ORAL ARGUMENT SCHEDULED FOR MAY 17, 2018

No. 17-5012

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GORDON C. REID,
Plaintiff – Appellant pro se,

v.

MARK INCH, Director, Federal Bureau of Prisons,
Defendant – Appellees.

Appeal from the United States District Court
for the District of Columbia, No. 1:15-cv-00375-RMC
(Hon. Rosemary M. Collyer)

REPLY BRIEF OF APPOINTED *AMICUS CURIAE* IN SUPPORT OF APPELLANT REID

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GLOSSARY OF ABBREVIATIONS

AD: Administrative Detention

BOP: Bureau of Prisons

CMU: Communications Management Unit

DS: Disciplinary Segregation

SJA: Supplemental Joint Appendix

SHU: Special Housing Unit

SHU-AD: Special Housing Unit for Administrative Detention

SMU: Special Management Unit

USP: United States Penitentiary

SUMMARY OF ARGUMENT

Mr. Reid seeks declaratory and injunctive relief from a *de facto* BOP-wide policy that illegally deprives him of subscription magazines, exercise, and administrative relief each time BOP places him in a Segregated Housing Unit (SHU). BOP principally argues that Mr. Reid's case is moot because future deprivations are too speculative to support jurisdiction, and because he has been transferred to another facility where he is now temporarily placed in a Special Management Unit (SMU). But BOP designated Mr. Reid to SHU more than 30 times in no less than eight BOP facilities—including two confinements *after* the district court dismissed Mr. Reid's case. Thirteen of those designations were unrelated to *any* specific misconduct by Mr. Reid. Practically speaking, if Mr. Reid cannot challenge BOP's SHU policies, no one can.

All of Mr. Reid's claims fall within two mootness exceptions. BOP's minor factual distinctions notwithstanding, *Aref v. Lynch*'s voluntary cessation holding controls the outcome here. *See* 833 F.3d 242, 251 (D.C. Cir. 2016). BOP has not—and cannot—satisfy its burden of showing with *absolute clarity* that its allegedly wrongful behavior cannot reasonably be

expected to recur. *See Friends of the Earth*, *Inc. v. Laidlaw Envtl. Serv.'s, Inc.*, 528 U.S. 167, 189 (2000).

BOP also argues that this case does not evade review and thus does not meet the capable-of-repetition-yet-evading-review exception. But BOP's concession—it "may be true" that "no single, isolated instance of deprivation in SHU will ever last long enough to be fully litigated"—answers that argument. *See* BOP Br. at 37.

Mootness exceptions aside, Mr. Reid's declaratory judgment claims challenging BOP's ongoing policy of deprivation are not moot. BOP asserts Mr. Reid's complaint challenges only past action. But BOP wholly ignores the complaint's six allegations that BOP's deprivations flowed from its "policy." JA7–9. BOP also contends that, in the absence of a more concrete factual dispute, the claims in this case are not ripe. But because this case presents a purely legal question—whether BOP can violate its regulations and exact the contested deprivations on Mr. Reid while in SHU—no further factual development is needed.

ARGUMENT

I. MR. REID'S SHU CONFINEMENTS DO NOT NECESSARILY DEPEND ON HIS MISCONDUCT.

Many of BOP's arguments depend on its assertion that Mr. Reid will not be placed in SHU unless he "backslide[s] again into bad behavior." *See* BOP Br. 17; *see also id.* at 34, 41. This argument ignores reality. As BOP rightly explained, placement in SHU for administrative detention ("AD") "is non-punitive and can occur for a variety of reasons." *See* BOP Br. 11 (quoting 28 C.F.R. § 541.23).[1] In fact, BOP frequently transfers Mr. Reid from one facility to another, placing him in SHU for up to two weeks without any accompanying record of misconduct. *See* Amicus Br. 8–10; BOP Br. 47 (conceding Mr. Reid's SHU confinement during transfers does not result from misconduct). At least eleven pre-dismissal designations to SHU-AD cannot be traced to Mr. Reid's misconduct because they are unsupported by any corresponding disciplinary record. *Compare* JA20–30 *with* JA41–47. And after Mr.

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[1] These reasons include, but are not limited to, pending classification or reclassification, investigation, transfer, and placement for the prisoner's own protection. 28 C.F.R § 541.23. BOP exercises discretion as to each of these designations, including when to transfer Mr. Reid back into the general population.

Reid's case was dismissed, BOP *again* confined him to SHU-AD twice—once with no explanation in the disciplinary record and the other for transfer.[2] *Compare* SJA2 *with* SJA10.[3] Mr. Reid's SHU-AD confinements are not exclusively related to his misconduct.

II. MR. REID'S CASE SATISFIES TWO MOOTNESS EXCEPTIONS

BOP's frequent and regular decisions designating Mr. Reid to SHU, combined with the limited period of those designations, demonstrate that his claims should not have been dismissed as moot.

A. The voluntary-cessation exception applies because BOP's deprivations can reasonably be expected to recur

BOP's bare assertion that it "can meet its evidentiary burden here," *see* BOP Br. 49, does not make it "*absolutely clear* that the allegedly wrongful behavior cannot reasonably be expected to recur." *Friends of*

[2] Although BOP claims Mr. Reid was in SHU for disciplinary segregation, *see* BOP Br. 8–9, his records show he was there for administrative detention from July 22, 2017, through October 14, 2017. SJA2.

[3] BOP in its brief relied on facts from an inmate report it obtained after the district court dismissed this case. BOP Br. 7-8 n.4. It provided Amicus, but not the Court, with copies of those reports. Because Amicus relies on some of those documents, Amicus has moved to supplement the appendix to provide the Court with all of those documents on which it relies. "SJA" refers to the page numbers for that Supplemental Joint Appendix.

the Earth, 528 U.S. at 189 (citation omitted) (emphasis added). For reasons unconnected to Mr. Reid's own actions, BOP's "allegedly wrongful behavior" has recurred *repeatedly*, both after Mr. Reid filed his complaint *and* after dismissal of his case. *See* SJA2-3. BOP's voluntary actions did not, as required, result in a permanent cessation of the challenged activity. *Friends of the Earth*, 528 U.S. at 190; *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983).

BOP's remaining arguments against voluntary cessation fail. First, *Aref* controls this case, notwithstanding BOP's misguided emphasis on insignificant factual distinctions. 833 F.3d at 251. Second, BOP's reason for transferring Mr. Reid to general population—whether to avoid the "specter of litigation" or otherwise—matters not. *See* BOP Br. 47. Finally, Mr. Reid's voluntary cessation argument is properly before this Court.

1. Aref *demonstrates that voluntary cessation applies*

The minor factual distinctions BOP asserts do not undermine important similarities binding this case to *Aref*. In *Aref*, three federal prisoners challenged their designation into Communication Management Units ("CMUs") that curtailed communication with the outside world.

833 F.3d at 246. The government, like BOP here, insisted the equitable claims were moot because the prisoners had not been confined in CMU for years. *Id.* at 251. The government argued the prisoners could therefore not identify any current injury for which this Court could provide relief. *Id.*

As BOP recognizes, "[t]he *Aref* court rejected [this] argument and held that the government had not met the high bar of showing that it was 'absolutely clear' that the allegedly wrongful behavior tied to the plaintiffs' previous confinement in the CMUs could not reasonably be expected to recur." *See* BOP Br. 44 (citing *Aref*, 833 F.3d at 251). Voluntary cessation saved the prisoners' complaint from mootness, despite government reassurances that prisoners would not be redesignated to CMU "unless some new event warranting redesignation occur[ed]." *Aref v. Holder*, No. 10-0539, 2015 WL 3749621 at *4 (D.D.C. March 16, 2015).

The government in *Aref* failed to establish with absolute clarity that the government's challenged action could not reasonably recur despite the fact that the complaining prisoners enjoyed several years uninjured by CMU designations; BOP in this case necessarily fails to meet that

same burden. *See* 833 F.3d at 251. Like the prisoners in *Aref*, Mr. Reid "point[s] to the likelihood of redesignation from general population" to SHU, his current time in SMU notwithstanding, and he has both declaratory and injunctive relief claims rooted in an overarching BOP policy. *See id.*; JA7–9 (alleging six times BOP's "policy" of SHU deprivations). Mr. Reid's likelihood of redesignation surpasses that in *Aref* because BOP has provided no assurance that Mr. Reid will remain free of SHU absent misconduct. And BOP has a record of redesignation after Mr. Reid's complaint, *and after dismissal of his case,* which advances the "likelihood of redesignation" in SHU to a near certainty. *See Aref*, 833 F.3d at 251; Amicus Br. 8–10; SJA2-3. *Aref* controls and the voluntary cessation exception applies. 833 F.3d at 251.

Neither of the minor distinctions BOP wrests from *Aref* undermines that central point. First, BOP argues Mr. Reid brings a different type of claim than the *Aref* inmates, insisting Mr. Reid's "challenge is of the as-applied variety." BOP Br. 45 (internal quotation marks omitted). Not so. Mr. Reid challenges the very *existence* of BOP's ongoing policy depriving him of his regulatory rights. In addition, although the legal basis of Mr. Reid's claim differs from the claim in *Aref*, BOP neither cites

a case suggesting voluntary cessation is limited to constitutional challenges nor provides any reason justifying such a novel limitation. *Id.; see Friends of the Earth*, 528 U.S. at 193–194 (applying voluntary cessation to statutory challenge). Voluntary cessation applies to "allegedly wrongful behavior," and whether that behavior leads to a constitutional or a regulatory challenge is irrelevant. *See Friends of the Earth*, 528 U.S. at 189.

Second, BOP argues that the non-punitive nature of CMU's in *Aref* is meaningfully different from Mr. Reid's SHU-AD confinement. But as BOP acknowledges, SHU-AD designation can occur for "several . . . specified reasons" having nothing to do with Mr. Reid's conduct or punishment, such as SHU confinement during prison transfer.[4] BOP Br. 46–47; *see supra* Part I. BOP's focus on placements resulting from misconduct—DS as a disciplinary sanction or AD when the inmate poses a threat—is therefore misdirected. *See* BOP Br. 45–46. Mr. Reid's

[4] BOP also argues that this mootness exception's purposes do not apply. *See* BOP Br. 62. But without an injunction preventing future violations, BOP is free to return to its old ways, subjecting Mr. Reid to the same violations while avoiding judicial review; this is exactly what voluntary cessation doctrine is designed to prevent. *See Friends of the Earth*, 528 U.S. at 189.

mootness argument relies *not* on punitive SHU placements resulting from his own misconduct but instead on designations like the CMU placements in *Aref*: non-punitive, outside of the prisoner's control, and aimed at "ensur[ing] the safety, security, and orderly operation of BOP facilities and [protecting] the public." BOP Br. 45; *see Aref,* 833 F.3d at 251. Because BOP often exclusively controls placing Mr. Reid in SHU-AD, its argument that its voluntary action is not cessation "within the meaning of the mootness doctrine" fails. *See* BOP Br. 46.

2. BOP's motivation for transfer does not moot Mr. Reid's case.

BOP further argues that voluntary cessation should not apply because "[t]here is no evidence that BOP officials engaged in subterfuge or sought to evade the court's jurisdiction by transferring Reid or returning him from SHU to the general population." *See* BOP Br. 47. BOP defeats itself by acknowledging "[t]he *Aref* court . . . rejected the government's argument that the voluntary cessation exception only applied if the cessation came about 'because of' the litigation." *See* BOP Br. 44 n.18 (citing *Aref*, 833 F.3d at 251 n.6); *see also Friends of the Earth*, *Inc.*, 528 U.S. at 193 (applying voluntary cessation without considering defendant's motive for cessation).

Indeed, this case illustrates *Aref*'s point that motivation for transfer is at best inconclusive. 833 F.3d at 251 n.6. As in *Aref,* it is possible that BOP "did not engage[] in subterfuge or [seek] to evade the court's jurisdiction by transferring Reid." BOP Br. 47. But BOP ceased the challenged conduct for one year before dismissal and then, three months after the case was dismissed, moved Mr. Reid back to SHU-AD. SJA3. These facts may "well imply an intent to renew the activity once the court has dropped out." *See Aref*, 833 F.3d at 251 n.6. BOP's motivation for transferring Mr. Reid should not affect the voluntary cessation analysis. *Id.* at 251 n.6.[5]

3. This Court should consider Amicus' voluntary cessation argument.

BOP fundamentally misunderstands the crux of Amicus' procedural argument regarding Mr. Reid's right to notice: This Court should consider *all* of Amicus' mootness arguments even if not specifically argued before the district court. Amicus Br. 22. In a footnote,

[5] Mr. Reid alleges the "same harm," despite BOP's transfers, because he alleges the same legal wrong at each institution. *See* JA8; *Honig v. Doe*, 484 U.S. 305, 322 (1988) (holding that although respondent no longer attended the school that gave rise to his action, he "would be faced with a real and substantial threat of [the challenged action] in any California school district in which he enrolled").

BOP asserts that Mr. Reid did not argue voluntary cessation below and that this Court should only consider this argument in "exceptional circumstances" "to achieve a just resolution." *See* BOP Br. 42 n.16 (quoting *Nat'l Ass'n of Mfrs. v. Dep't of Labor*, 159 F.3d 597, 605–06 (D.C. Cir. 1998)). BOP forfeited this argument by raising it only "summarily in a footnote." *United States v. Saani*, 650 F.3d 761, 763 n.* (D.C. Cir. 2011); *see also Solomon v. Vilsack*, 763 F.3d 1, 13 (D.C. Cir. 2014) ("By failing to argue forfeiture . . . [defendant] forfeited his forfeiture argument here.").

More importantly, it is precisely these circumstances—where the district court relied on a new argument and new evidence in BOP's reply to dismiss the case, without notifying Mr. Reid of his right to respond—that are exceptional.[6] Thus, this Court should consider Amicus' voluntary cessation argument "to achieve a just resolution." *Nat'l Ass'n of Mfrs.*, 159 F.3d at 606.

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[6] BOP notes that Mr. Reid could have filed a reply to his cross-motion for summary judgment. BOP Br. at 50. But a failure to reply to BOP's response to his motion would, at worst, have resulted in denial of his motion. Without notice from the district court of his need to respond to BOP's new argument and new evidence, Mr. Reid could not have known that his failure to respond would result in dismissal of his case. Amicus Br. at 20–21.

B. BOP's challenged conduct will likely recur and cease before Mr. Reid's case can be fully litigated

1. Deprivation of Mr. Reid's rights while in SHU is capable of repetition

Having acknowledged the challenged action is "capable of repetition," BOP Br. 39, BOP nevertheless argues that the time between deprivations has rendered Mr. Reid's expectation of recurrence unreasonable. *Id.* at 39–41.[7] This argument collapses under the weight of Mr. Reid's evidentiary showing.

BOP points out the obvious: "Once the conditions of confinement that an inmate challenges cease completely[,] at *some* point an expectation of recurrence is no longer reasonable." *Id.* at 40 (emphasis in original). But BOP neither cites any case marking where that "point" lies, nor explains why Mr. Reid has passed that "point" here. *See* BOP Br. 40–41.[8]

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[7] BOP also argues the exception does not apply because Mr. Reid's SHU designations are the result of his own bad behavior. BOP Br. 41–42. For reasons explained above, this is simply not true. *See supra* Part I.

[8] For example, although BOP cites to *Zajrael*, that court simply stated, without reference to a length of time, that the prisoner "made no showing that transfer to [the prison that spurred his claim] is likely." *Zajrael v. Harmon*, 677 F.3d 353, 355 (8th Cir. 2012). Mr. Reid has been transferred at least thirteen times and is currently housed in USP Lewisburg, the same facility that housed him in 2008. Unlike in *Zajrael,* Mr. Reid's

In fact, this Court has looked not at the length of time between occurrences, but rather at frequency and the "sequence of coincidences" necessary for the challenged action to recur. *People for the Ethical Treatment of Animals v. Gittens,* 396 F.3d 416, 424 (D.C. Cir. 2005) (finding a challenged event that results from at least seven sequential events is not "capable of repetition"); *cf. Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2345 (2014) ("We have observed that past enforcement against the same conduct is good evidence that the threat of enforcement is not chimerical." (citation and punctuation omitted)). Because Mr. Reid alleges a BOP-wide policy of deprivations, only two events need occur for BOP's challenged conduct to repeat. First, he must be released from SMU into general population, which BOP concedes is expected before the end of the year. BOP Br. 28. Second, Mr. Reid must be placed in SHU, which he has consistently shown he reasonably expects.

Mr. Reid's frequent history of SHU confinement firmly grounds his reasonable expectation in this recurring sequence: He has suffered SHU

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reasonable expectation of returning to previously-designated prisons and their accompanying SHU's is rooted in a history of repetition.

deprivations for reasons outside his control at least thirteen times. *Compare* SJA2-8 *with* SJA10-23. And he alleged similar deprivations in "each" facility that placed him in SHU. JA8.

Mr. Reid's reasonable expectation of recurrence was not dimmed by the almost SHU-free year preceding the district court's dismissal because the challenged action *recurred three months later*. *See* SJA3. Similarly, the predicted four- to eight-month period during which Mr. Reid will remain confined in SMU—and therefore cannot be confined in SHU—does not foreclose the very real probability that the challenged conduct will recur upon his release.[9] Mr. Reid's reasonable expectation that he will again be subjected to the challenged action renders it "capable of repetition."

2. The challenged action evades review.

BOP erroneously maintains Mr. Reid's claim does not evade review because "[Mr.] Reid was transferred and had not been confined in SHU

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[9] BOP expects SMU confinement to last from 9 months to 13 months. *See* BOP Program Statement 5217.02, at 9, *available at* https://www.bop.gov/policy/progstat/5217_02.pdf. BOP placed Mr. Reid in SMU on November 6, 2017. *See* BOP Br. 9.

for 15 months straight." BOP Br. 37–38.[10] The "evades review" inquiry asks not how much time has passed *between* instances of the challenged conduct but whether "the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration." *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975).

BOP's concession that it "may be true" that "no single, isolated instance of deprivation in SHU will ever last long enough to be fully litigated" confirms that its actions evade review. BOP Br. at 37; *cf. Beethoven.com LLP v. Librarian of Congress*, 394 F.3d 939, 951 (D.C. Cir. 2005) (holding that agency orders "of less than two years' duration ordinarily evade review"). Mr. Reid's longest SHU confinement was only seven months. *See* SJA2-8. Because Mr. Reid's SHU deprivations are too short to be fully litigated, they *necessarily* evade review.

[10] BOP also asserts that it "never argued, and the district court did not hold, that Reid had to remain in SHU continuously and for the entirety of the litigation for his case to remain a live controversy." BOP Br. 37–38. BOP's extensive list of cases arguing that "transfer or release from a prison" or from SHU automatically moots his claim contradicts that assertion. BOP Br. 22–25.

III. MR. REID'S DECLARATORY JUDGMENT CLAIMS AGAINST BOP'S ONGOING POLICY ARE NOT MOOT

The silence in BOP's brief says more than its words. BOP neither addresses nor even cites *Payne Enterprises*, even though Amicus cited it as controlling precedent. *See* Amicus Br. 24; *see also Payne Enterprises, Inc. v. United States*, 837 F.2d 486 (D.C. Cir. 1988). There, the Air Force's informal policy prevented Payne Enterprises from getting information to which the company claimed it was entitled under FOIA. *Id.* at 491. Though the Air Force granted all Payne Enterprises' FOIA requests in the year leading up to this Court's decision, this Court upheld jurisdiction against a mootness challenge. *Id.* at 491; *see also City of Houston, Tex. v. Dep't of Hous. & Urban Dev.*, 24 F.3d 1421, 1430 (D.C. Cir. 1994) (noting *Payne Enterprises* illustrates plaintiffs challenging an "ongoing policy" can obtain declaratory judgment if they have forward-looking standing and their claims are ripe). This Court should likewise uphold jurisdiction here because Mr. Reid challenges BOP's ongoing informal policy.

Sidestepping *Payne Enterprises*, BOP argues Mr. Reid challenges only past BOP conduct. *See* BOP Br. 33. BOP improbably argues Mr. Reid's forward-looking claims are too speculative to support ripeness and

standing, even in the face of BOP's two additional SHU designations after the district court dismissed his case. *Id.* 34–36. These arguments fail.

A. Mr. Reid challenges BOP's ongoing policy and practice of deprivations

BOP argues that "Amicus' characterization of the action as a challenge to an 'ongoing policy' and 'ongoing practice' is contradicted by the allegations set forth" in Mr. Reid's complaint. *See* BOP Br. 33. Not so. Read liberally, Mr. Reid's complaint challenges BOP's ongoing policy and practice. Mr. Reid's allegations of identical deprivations at eight separate prisons all operated by BOP assert a claim of an ongoing, system-wide practice. *See* JA7–9. He also alleges BOP's denial of magazines and deprivation of exercise for minor infractions "is BOP policy." *See* JA7–8 (explaining that prison officials justified their actions as following BOP policy). BOP fails to recognize, let alone respond to, these allegations.

Doubling down, BOP lists twelve cases bolstering an irrelevant point: Transfer from a prison facility usually moots a challenge to conditions *specific to that facility*. *See* BOP Br. 22–25. But where, as here, the complaint challenges a system-wide policy, transfer to another

BOP-run facility cannot moot the claim. *Cf. Friends of the Earth*, 528 U.S. at 190–91.

B. Mr. Reid's declaratory judgment claims are ripe

BOP presses this Court to wait. BOP asserts that it must again deny Mr. Reid his regulatory entitlements and that Mr. Reid must again undertake the administrative process he alleges is not available. *See, e.g.*, BOP Br. 35. But just as *Payne Enterprises*'s declaratory judgment claim was ripe, so too are Mr. Reid's. There, this Court held plaintiff's claim fit for review because it raised only a purely legal question: Whether the Air Force's "blanket refusal . . . to grant Payne's FOIA requests when there is limited competition for a contract . . . warrants equitable relief." 837 F.2d at 492. And because the "outlines and impact" of that practice were "manifest," Payne Enterprises established finality and concreteness. *See id.* Mr. Reid similarly raises only a purely legal question about an agency's practice whose "outlines and impact" are clear: Whether BOP's "blanket refusal" to provide Reid with his subscription magazines and its punitive deprivations of exercise warrants equitable relief.

Nor did the Court insist that Payne Enterprises exhaust administrative relief for *future* violations where, like Mr. Reid, Payne Enterprises had already given the agency an opportunity to address the policy. *See id.* at 487 (noting that plaintiff sought administrative relief for previous violation); JA7–8 (alleging filing for administrative relief "to no avail"). Such a requirement would be doubly wrong in this case because Mr. Reid alleges inadequate access to administrative relief in SHU. JA9. Thus, there is no need to wait for future violations to decide this case.[11]

C. Mr. Reid has standing because he faces at least a "substantial risk" of SHU deprivations

BOP concedes that this "Court could find that Reid's [post-dismissal] re-confinement in SHU casts doubt on the district court's predictive judgment." *See* BOP Br. 28. It nonetheless maintains Mr. Reid lacks standing because he "has made no showing that there is a

[11] BOP does not contest ripeness' hardship prong. Because BOP's policy is fit for review, "there are no significant agency or judicial interests militating in favor of delay, lack of hardship cannot tip the balance against judicial review." *See Nat'l Ass'n of Home Builders v. U.S. Army Corps of Engineers*, 440 F.3d 459, 465 (D.C. Cir. 2006) (citations and punctuation omitted).

reasonable likelihood that he will be subjected again" to the challenged deprivations. *See* BOP Br. at 36. Granted, Mr. Reid "must demonstrate standing to bring . . . a forward-looking challenge." *Del Monte Fresh Produce Co. v. United States*, 570 F.3d 316, 321 (D.C. Cir. 2009) (punctuation omitted). But Mr. Reid has carried this "light burden" because his "complaint plausibly *alleges* that [he] now face[s] a substantial risk" of future SHU deprivations. *See Attias v. Carefirst, Inc.*, 865 F.3d 620, 627 (D.C. Cir. 2017) (emphasis in original); *see also Driehaus*, 134 S. Ct. at 2341 (2014) (holding plaintiffs can satisfy injury-in-fact by alleging future injury is "certainly impending, or there is a substantial risk that the harm will occur" (punctuation and citation omitted)). The challenged unlawful policies are persistent and system-wide in scope. And given Mr. Reid's previous SHU confinements, it is nearly certain—"not conjectural or hypothetical"—that he will encounter SHU deprivations again. *See Driehaus*, 134 S. Ct. at 2336 (punctuation and citation omitted).

CONCLUSION

This Court should reverse the district court's order and hold that Mr. Reid's claims for injunctive and declaratory relief satisfy a mootness exception. Alternatively, this Court should hold that Mr. Reid's declaratory judgment claims are not moot, and reverse the lower court's order with respect to Mr. Reid's plea for declaratory judgment.

Respectfully Submitted,
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April 16, 2018

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4097 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook, Size 14 in Microsoft Word (2013).

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Dated: April 16, 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 2018, I electronically filed the Reply Brief of Appointed Amicus Curiae in Support of the Appellant Gordon C. Reid with the Clerk of the Court. I certify that the following attorneys are registered CM/ECF participants for whom service will be accomplished electronically by the CM/ECF system and with hard copies provided by Federal Express: R. Craig Lawrence and Daniel Schaefer. I also certify that on this day I sent, by Federal Express, paper copies of the foregoing Reply Brief to Appellant, Gordon C. Reid, at the following address:

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