-Snyder's pretrial solitary confinement was prejudicial in each of these ways. The oppressive nature and anxiety inherent in solitary confinement, detailed above, are quite clearly prejudicial." *Id.* at 23-24.

[133] *See Jailbirds: Dressed Into Oranges, Ima Be That Phatt B. . ., We're All Criminals, Swimmin' in S. . ., Bruh!* (Netflix May 10, 2019) (showing inmates relying on jobs for certain commodities while incarcerated).

[134] *See Marion*, 404 U.S. at 320 (detailing impact of being incarcerated); *see also Jailbirds: Dressed Into Oranges, Ima Be That Phatt B. . ., We're All Criminals, Swimmin' in S. . ., Bruh!* (Netflix May 10, 2019) (depicting frustration of inmates who could not afford various commodities).

istrative segregation in the same way they would know about an "arrest" on the streets, the same type of "public obloquy" can occur in prisons.[135] Prisons function in similar ways to society on the outside; relationships and cliques form, therefore the traveling of information is inevitable.[136] When an inmate goes into administrative segregation for a new charge, they often face analogous scrutiny from fellow inmates that one arrested on the streets would from the general public.[137] This can cause great anxiety for an inmate placed in isolation.[138] Lastly, depending on the specific situation, inmates are allowed calls and visits from family and friends.[139] When inmates are placed in administrative segregation, this complete isolation prevents any type of communication.[140] Lack of communication with an incarcerated loved one creates feelings of anxiety in the inmate's family and friends that are similar to those that would arise if that individual had been arrested.[141] These elements demonstrate the ways in which the Court's classification of an "arrest" is especially similar to its classification of an administrative segregation, so both should be treated the same for Sixth Amendment speedy trial purposes.[142] Disregarding this determination will likely lead to many subsequent issues, such as the isolated inmate's inability to build a strong defense and competently stand for trial.[143]

An accused's interests in a speedy trial—specifically the possibility that their defense will be impaired—mirror those of administratively segre-

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[135] *See Jailbirds: Dressed Into Oranges, Ima Be That Phatt B. . ., We're All Criminals, Swimmin' in S. . ., Bruh!* (Netflix May 10, 2019) (showing general population's knowledge of newly isolated inmate).

[136] *See id.* (displaying society formed in prison).

[137] *See id.* (observing inmates speaking negatively of newly isolated inmates).

[138] *See id.* (showing anxiety caused by such scrutiny).

[139] *See id.* (showing inmates interacting with family members).

[140] *See Jailbirds: Dressed Into Oranges, Ima Be That Phatt B. . ., We're All Criminals, Swimmin' in S. . ., Bruh!* (Netflix May 10, 2019) (showing inmates being denied opportunity to speak to loved ones); *see also* Frost, *supra* note 8, at 6 (explaining distinct features of solitary confinement). A defining feature of solitary confinement in correctional systems is minimal contact with others. *See* Frost, *supra* note 8, at 6. "Other distinct features of solitary confinement practices include . . . restrictions on visited from friends and family." *Id.*

[141] *See Time: The Kalief Browder Story: Part 3 - The Bing* (Netflix Mar. 15, 2017) (showing stress Kalief's family endured during his time in solitary confinement).

[142] *See* Petition for Writ of Certiorari at 9, United States v. Bailey-Snyder, 923 F.3d 289 (3d Cir. 2019) (No. 19-742) (applying *Marion* analysis to deem administrative segregation and arrests synonymous for sixth amendment purposes). "If speedy trial rights attached at the time of Mr. Bailey-Snyder's placement in solitary, which they must under this Court's *Marion* analysis, then the *Barker* test determines whether the nearly eleven-month delay between placement in solitary confinement and indictment constitutes a violation of those rights." *Id.* at 23.

[143] *See id.* at 7 (detailing detrimental impact of solitary confinement on inmate's ability to build a strong defense); *see also* Medina v. California, 505 U.S. 437, 439 (1992) (recognizing defendant's right to competently stand trial).

gated individuals facing a new charge.[144] Prejudice to the defendant is a factor within the *Barker* balancing test which the Court uses in assessing whether the defendant has been deprived of their right to a speedy trial.[145] The prejudice factor addresses the interests of the defendant in: (i) preventing oppressive pretrial incarceration; (ii) minimizing anxiety and concern of the accused; and (iii) limiting the possibility that the defense will be impaired.[146] With respect to preventing oppressive pretrial incarceration, inmates placed in solitary confinement while awaiting trial are certainly prejudiced given the oppressive nature of detainment.[147] It is difficult—if not impossible—to think of a more oppressive way to incarcerate someone than to lock them in a small room for twenty-three hours a day with absolutely no human interaction.[148] As for minimizing anxiety and concern of the accused, inmates in solitary confinement struggle with extreme mental health issues; if the interest in minimizing the anxiety and concerns of the accused is sincere, making them await their trial in solitary confinement is not a practice that upholds such an interest due to its destructive nature.[149] Lastly, addressing the possibility that the defense will be impaired, it is a difficult task to build a strong case while in complete isolation.[150]

> Equally clear is the detrimental impact of solitary on [an inmate's] ability to present a defense. The *Barker* Court explained that "if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense." Of course, this is also true when the alleged crime took place in general population and the defendant is locked up in solitary confinement—away from the witnesses and evidence relevant to his case.

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144 *See* Petition for Writ of Certiorari at 16, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (emphasizing difficulties involved with building a strong defense in isolation).

145 *See* Barker v. Wingo, 407 U.S. 514, 530 (1972) (articulating balancing test courts use to determine violation of speedy trial rights).

146 *Id.* at 532 (outlining elements of factor test to determine whether defendant has been deprived of speedy trial).

147 *See* Petition for Writ of Certiorari at 15, *Bailey-Snyder*, 923 F.3d 289 (3d Cir. 2019) (describing how isolation is oppressive).

148 *See id.* at 21 ("[S]hort of execution, our penal system knows no more extreme, oppressive, and anxiety-inducing liberty restriction than solitary confinement.")

149 *See id.* at 17 ("The oppressive nature and anxiety inherent in solitary confinement . . . are quite clearly prejudicial."); *see also* Weir, *supra* note 121, at 54 (listing extreme mental health problems inmates suffer from prolonged isolation). "[M]any segregated prisoners reportedly suffer from mental health problems including anxiety, panic, insomnia, paranoia, aggression and depression . . . ." *See* Weir, *supra* note 121, at 54.

150 *See Barker*, 407 U.S. at 533 ("[I]f a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.")

> This is not a hypothetical concern . . . . But under the prevailing rule, the government could hold a prisoner in dangerous isolation indefinitely, enabling it to gradually build a case while the prisoner's ability to do the same diminishes with each passing day.[151]

For the reasons mentioned above, placing an inmate in solitary confinement—or administrative segregation—pending investigation for a new criminal charge should trigger protection from the Speedy Trial Act.[152] It should be required that the information or indictment be filed within thirty days from the date of placing the inmate in solitary confinement pending a criminal investigation.[153] Further, the trial must commence within seventy days from the date of filing the information or indictment.[154] In addition to these procedural requirements, the prison should perform an informal incarceration hearing in order to minimize the amount of time inmates wait for their trial in isolation.[155] Otherwise, with no time limit on how long a defendant waits for their trial in isolation, there is a greater risk that they will suffer extreme psychological trauma.[156]

The psychological issues stemming from a prolonged period of time in administrative segregation heavily impact a defendant's ability to competently stand trial.[157] If prisons continue placing inmates in solitary confinement for extremely long periods of time, it is inevitable that they will become mentally impaired and legally incompetent to stand trial.[158] Further, if defense counsel questions the competency of its client, the

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[151] *See* Petition for Writ of Certiorari at 17-18, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (citations omitted).

[152] *See* 18 U.S.C.S. § 3161(b) (1974) (stating time limits for procedure of speedy trial). "Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges." *Id.*

[153] *See id.* (outlining timing requirements of right to speedy trial).

[154] *See* 18 U.S.C.S. § 3161(c)(1) (1974) (outlining timing requirements of right to speedy trial).

[155] *See* Petition for Writ of Certiorari at 15-16, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (emphasizing need for better procedural safeguards for incarcerated inmates); *see also* Fettig, *supra* note 103, at 11 (explaining United Nations global ban on solitary confinement lasting more than fifteen days).

[156] *See* Chan, *supra* note 60, at 252 (explaining psychological trauma caused by prolonged isolation).

[157] *See* Douglas, *supra* note 64, at 527 (2019) (referring to population of criminal defendants with mental health care needs who are deemed incompetent).

[158] *See* Petition for Writ of Certiorari at 13-14, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) ("[T]here is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects.")

courts employ a procedure to evaluate their client's mental health.[159] This procedure prolongs the trial process because of the time consuming nature of tending to a defendant's deteriorating mental health, which can lead to backlog that Congress sought to do away with by enacting the Speedy Trial Act.[160] Instead, courts should afford inmates the speedy trial rights prior to them reaching the state of mental deterioration deeming them legally incompetent.[161]

B. Shift Towards a More Hands-On Approach to Carceral Punishment

The issue posed by Judge Kelly's concurring opinion is one courts should be mindful of, given the fundamental nature of the right to a speedy trial.[162] While courts historically took the "hands-off approach" in order to allow correctional authorities more autonomy in managing their facilities, it is crucial for the courts to be involved in the adjudication of the matter when a criminal investigation is underway.[163] The hands-off doctrine has proved to be dangerous for the fate of prisoners' rights.[164] Since courts are afraid to overstep their bounds into the executive or legislative branch, they try not to postulate solutions that may be best left to a different branch.[165] Instead, courts allow for internal investigations and procedures intended as safeguards for inmates, and claim they are the best solutions.[166] The cur-

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[159] *See* 18 U.S.C.S. § 4241 (describing procedure for court's determination of mental competency).

[160] *See id.* (explaining timeline for mentally incompetent before standing for trial); *see also* Partridge, *supra* note 37 (explaining interest in bringing defendants to trial promptly); Chan, *supra* note 60 (explaining psychological trauma caused by prolonged isolation).

[161] *See* Petition for Writ of Certiorari at 14, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) ("[E]ven a short time in solitary confinement is associated with drastic cognitive changes.")

[162] *See id.* at 12 (declaring "[u]nanimity does not guarantee accuracy"). "That is particularly so in light of the fact that the dangerous impact of solitary confinement was not a pressing concern when the bulk of this precedent issued. Pleading ignorance is no longer tenable, yet the Third Circuit grounded its holding in stale decisions that predate the scientific consensus." *Id.*; *see also* Klopfer v. North Carolina, 386 U.S. 213, 223 (1967) (detailing historical roots of right to speedy trial).

[163] *See* United States v. Marion, 404 U.S. 307, 313 (1971) (explaining when speedy trial rights begin and when they require court involvement).

[164] *See The Hands-Off Period*, *supra* note 73 (explaining "[i]n one case, a federal court refused to hear from inmates whose lives were endangered by these conditions, [and] because of the hands-off doctrine, the judge declined to intervene.")

[165] *See id.* ("Underlying the hands-off doctrine were concerns about the appropriate reach of federal judicial power.") "The argument that courts lack expertise in prison management was also criticized. The argument is based on a misconception of the judiciary's role." *Id.*

[166] *See id.* ("The courts believed that they lacked the expertise to become involved in prison management and the corrections officials perceived judicial review as a threat to internal discipline and authority.")

rent safeguards to administrative segregation pending a criminal investigation do not work as intended.[167] This lack of functionality requires that the Sixth Amendment right to speedy trial attach to administrative segregation based on the framers' intent to protect the criminally accused.[168] By allowing penal institutions to place inmates in limitless administrative segregation pending investigation for a new crime, the Court allows the penal institution to strip inmates of their constitutional assurance to a speedy trial.[169]

The right to a speedy trial is one of the most fundamental rights found in the Constitution—and the Court should afford inmates that same constitutional right as those criminally accused in the general public.[170] Inmates and the criminally accused have the same interests as any accused and need the protections speedy trial right.[171] The Court's hands-off approach to dealing with penal institutions has led to less interest in protecting inmate's constitutional rights, and more of an interest in making corrections officers' jobs easier.[172] For these reasons, this Note urges defense attorneys to raise these Sixth Amendment speedy trial issues when repre-

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[167] *See* Marcus, *supra* note 101, at 1180 ("Indeed, 'the decision is predetermined, the review is a sham, and there is nothing the prisoner can do to get out of solitary confinement.'"); *see also* Petition for Writ of Certiorari at 14, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (explaining risk of government overreach in prison administrative remedies).

> Likewise, if prison officials were to throw a prisoner in solitary confinement for some purpose other than to detain him pursuant to a criminal investigation, speedy trial rights would not attach. Instead, the prisoner could avail himself of the administrative remedies denied Mr. Bailey-Snyder. The habeas and civil rights statutes are not substitute for speedy trial rights—litigating such claims takes years, and prisoners rarely prevail.

Id.

[168] *See* Petition for Writ of Certiorari at 19, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (criticizing rule that disregards "both the foundational nature of the speedy trial right, and our present understanding of the threat of the modern solitary confinement regime.")

[169] *See id.* (explaining speedy trial right is sole protection inmates have from government overreach).

> Under the prevailing doctrine, the government can hold an incarcerated person in isolation indefinitely—or at least until the statute of limitations runs—while it builds a criminal case against him and his ability to marshal a defense dwindles. This is permissible, the cases hold, because a radical additional deprivation of liberty is of no significance when a person is already locked away, and solitary confinement may be imposed for reasons unrelated to investigation and prosecution.

Id.

[170] *See* Klopfer v. North Carolina, 386 U.S. 213, 223 (1967) (explaining how fundamental right to speedy trial is).

[171] *See* Barker v. Wingo, 407 U.S. 514, 533 (1972) (stating rationales to solitary detention do not outweigh right to speedy trial in U.S. Constitution).

[172] *See The Hands-Off Period, supra* note 73 ("The attitude of the courts and the prison officials work[] hand-in-hand to deny prisoners' rights.")

senting inmates who are awaiting a new criminal trial while isolated in solitary confinement.[173]

V. CONCLUSION

One of the most fundamental rights belonging to the accused in a criminal prosecution is their right to a speedy trial. When incarcerated inmates are accused of crimes and subsequently put in prolonged isolation, they should be afforded the same rights as those accused outside of the prison walls. As time in isolation persists, inmates are left with a higher risk of an impaired defense because of their lack of access to witnesses and others substantially involved in the matter. More importantly, there also exists a strong possibility that the defendant will not be legally competent enough to inevitably stand trial due to the traumatic mental effects of prolonged isolation. If the Court remains reluctant to abolish solitary confinement altogether—as many have strongly suggested—it should at least consider administrative segregation pending investigation for a new crime while incarcerated an "arrest" within the meaning of the Sixth Amendment's right to speedy trial and the Speedy Trial Act.

Taking the hands-off approach to carceral punishment, especially the right to speedy trial after administrative segregation, enables the criminal justice system to place inmates in complete isolation and leave them there indefinitely. Rather than maintaining the system currently in place, affording inmates the right to a speedy trial would reduce: (1) the risk that the defense will be impaired and (2) the extreme mental health issues of prolonged solitary confinement. Since the Court remains reluctant to answer the important constitutional question posed by Judge Kelly in her concurring opinion in *Wearing*, defense attorneys should be committed to relentlessly raising these speedy trial claims. As a country, it is time we stop disregarding the rights of individuals we lock in cages—they are suffering and should be afforded the same speedy trial rights for a new criminal charge as the criminally accused outside of the prison system. The more visibility these issues gain, the greater the chance society can do away with this grotesque practice altogether.

Madison Carvello

[173] *See* Petition for Writ of Certiorari at 24, *Bailey-Snyder*, 923 F.3d 289 (No. 19-742) (explaining detrimental impact solitary confinement has on defendant's ability to build defense).