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Note

THE DOCTOR WILL SEE YOU NOW: THE FOURTH CIRCUIT REVIVES THE JUVENILE DETAINEE'S RIGHT TO TREATMENT BY ADOPTING THE PROFESSIONAL JUDGMENT STANDARD IN *DOE 4*

MATTHEW SKOLNICK*

"Indeed, it is the odd legal rule that does *not* have some form of exception for children."[1]

I. TAKING THE JUVENILE JUSTICE SYSTEM'S PULSE AND INTRODUCING THE ONGOING FIGHT FOR IMPROVED MENTAL HEALTH CARE

Hoping to escape the horrors of his past, sixteen-year-old John Doe 4 fled Honduras and headed to the United States, only to find that his childhood trauma would be used as a basis for treating him like a criminal.[2]

* J.D. Candidate, 2023, Villanova University Charles Widger School of Law; B.A. 2019, Northeastern University. This Note is dedicated to Carolyn Melley, for without her inspiration and assistance this never could have been published. It is also dedicated to my parents, Bruce and Kerry Skolnick, whose love and support enabled me to get to this point in my academic career. Thank you to the rest of my family and friends for always believing in me and pushing me to be better. I would also like to recognize the staff of the *Villanova Law Review* for their helpful comments and dedication throughout the entire editing process.

1. Miller v. Alabama, 567 U.S. 460, 481 (2012) (recognizing that children may be afforded distinct protections under the law). In *Miller*, Justice Kagan, writing for the majority, pointed out how the Supreme Court had, on multiple prior occasions, recognized that certain rules which are used in sentencing for convicted adult prisoners may not be applicable to children. *Id.* (pointing out that capital punishment may be appropriate under the Eighth Amendment with respect to adults, but unconstitutional with respect to children). Relying on this idea that "children are different," the majority ultimately concluded that it would violate the Eighth Amendment's prohibition on cruel and unusual punishment to enact a sentencing scheme that automatically subjects juvenile offenders to life in prison without the possibility of parole. *Id.* at 479–81. For a more in-depth analysis of the Court's reasoning in *Miller*, see *infra* notes 92–95 and accompanying text.

2. *See* Doe 4 *ex rel.* Lopez v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 331–33 (4th Cir. 2021) (providing an overview of the factors that prompted Doe 4's journey from Honduras to the United States and the torment he was subjected to while detained). For a more detailed discussion of the facts in *Doe 4*, see *infra* notes 117–39 and accompanying text. *See also* Samantha Buckingham, *Trauma Informed Juvenile Justice*, 53 AM. CRIM. L. REV. 641, 656 (2016) (explaining that behavioral responses to trauma often resemble "common delinquent behaviors," prompting perceptions of traumatized youth as aggressive or even sociopathic (quoting ERICA J. ADAMS, JUST. POL'Y INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 2 (2010), https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/10-07_rep_healinginvisiblewounds_jj-ps.pdf [https://perma.cc/YUS3-36HP])).

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Abandoned by his mother, and with his father in jail, Doe 4 was raised by his maternal grandparents.[3] After witnessing gang members kill several of his peers, and being hacked with a machete and a switchblade himself, he and a friend made plans to flee to the United States.[4] They encountered violence all along the way, and while in Mexico, the two were separated after being robbed and beaten by a group of burglars.[5] Doe 4 was hospitalized after sustaining a gunshot wound to his foot.[6] Following his recovery, thieves attacked again, ransacking the house in Mexicali where Doe 4 was taking refuge.[7]

Immediately after Doe 4 crossed the border into the United States, U.S. Customs and Border Protection officers grabbed him, slammed his head into the ground—nearly knocking him unconscious—and detained him in a juvenile detention center in Arizona.[8] The Arizona facility relocated him to the Children's Village in New York, where Doe 4 exhibited behavioral problems that eventually prompted his transfer to the Shenandoah Valley Juvenile Center ("SVJC") in Virginia.[9] Although SVJC staff were aware of Doe 4's history of self-harm and that he suffered from post-traumatic stress disorder (PTSD) and attention deficit hyperactivity disorder (ADHD), they routinely responded to his outbursts with force and restraints.[10] Instead of providing Doe 4 the care and attention that an adolescent with his background required, the staff met his serious mental health issues with violence and ridicule.[11] Doe 4's situation is not unique; unfortunately, prison staff frequently disregard the severe mental health

3. *Doe 4*, 985 F.3d at 331.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.* U.S. Customs and Border Protection is the national agency charged with monitoring immigration and overseeing border security. *See generally* ABOUT CBP, U.S. CUSTOMS AND BORDER PROTECTION, https://www.cbp.gov/about [https://perma.cc/L3C4-UZJG] (last visited May 9, 2022) (listing the mission statement and core duties of U.S. Customs and Border Protection).

9. *Doe 4*, 985 F.3d at 331–32.

10. *See id.* at 332. Based on Doe 4's diagnoses of PTSD and ADHD, as well as his history of self-harm, the physician at SVJC labeled him a "medium risk factor" to engage in self-harm or attempt suicide. *Id.* (internal quotation marks omitted) (stating that the physician recommended Doe 4 be transferred to a different facility given his mental health issues).

11. *See id.* at 330–31 (explaining that children housed at SVJC have a "high need for mental health treatment[,]" and that SVJC itself recognizes that it is ill-equipped to provide necessary services). A former staff member testified that other guards frequently acted with indifference toward the detainees, often mocking them and watching them languish. *Id.* at 334 (detailing the testimony of a prior SVJC staff member). One expert testified that SVJC staff's behavioral control techniques may have actually exacerbated the trauma that detainees were coping with. *Id.* (discussing the testimony of Dr. Gregory Lewis, expert witness for the appellants).

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needs of detained juveniles, producing a juvenile justice system that is quite different from the one envisioned by its original architects.[12]

Believing that juveniles have reduced levels of culpability and that they stand to benefit from treatment-oriented detention, progressive reformers in the late nineteenth century successfully advocated for the development of a distinct juvenile justice system.[13] The objectives of this separate system were primarily rehabilitative rather than punitive.[14] But many states have recently altered these initial goals with the introduction of transfer laws, which make it easier to try juvenile offenders as adult criminals.[15] These reforms have resulted in an increased number of adolescent offenders being housed with adults, as well as the authorization of

12. *See* Thomas L. Hafemeister, *Parameters and Implementation of a Right to Mental Health Treatment for Juvenile Offenders*, 12 VA. J. SOC. POL'Y & L. 61, 71 (2004) (finding that juvenile detention centers, in general, regularly fail to respond to the individual needs of juvenile offenders, and that, in some cases, the limited mental health services provided are actually counterproductive).

13. *See* Paul Holland & Wallace J. Mlyniec, *Whatever Happened to the Right to Treatment? The Modern Quest for a Historical Promise*, 68 TEMP. L. REV. 1791, 1795 (1995) (discussing that the first juvenile courts were founded on the notion that children could be taught how to cope with negative influences, permitting those courts to forgo traditional legal procedures in exchange for treatment leading to rehabilitation). The first juvenile court was established in Illinois in 1899. *See id.* at 1791 n.1 (stating that Illinois enacted the Juvenile Court Act with the intention that the court would act on behalf of the child as parents would); *see also* Hafemeister, *supra* note 12, at 72 (detailing how reformers to the criminal justice system at the beginning of the twentieth century were concerned that the present common law approach was failing to appreciate the malleability of juveniles). The reformers also felt that grouping juvenile offenders with adult convicts was more likely to consign the juveniles to a lifetime of crime. *See id.* All fifty states have separate systems for adjudicating youthful offenders. *See id; see generally* Marsha Levick, Jessica Feierman, Sharon Messenheimer Kelley & Naomi E. S. Goldstein, *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment Through the Lens of Childhood and Adolescence*, 15 U. PA. J.L. & SOC. CHANGE 285, 298–99 (2012) (finding that modern neurological research confirms that the underdeveloped brains of adolescents result in lower levels of maturity, heightened impulsivity, and a reduced capacity to engage in effective decision-making processes).

14. *See* Holland & Mlyniec, *supra* note 13, at 1792 (noting that the goal of the juvenile court movement was "[t]he rehabilitation of wayward children").

15. *See* Sara McDermott, Comment, *Calibrating the Eighth Amendment: Graham, Miller, and the Right to Mental Healthcare in Juvenile Prison*, 63 UCLA L. REV. 712, 714–15 (2016) ("[S]ince the 1980s and 1990s, when the specter of the juvenile 'superpredator' haunted the popular imagination, the juvenile system has moved toward a much more punitive model."); *see also* Holland & Mlyniec, *supra* note 13, at 1803 (explaining that throughout the 1980s and 1990s, state legislatures changed the purpose clauses within their juvenile court statutes in order to emphasize a need to protect the public and hold children accountable for criminal behavior). Despite this current trend, most states have preserved the original rehabilitative goals that served as the foundation for the right to treatment for youth detainees. *See id.* at 1794 (arguing that states remain statutorily obligated to "serve as the substitute parents they promise to be"); *see also* Hafemeister, *supra* note 12, at 79 (suggesting that courts throughout the country accept that the dual purposes of rehabilitation and punishment can coexist). The primary goal of nearly all state juvenile systems remains rehabilitation. *See id.* at 94.

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mandatory minimum sentencing schemes for youth offenders.[16] Perhaps the most alarming byproduct of this change, though, is the subversion of the right to treatment for juvenile detainees, a concept that was fundamental to the creation of the distinct juvenile justice system.[17]

One cannot overstate the importance of attending to the mental health needs of juveniles offenders.[18] Not only are juveniles, in general, more vulnerable than adult populations, but also youth detainees in particular experience much higher rates of mental illness.[19] While most observers agree that juvenile detention facilities continue to be woefully

16. *See* Holland & Mlyniec, *supra* note 13, at 1794 (arguing that the state promise of treatment has been compromised with the introduction of punishment into juvenile statutory codes, the authorization of mandatory minimum commitments for juvenile offenders, and the expanded opportunities for prosecuting youths in criminal settings); Hafemeister, *supra* note 12, at 76–79 (outlining the reforms to the juvenile system which were motivated by a desire to protect the community); *see also* David R. Katner, *The Mental Health Paradigm and the MacArthur Study: Emerging Issues Challenging the Competence of Juveniles in Delinquency Systems*, 32 AM. J.L. & MED. 503, 504 (2006) (reporting studies that show that the number of juvenile cases transferred to criminal courts increased by seventy-three percent between 1988 and 1994). The article further demonstrates how the legal system has mistakenly assumed that a majority of children are competent enough to stand trial for their misconduct. *See id.* at 582–83 (contending that the assumption that children can be tried as competent adults needs to come under greater scrutiny); *see also* Amanda M. Kellar, Note, *They're Just Kids: Does Incarcerating Juveniles with Adults Violate the Eighth Amendment?*, 40 SUFFOLK U. L. REV. 155, 173–79 (2006) (arguing generally that states violate the Eighth Amendment when they house juveniles with adults).

17. *See* Hafemeister, *supra* note 12, at 79 ("One of the potential consequences of the juvenile system shifting its emphasis from rehabilitation to punishment and community protection . . . is that the extent and nature of a right to treatment in general and to mental health treatment in particular for juvenile offenders has become less certain."); Holland & Mlyniec, *supra* note 13, at 1807 (suggesting that recent Supreme Court jurisprudence may have undermined the right to treatment for confined juveniles).

18. *See* Hafemeister, *supra* note 12, at 69–70 (stating that the failure to address the mental health needs of juvenile offenders can bring about severe long-term adult psychiatric problems such as "anxiety, depression, substance abuse, antisocial personality, mania, schizophreniform, and eating disorders"); McDermott, *supra* note 15, at 726–29 (suggesting that continuing to incarcerate mentally ill juveniles without adequately attending to their medical needs will expose these children to unnecessary suffering and increase the likelihood that they continue to offend as adults); *see also* Doe 4 *ex rel.* Lopez v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 330 (4th Cir. 2021) (recognizing that most of the unaccompanied immigrant children detained at SVJC have experienced severe trauma, underscoring the "high need for mental health treatment"). However, SVJC acknowledged that it lacks the resources and capacity to effectively address the needs of children with severe mental illnesses. *See id.* at 331. For more details about SVJC and the facts of *Doe 4*, see *infra* notes 117–39 and accompanying text.

19. *See* McDermott, *supra* note 15, at 718 (citing a statistic that twelve to fifteen percent of youth in the general population suffer from mental disorders, while sixty-five to eighty percent of incarcerated youth suffer from mental illnesses). Of all juvenile detainees, twenty percent have mental health illnesses that are so severe that they significantly impede their abilities to function. *See id.* at 714, 719.

inadequate in addressing the mental health needs of their detainees, the blurring of rehabilitative and punitive objectives within the system has led to an underappreciation of the significant differences between adults and juveniles and the deterioration of the right to treatment.[20]

Given the convoluted quasi-civil and quasi-criminal nature of juvenile detainment, there has been a lack of consistency across courts when determining what level of treatment the Constitution demands with respect to detained youth.[21] Courts generally concede that unlike adult prisoners, juvenile detainees—even those adjudicated delinquent—have not actually been convicted of any crimes.[22] Therefore, the Constitution guarantees them more protections under the Fourteenth Amendment than it grants convicted criminals under the Eighth Amendment.[23] Despite this aware-

20. *See* Hafemeister, *supra* note 12, at 71 (finding that juvenile detention centers, in general, regularly fail to respond to the individual needs of juvenile offenders, and that the limited mental health services provided are sometimes counterproductive). Nevertheless, the transition to a mixed punitive and rehabilitative system has reduced the strength of the argument that juvenile offenders are entitled to a broad right to treatment. *See id.* at 79 (conceding that the argument emboldening a broad right to treatment has been weakened by the fact that the juvenile system no longer has the sole purpose of rehabilitation); *see also* McDermott, *supra* note 15, at 723–24 ("Despite the demonstrably high need for mental health services among incarcerated youth, juvenile prisons very often fail to provide even basic services to youth with mental illnesses."). With the move towards the punitive model, detained children are being treated increasingly more like adult prisoners, and the notion of a right to treatment is disappearing. *See id.* at 714–15 (stipulating that youth detention programs are becoming more akin to adult prisons).

21. *See* McDermott, *supra* note 15, at 715 (suggesting that because the juvenile system is a confusing hybrid system, courts differ drastically in how they assess the claims of juvenile offenders asserting that they have been denied adequate access to mental health care).

22. *See* Hafemeister, *supra* note 12, at 90 (distinguishing between adjudicated juvenile detainees and adult criminals, as the former "technically have not been found guilty of a crime and subjected to criminal punishment"); McDermott, *supra* note 15, at 717 ("Nowhere in the United States does the juvenile justice system actually try and convict young people of any crimes.").

23. *Compare Doe 4*, 985 F.3d at 339 (analyzing the claims of juvenile detainees through the Fourteenth Amendment), A.M. *ex rel.* J.M.K. v. Luzerne Cnty. Juv. Det. Ctr., 372 F.3d 572, 584 (3d Cir. 2004) (agreeing that the district court appropriately analyzed the plaintiff's claim under the Fourteenth Amendment because he was a juvenile detainee and not a convicted prisoner), Milonas v. Williams, 691 F.2d 931, 942 n.10 (10th Cir. 1982) (finding that the Eighth Amendment does not apply because juvenile detainees have not been convicted of a crime), Santana v. Collazo, 714 F.2d 1172, 1179 (1st Cir. 1983) (stating that juvenile detainees "have a due process interest in freedom from unnecessary bodily restraint which entitles them to closer scrutiny of their conditions of confinement than that accorded convicted criminals"), Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987) (rejecting the use of the Eighth Amendment with respect to practices at a juvenile detention facility, and instead applying the Due Process Clause of the Fourteenth Amendment), *and* A.J. *ex rel.* L.B. v. Kierst, 56 F.3d 849, 854 (8th Cir. 1995) (concluding that the Due Process Clause of the Fourteenth Amendment is the measuring stick for conditions at a juvenile facility rather than the Eighth Amendment's Cruel and Unusual Punishment Clause), *with* Nelson v. Heyne, 491 F.2d 352,

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ness, in the absence of additional guidance from the Supreme Court, lower courts continue to erroneously lean on Eighth Amendment principles when addressing detained youth offenders' claims about inadequate access to mental health care.[24]

Most notably, the Third Circuit declared in *A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center*[25] that the Eighth Amendment's deliberate indifference standard is the appropriate test for juvenile detainees' claims of inadequate access to mental health care.[26] This is the same onerous test that the Supreme Court held should apply when determining whether a prison's failure to adequately address the medical needs of adult criminals rises to the level of cruel and unusual punishment.[27] It requires plaintiffs to show that detention facility administrators not only failed to attend to an objectively serious medical need, but also that they acted deliberately indifferent toward that medical need.[28]

However, when Doe 4's story reached the Fourth Circuit in 2021, the court split with the Third Circuit, and finally delivered on the juvenile justice system's original promise of treating youth detainees differently from adult prisoners.[29] In *Doe 4 ex rel. Lopez v. Shenandoah Valley Juvenile*

355–56 (7th Cir. 1974) (applying the Eighth Amendment to claims by juvenile detainees), *and* Morales v. Turman, 562 F.2d 993, 998 n.1 (5th Cir. 1977) (finding that the Eighth Amendment applies equally to juvenile detention centers and adult prisons).

24. *See A.M.*, 372 F.3d at 584 (acknowledging that the plaintiff's claim should proceed under the Fourteenth Amendment yet still applying the Eighth Amendment's deliberate indifference standard); *see also* McDermott, *supra* note 15, at 739 (insinuating that even courts purporting to analyze juvenile claims under the Fourteenth Amendment may still use the Eighth Amendment's deliberate indifference test).

25. 372 F.3d 572 (3d Cir. 2004).

26. *Id.* at 584 (acknowledging that the plaintiff's claim should proceed under the Fourteenth Amendment, yet still applying the Eighth Amendment's onerous deliberate indifference standard). The court noted that, under the Fourteenth Amendment, juvenile detainees are entitled to at least the same protections afforded convicted prisoners under the Eighth Amendment. *Id.* However, because the Supreme Court had not yet defined the contours of the state's obligations to civil detainees under the Due Process Clause, the court elected to use the deliberate indifference standard. *Id.* For more discussion on the Third Circuit's decision to use the deliberate indifference test, see *infra* notes 109–16 and accompanying text.

27. *See* Estelle v. Gamble, 429 U.S. 97, 106 (1976) (holding that prisoners alleging inadequate access to medical care must show evidence of deliberate indifference to serious medical needs in order to make out a viable Eighth Amendment claim).

28. *See* Farmer v. Brennan, 511 U.S. 825, 837 (1994) (defining deliberate indifference as when a prison administrator knows of and disregards an excessive risk to inmate safety). "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* For more information regarding the development of the deliberate indifference test, see *infra* notes 39–47 and accompanying text.

29. *Compare Doe 4*, 985 F.3d at 342 (emphasizing the recognized differences between adults and children that warrant the application of distinct constitutional

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Center Commission,[30] Doe 4 brought a class action alleging that SVJC had violated his constitutional rights, as well as the rights of other unaccompanied alien children ("UACs"), by failing to provide adequate access to mental health treatment.[31] The Fourth Circuit rejected the district court's application of the Eighth Amendment's deliberate indifference standard.[32] The court instead relied on the Supreme Court's holding in *Youngberg v. Romeo*[33] to conclude that a detention facility addressing the mental health needs of a child violates the Constitution when the facility substantially departs from accepted professional standards, regardless of the intent of any specific employee.[34]

This Note submits that the Fourth Circuit's decision to apply the professional judgment standard to juvenile detainees' claims of inadequate access to mental health care is appropriate because it comports with the Supreme Court's rationale in *Youngberg* and provides the added protection needed to realize the ongoing goal of rehabilitating youth offenders.[35] Part II of this Note provides background information on the development of the deliberate indifference and professional judgment standards and discusses how courts have previously handled juvenile detainees' claims, including the Third Circuit in *A.M.* Part III outlines the facts and procedural history of *Doe 4*, while Part IV details how the Fourth Circuit arrived at its conclusions. Part V critically analyzes the holding in *Doe 4* and asserts that the Fourth Circuit's approach is more prudent than the Third Circuit's approach. Finally, Part VI concludes with a brief assessment of the impact that *Doe 4*'s holding will have on the future claims of juvenile detainees alleging inadequate access to mental health care.

II. FILLING IN THE PATIENT HISTORY FORM: A BACKGROUND ON THE GOVERNMENT'S CONSTITUTIONAL OBLIGATIONS TO DETAINED JUVENILES

This Part of the Note will provide some background on the developments that have been made with respect to the constitutional rights of juveniles in the judicial system and highlight the competing precedents

protections), *with id.* at 348, 349, 352 (Wilkinson, J., dissenting) (arguing that the majority needlessly created a circuit split with the Third Circuit).

30. 985 F.3d at 327.

31. *See id.* at 329. Expert testimony suggested that the facility failed to implement trauma-informed care, and that the practices used for disciplining children may have actually exacerbated their mental illnesses. *See id.* at 334 (discussing the testimony of expert witness).

32. *See id.* at 329.

33. 457 U.S. 307 (1982). For a discussion of the facts and analysis in *Youngberg*, see *infra* notes 54–57 and accompanying text.

34. *See Doe 4*, 985 F.3d. at 342. For an analysis of the steps taken by the Fourth Circuit in arriving at its holding, see *infra* notes 140–55 and accompanying text.

35. *See* Hafemeister, *supra* note 12, at 94 (arguing that a majority of jurisdictions remain committed to the idea that the cardinal reason for detaining juveniles is to provide for their rehabilitation).

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that the Fourth Circuit grappled with in *Doe 4*. Section II.A outlines three separate tests that courts use when assessing the constitutional claims of individuals under state confinement. Section II.B demonstrates how courts have routinely treated juveniles differently from adults when it comes to general conditions-of-confinement claims and sentencing. Lastly, Section II.C concludes with a discussion of the Third Circuit's analysis in *A.M.*

A. *Differing Treatment Regimens: Comparing Eighth and Fourteenth Amendment Standards for Conditions of Confinement*

Unsure whether to treat youth detainees like convicted criminals, adult pre-trial detainees, or involuntarily committed psychiatric patients, courts have struggled with developing appropriate tests to address the claims of juvenile detainees alleging inadequate mental health treatment or unconstitutional conditions of confinement.[36] Because of the unique space that the juvenile justice system occupies in the political and legal landscape—somewhere between criminal proceedings and civil matters—courts frequently draw on a mix of precedents from both Eighth and Fourteenth Amendment jurisprudence.[37] To fully grasp why the Fourth Circuit's decision to apply the professional judgment standard is the most logical approach, it is important to understand the variety of tests currently in use and their origins.[38]

36. *See* Ingraham v. Wright, 430 U.S. 651, 669 n.37 (reserving the question of whether the Eighth Amendment applies to juveniles in detention facilities); Gary H. v. Hegstrom, 831 F.2d 1430, 1431 (9th Cir. 1987) ("The Supreme Court has not announced the appropriate federal standards by which to judge state juvenile detention facility conditions."); A.J. *ex rel.* L.B. v. Kierst, 56 F.3d 849, 854 (8th Cir. 1995) (explaining that the Supreme Court has not provided any guidance on how to judge conditions in state juvenile facilities); Hafemeister, *supra* note 12, 90–91 (pointing out that the Supreme Court has not directly stated whether children in secured housing have a right to treatment); *see also* Levick et al., *supra* note 13, at 312 (arguing that regardless of which Amendment provides protections for youth offenders, the standard employed in conditions-of-confinement cases needs to be tailored to the unique developmental status of children).

37. *See* McDermott, *supra* note 15, at 729–31 (detailing the lack of consistency across courts in addressing claims made by juvenile detainees). Some courts exclusively evaluate claims under the Eighth Amendment, while others use the Fourteenth Amendment; still others purport to use the Fourteenth Amendment but instead rely on Eighth Amendment standards. *See id.* (outlining the conflation of Eighth and Fourteenth Amendment jurisprudence in cases analyzing claims made by juvenile detainees); *see also* Hafemeister, *supra* note 12, at 97 (explaining that while most scholars believe the Fourteenth Amendment provides a broader right to treatment, some find the analysis to be relatively similar under either Amendment).

38. *See, e.g.*, Farmer v. Brennan, 511 U.S. 825, 837 (1994) (defining the deliberate indifference test for conditions-of-confinement and access-to-medical-care claims); Bell v. Wolfish, 441 U.S. 520, 539 (1979) (applying the Fourteenth Amendment to pre-trial detainees and finding that conditions of confinement are unconstitutional when they are not reasonably related to a legitimate government goal); *Youngberg*, 457 U.S. at 323 (finding that the professional judgment standard

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1. *The Supreme Court Writes a Prescription for Deliberate Indifference for Prisoners Alleging Unconstitutional Conditions of Confinement*

The Eighth Amendment to the United States Constitution provides that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."[39] Traditionally, the Supreme Court of the United States only looked at "objective indicia"—contemporary social norms, as evidenced by legislative enactments and sentencing practices—to determine whether conditions of confinement violated the Eighth Amendment's prohibition on cruel and unusual punishment.[40] In 1976, however, the Court heard *Estelle v. Gamble*[41] and separated claims alleging inadequate access to medical care from other conditions-of-confinement claims.[42] The Court held that for a prisoner to make a cognizable claim of cruel and unusual punishment due to inadequate access to health care, the prisoner must have an objectively serious medical condition and prison administrators must have acted with deliberate indifference toward that serious medical condition.[43]

Despite its original narrow application to claims alleging inadequate medical care, the Court in 1991 held that the *Estelle* deliberate indifference standard should also govern general conditions-of-confinement claims in *Wilson v. Seiter*.[44] Nevertheless, it was not until the Supreme

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is the appropriate Fourteenth Amendment test for involuntarily committed psychiatric patients alleging unconstitutional conditions of confinement).

39. U.S. CONST. amend. VIII.

40. *See* Ian P. Farrell, *Abandoning Objective Indicia*, 122 YALE L.J. ONLINE 303, 304 (2013), https://www.yalelawjournal.org/forum/abandoning-objective-indicia [https://perma.cc/38V9-KP5M] (defining objective indicia). *See generally* Gregg v. Georgia, 428 U.S. 153 (1976) (rejecting a subjective analysis and holding that punishment which is grossly out of proportion to the severity of the crime is an example of unnecessary and wanton infliction of pain, in violation of the Eighth Amendment); Hutto v. Finney, 437 U.S. 678 (1978) (upholding the district court's determination that a combination of objective factors contributed to the conclusion that the prison had violated the prohibition against cruel and unusual punishment); Rhodes v. Chapman, 425 U.S. 337 (1981) (applying the *Gregg* test to conditions of confinement and engaging in a purely objective analysis).

41. 429 U.S. 97 (1976).

42. *Id.* at 105–06 (finding that inadequate medical care that is the byproduct of negligent conduct cannot be an Eighth Amendment violation because then every instance of medical malpractice would amount to a constitutional violation).

43. *Compare id.* at 106 (holding that prisoners alleging inadequate access to medical care must show evidence of deliberate indifference to serious medical needs), *with id.* at 116–17 (Stevens, J., dissenting) (asserting that whether the Constitution has been violated should depend on the nature of the punishment rather than the motivations of the individuals that inflicted it).

44. *Compare* Wilson v. Seiter, 501 U.S. 294, 303 (1991) (finding no difference between claims alleging inadequate access to medical care and inadequate conditions of confinement), *with id.* at 309–11 (White, J., concurring) (emphasizing that *Estelle* and claims alleging inadequate medical treatment are distinct from conditions-of-confinement claims, and further, that injecting a subjective component into these claims is imprudent).

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Court decided *Farmer v. Brennan*[45] in 1994 that it finally shed some light on how to determine when prison officials act with deliberate indifference.[46] In *Farmer*, the Court defined deliberate indifference as when a prison administrator "knows of and disregards an excessive risk to inmate health or safety[.]"[47]

2. *"A Spoonful of Sugar"*[48]*: Relaxing the Standard for Pre-trial Detainees and the Institutionalized*

Shortly after creating the deliberate indifference standard, the Supreme Court heard *Bell v. Wolfish.*[49] There, the Court considered how to assess claims by adult pre-trial detainees alleging unconstitutional practices and conditions of confinement within a New York correctional facility.[50] The Court recognized that pre-trial detainees, by virtue of not yet having been convicted of a crime, are entitled to certain liberty interests under the Due Process Clause of the Fourteenth Amendment that are not guaranteed by the Eighth Amendment.[51] Because courts have yet to adjudge those being held in pre-trial detention, and therefore cannot lawfully punish them, the question in *Bell* became whether the alleged conditions were so egregious that they were tantamount to punishment

45. 511 U.S. 825 (1994).

46. *See id.* at 834 (stating that prison officials violate the Eighth Amendment when two requirements are met: (1) the alleged deprivation objectively poses a serious risk of harm; and (2) when there is an unnecessary and wanton infliction of pain). As opposed to prior understandings of unnecessary and wanton infliction of pain, the second prong of the test now requires a showing that prison officials acted with the state of mind of deliberate indifference. *See id. Contra id.* at 856 (Blackmun, J., concurring) ("A punishment is simply no less cruel or unusual because its harm is unintended. In view of this obvious fact, there is no reason to believe that, in adopting the Eighth Amendment, the Framers intended to prohibit cruel and unusual punishment only when they were inflicted intentionally.").

47. *Id.* at 837 (defining deliberate indifference). The Court did not entirely reject the notion of constructive knowledge in this context, but it strongly cautioned against it. *See id.* at 841–42 (rejecting the idea that a judge could find constructive knowledge as a matter of law but acknowledging that a factfinder is entitled to conclude that an official knew of a substantial risk because of its obviousness). *But see id.* at 855–56 (Blackmun, J., concurring) (pointing out that the majority's holding was misguided because it would allow barbaric prison conditions, resulting from a lack of funding, to be immune from constitutional scrutiny simply because no prison official acted with a culpable mindset).

48. MARY POPPINS (Walt Disney Productions 1964).

49. 441 U.S. 520 (1979).

50. *Id.* at 523 (identifying the issue in the case as examining the constitutional rights of pre-trial detainees who have yet to be convicted). The alleged constitutional violations included overcrowded conditions, undue length of confinement, improper searches, inadequate access to recreational and employment opportunities, insufficient staff, and unnecessary restrictions regarding the purchase and receipt of personal items. *Id.* at 527.

51. *Id.* at 533 ("We do not doubt that the Due Process Clause protects a detainee from certain conditions and restrictions of pre-trial detainment.").

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under the Constitution.[52] While the Court was unable to conclude that the conditions of confinement at issue in that case constituted punishment, it nevertheless held that pre-conviction detainment conditions may amount to punishment if those conditions are not reasonably related to a legitimate government goal.[53]

After *Bell*, the Court heard *Youngberg*, where an involuntarily committed psychiatric patient's mother alleged that administrators of the hospital failed to institute appropriate procedures to prevent the patient from sustaining serious injuries, violating his Eighth and Fourteenth Amendment rights.[54] While the Court stopped short of declaring a fundamental constitutional right to treatment for involuntarily committed psychiatric patients, it recognized that the purpose of the plaintiff's confinement was care and safety.[55] As the purpose of confinement in that case was treat-

52. *See id.* at 535 (stating that the proper inquiry is whether the alleged conditions can be considered punishment). The Court, however, understood that not every deprivation amounted to punishment, as federal and state governments have the authority to detain individuals suspected of committing crimes in the name of security. *See id.* at 537 (recognizing that not all imposed disabilities amount to punishment in the constitutional sense). *But see id.* at 564 (Marshall, J., dissenting) (arguing that the appropriate inquiry should not involve analyzing whether certain restraints can be labeled punishment, but should concern whether the governmental interests at stake are outweighed by the deprivations suffered).

53. *Compare id.* at 538–39 (majority opinion) (articulating that, absent a showing of intent, conditions of confinement for pre-trial detainees may amount to punishment when they are shown to bear no reasonable relation to a legitimate governmental objective), *with id.* at 570 (Marshall, J., dissenting) (arguing that any restraint imposed on a pre-trial detainee may have a serious effect on that individual, so the government action should have to undergo a more rigorous analysis than mere rational basis), *and id.* at 585 (Stevens, J., dissenting) (opposing the use of a rational basis standard, as it will likely result in virtually no protection against punishment).

54. Youngberg v. Romeo, 457 U.S. 307, 310 (1982) (describing the claim brought by the involuntarily committed patient's mother, where she alleged that the plaintiff had suffered at least sixty-three separate injuries while in the care of the defendant facility). Also at issue in this case was the plaintiff's claim that an involuntarily committed psychiatric patient is entitled to minimally adequate habilitation under the Constitution. *Id.* at 316–17 (laying out the plaintiff's additional claim of habilitation and defining the term as "training and development of needed skills"). While the Court was reluctant to find a general right to habilitation for involuntarily committed patients, it recognized nevertheless that they are entitled to the level of training necessary to "ensure safety and freedom from undue restraint." *Id.* at 319 (limiting an involuntarily committed patient's right to habilitation to ensuring safety from undue restraint); *see also id.* at 329 (Burger, C. J., concurring) (suggesting that he would find a constitutional right to habilitation per se).

55. *Id.* at 319 (majority opinion) (finding that the state is required to provide minimally adequate training to ensure freedom from restraint but refusing to extend that right any further). However, the Court did cite language from the Third Circuit's opinion, where Chief Judge Seitz said, "I believe that the plaintiff has a constitutional right to minimally adequate care and treatment. The existence of a constitutional right to care and treatment is no longer a novel legal proposition." *Id.* at 318–19 (citing Romeo v. Youngberg, 644 F.2d 147, 176 (3d. Cir. 1980) (Seitz, C.J., concurring)). *Compare* Holland & Mlyniec, *supra* note 13, at 1802–08, 1822

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ment, the Court realized that the "involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish."[56] Based on that conclusion, the Court held that liability may only be imposed when the treatment is deemed to be a substantial departure from accepted professional judgment.[57]

With little Supreme Court guidance regarding state obligations to detained children, lower courts dealing with juvenile detainees' claims of inadequate conditions of confinement have inconsistently drawn on elements from each of the aforementioned tests.[58] However, despite the disparate applications of Eighth and Fourteenth Amendment principles, nearly every jurisdiction agrees that children are entitled to different protections under the Constitution than adults.[59]

(suggesting that *Youngberg* may have contributed to the demise of a constitutional right to treatment for children, but that state law provides a supplementary basis for a right to rehabilitative care), *with* Hafemeister, *supra* note 12, at 91–92 (describing the two main arguments that bolster the conclusion that the Fourteenth Amendment ensures a right to treatment for juvenile detainees). The first argument is the *parens patriae* rationale, which asserts that because juveniles are confined for rehabilitative purposes, committing them without providing access to needed medical treatment is impermissible. *See* Hafemeister, *supra* note 12, at 91. The second argument is the quid pro quo argument, which defends the right to treatment as an appropriate exchange for receiving lesser procedural protections than adults during adjudication. *See id.* at 92.

56. *See Youngberg*, 457 U.S. at 321–22. The Court also distinguished involuntarily committed mental health patients from pre-trial detainees because the purpose of confining mental health patients is to provide care, while pre-trial detainees are held in the name of public safety. *Id.* at 321 n.27. For an explanation of how the Fourth Circuit used *Youngberg* to conclude that juvenile detainees are more like institutionalized patients than pre-trial detainees, see *infra* notes 140–47 and accompanying text.

57. *Youngberg*, 457 U.S. at 323 (holding that the appropriate standard for assessing the constitutionality of confinement conditions for those institutionalized is the professional judgment standard); *see also* Rosalie Berger Levinson, *Wherefore Art Thou Romeo: Revitalizing Youngberg's Protection of Liberty for the Civilly Committed*, 54 B.C. L. REV. 535, 550–54 (2015) (arguing that lower courts have sought to minimize the importance of the *Youngberg* holding although it is still good law that protects the substantive liberty rights of the civilly committed).

58. *See* McDermott, *supra* note 15, at 729–31 (detailing the lack of consistency across courts in addressing claims made by juvenile detainees); *see also* Michael J. Dale, *Lawsuits and Public Policy: The Role of Litigation in Correcting Conditions in Juvenile Detention Centers*, 32 U.S.F. L. REV. 675, 700–03 (1998) (comparing the applicability of the *Bell* and *Youngberg* standards to juvenile detainees and suggesting that the protections available to children in detention should be more extensive than those accorded to adult pre-trial detainees).

59. For a discussion of the ways in which courts have distinguished between children and adults for constitutional purposes, see *infra* notes 60–96 and accompanying text.

B. *Not Recommended for Children: Courts Find the Constitution Applies Differently to Juveniles*

The juvenile justice system originally did not afford children many of the procedural due process protections that alleged criminals were entitled to under the Fifth Amendment.[60] The reason for the distinction was to provide flexibility in addressing the acute developmental needs of children, but the lack of procedural protections likely had the adverse effect of protecting children less than adults.[61] Because of the juvenile justice system's initial shortcomings, the Supreme Court eventually stressed in *In re Gault*[62] that the Bill of Rights was not intended solely for adults, but also extended some procedural protections to children.[63] However, in that case, the Court explicitly emphasized that adding due process requirements to juvenile proceedings was not meant to interfere with the goals of treating children differently from adults.[64] In light of the recent shift in purpose of juvenile detainment, the next subsection of this Note discusses

60. *See* U.S. CONST. amend. V; *In re* Gault, 387 U.S. 1, 14 (1967) (stating that from the inception of the juvenile court system, differences have existed between the procedural rights given to adults and those provided to juveniles.) The plaintiff in *Gault* alleged that the Juvenile Code of Arizona was unconstitutional because it afforded children no notice of the charges, no right to counsel, no right to confrontation and cross-examination, no privilege against self-incrimination, no right to a transcript of the proceedings, and no right to appellate review. *Id.* at 10 (laying out the differences between the juvenile and criminal court system that prompted this suit). In addition to those outlined by the plaintiff, the Court also pointed out that juveniles are not entitled to bail, nor to indictment by grand jury, nor to a public trial by jury. *Id.* at 14.

61. *See Gault*, 387 U.S. at 14–17 (providing context on why reformers sought the removal of stringent procedures within the juvenile system). Believing that children were innately good, the reformers discarded the rigidities and harshness seen in criminal law, so that the goal of rehabilitation could be more readily pursued. *See id.* (elaborating on the objectives behind reduced procedural safeguards for children). The Court then detailed how, in practice, the results of this decision may not have been satisfactory. *See id.* at 17–31 (weighing the costs and benefits of reduced procedural requirements for children and suggesting that sometimes the result has been unfair); *see also* Kent v. U.S., 383 U.S. 541, 556 (1966) ("There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.").

62. 387 U.S. 1.

63. *Id.* at 13 ("[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."). The Court also said, "[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court." *Id.* at 28. Ultimately the Court concluded that children are entitled to notice, counsel, the right against self-incrimination, and the right to confrontation. *Id.* at 31–57; *see also* Buckingham, *supra* note 2, at 667 (suggesting that *Gault* may have contributed to the "adultification of children" and the compromising of the rehabilitative focus of the juvenile justice system).

64. *Gault*, 387 U.S. at 22–24 (discussing why added due process requirements for children should not interfere with the goals of distinguishing adults from children).

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the ways in which courts have still routinely treated juveniles differently from adults under the Constitution.[65]

1. *Injecting a Fourteenth Amendment Analysis into Juvenile Conditions-of-Confinement Claims*

When it comes to the general conditions-of-confinement claims of juvenile detainees, courts have typically been willing to recognize that the Constitution entitles children to protections under the more expansive Fourteenth Amendment, rather than the Eighth Amendment.[66] Even in *Nelson v. Heyne*,[67] where the Seventh Circuit applied an Eighth Amendment analysis to juvenile claims, the court still drew on Fourteenth Amendment principles to distinguish children from adults and to declare a general right to rehabilitative treatment for youth detainees.[68] The court warned against a system that merely warehouses children and stressed the importance of ensuring that detention facilities adequately equip children to reintegrate into society.[69]

Although the Seventh Circuit decided *Nelson* before the Supreme Court issued opinions in *Bell* and *Youngberg*, subsequent cases in other circuits have relied on *Bell* and *Youngberg* in concluding that conditions-of-confinement claims by juvenile detainees are entitled to more scrutiny than prisoners' claims.[70] The Tenth Circuit was the first federal appellate

65. For a discussion about the contemporary shift in goals with respect to the juvenile offense system, see *supra* notes 15–17 and accompanying text.

66. *See* McDermott, *supra* note 15, at 730–31 (stating that six circuits apply the Fourteenth Amendment to incarcerated youths, while the Third, Fifth, and Seventh Circuits have explicitly applied the Eighth Amendment). However, in *A.M.*, the Third Circuit acknowledged that a juvenile detainee is entitled to protections under the Fourteenth Amendment, even though it ultimately fell back on the Eighth Amendment's deliberate indifference test. A.M. *ex rel.* J.M.K. v. Luzerne Cnty. Juv. Det. Ctr., 372 F.3d 572, 584 (3d Cir. 2004) (agreeing with the plaintiff that his claim is appropriately analyzed under the Fourteenth Amendment because he is a juvenile detainee and not a convicted prisoner). For more discussion on the Third Circuit's analysis in *A.M.*, see *infra* notes 109–16 and accompanying text.

67. 491 F.2d 352 (7th Cir. 1974).

68. *See id.* at 355–56 (applying the Eighth Amendment to determine whether the corporal punishment tactics used by the defendant facility were disproportionate to the committed offenses). However, in addressing the right to treatment for juvenile detainees, the Seventh Circuit understood that the goals of detaining children were clinical rather than punitive. *See id.* at 358 (noting the differences between juvenile detention and incarcerating criminal defendants). Ultimately, the court concluded that juveniles have the right to rehabilitative treatment under the Fourteenth Amendment's Due Process clause. *Id.* at 360 ("We hold that on the record before us the district court did not err in deciding that the plaintiff juveniles have the right under the 14th Amendment due process clause to rehabilitative treatment.").

69. *Id.* at 360 (stressing the importance of individualized treatment for youth offenders in order to advance their rehabilitation and prevent the warehousing of children).

70. *See* Holland & Mlyniec, *supra* note 13, at 1803 (asserting that while *Youngberg* has perhaps stunted the filing of right to treatment claims, it has, nevertheless, afforded some additional protections to incarcerated children).

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court to apply a Fourteenth Amendment analysis in the wake of *Bell* and *Youngberg*.[71] In *Milonas v. Williams*,[72] the Tenth Circuit concluded that juvenile detainees, like non-criminal adults, have additional liberty interests that are guarded by the Fourteenth Amendment that convicted adults lack.[73] The Tenth Circuit also affirmed the trial court's use of a *Bell*-like balancing test to conclude that the alleged conditions of confinement were not reasonably related to security goals.[74]

One year after *Milonas*, the First Circuit heard *Santana v. Collazo*,[75] a case where eight juvenile offenders brought a class action suit against an industrial school in Puerto Rico and urged the court to declare the conditions at the school unconstitutional.[76] While the First Circuit chose not to declare a constitutional right to rehabilitative training, it relied heavily on *Youngberg* to decide that the plaintiffs have a due process interest in freedom from unnecessary bodily restraint, which affords their claims closer scrutiny than similar ones that convicted criminals bring under the Eighth Amendment.[77]

The Ninth Circuit followed in the First Circuit's footsteps a few years after *Santana* and determined that the status of a detainee is the primary factor to consider when deciding what standard to apply.[78] With respect to juveniles not convicted of a crime, the court required that a more protective Fourteenth Amendment analysis apply.[79] In 1995, the Eighth Cir-

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71. *See* Milonas v. Williams, 691 F.2d 931 (10th Cir. 1982).

72. 691 F.2d 931 (10th Cir. 1982).

73. *Id.* at 942 ("A person involuntarily confined by the state to an institution retains liberty interests that are protected by the due process clause of the fourteenth amendment." (citing Bell v. Wolfish, 441 U.S. 520, 545 (1979))).

74. *Id.* at 942–43 (affirming the trial court's decision to apply a Fourteenth Amendment balancing test to the alleged unconstitutional conditions of confinement).

75. 714 F.2d 1172 (1st Cir. 1983).

76. *Id.* at 1174 (detailing the juveniles' complaint against the Mayaguez Industrial School).

77. *Id.* at 1179 ("Even more important than Eighth Amendment concerns for our purposes, juveniles like plaintiffs, who have not been convicted of crimes, have a due process interest in freedom from unnecessary bodily restraint which entitles them to closer scrutiny of their conditions of confinement than that accorded convicted criminals."). Recognizing that juvenile detainees are not identical to involuntarily committed mental health patients, the court said that the two were similar because the state cannot assert punishment as a legitimate interest in either context. *Id.* ("[T]he crucial similarity is that in neither context may the state assert punishment as a legitimate interest warranting incarceration. The state acquires the right to punish an individual only after it has tried and convicted him as a criminal."). The court applied a test akin to *Bell*, where an individual not yet convicted of a crime may only face restrictions on liberty which are reasonably related to a legitimate government objective. *Id.* at 1180–83.

78. Gary H. v. Hegstrom, 831 F.2d 1430, 1432 (9th Cir. 1987) (stating that the status of a detainee determines what standard to use in evaluating that detainee's conditions of confinement).

79. *See id.* (finding that the more protective Fourteenth Amendment standard is appropriate when detainees have not yet been convicted of a crime); *see also*

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cuit pushed the Fourteenth Amendment analysis even further in *A.J. v. Kierst*[80] and suggested that the test, when applied to juvenile pre-trial detainees, should be construed more liberally than when applied to adult pre-trial detainees.[81]

While subjective intent remains an integral part of adult conditions-of-confinement claims, the cases above demonstrate that circuit courts have deliberately chosen to exclude that aspect of the analysis for similar claims brought by juvenile detainees.[82] If, as the Supreme Court explained in *Wilson*, conditions-of-confinement claims are to be treated the same way as access to health care claims, then juvenile detainees should not need to prove a subjective component in the latter claims as well.[83]

3. *The Supreme Court Offers a More Optimistic Prognosis to Adolescents Tried as Criminals*

In addition to acknowledging that juvenile detainees should receive distinct treatment with respect to conditions of confinement, the Supreme Court has started to recognize that children should receive different protections during sentencing. In *Roper v. Simmons*,[84] for instance, the Court found that the Eighth and Fourteenth Amendments forbid the imposition

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McDermott, *supra* note 15, at 730 (stating that scholars and courts frequently consider the Fourteenth Amendment to be more protective than the Eighth Amendment).

80. 56 F.3d 849 (8th Cir. 1995).

81. *Id.* at 854; *see also* Dale, *supra* note 58, at 702 ("The constitutional protection available to a child in detention should be more extensive than the protection against punishment applicable to an adult pre-trial detainee in a criminal case. After all, the state's purpose is different."). *Compare Kierst*, 56 F.3d at 854 ("In applying the due process standard to juveniles, we cannot ignore the reality that assessments of juvenile conditions of confinement are necessarily different from those relevant to assessments of adult conditions of confinement."), *with* Bell v. Wolfish, 441 U.S. 520, 538–39 (1979) (laying down the Fourteenth Amendment test for pre-trial detainees alleging unconstitutional conditions of confinement).

82. See *supra* and *infra* notes 66–81 and accompanying text (explaining that when assessing conditions-of-confinement claims, circuit courts only look to see whether the conditions are reasonably related to a legitimate government interest).

83. *See* Wilson v. Seiter, 501 U.S. 294, 303 (1991) (finding no difference between claims alleging inadequate access to medical care and inadequate conditions of confinement); McDermott, *supra* note 15, at 751–56 (suggesting that a purely objective test for access to health care claims comports with Supreme Court precedent); Levick, *supra* note 13, at 313 (arguing that deliberate indifference is an inapt test for juvenile offenders and that an objective standard would better protect the developmental needs of youth detainees).

84. 543 U.S. 551 (2005). In *Roper*, a jury in Missouri sentenced a seventeen-year-old boy to death for deliberately drowning a woman. *Id.* at 557–58 (stating that the defendant was tried as an adult and that the jury recommended the death penalty). The Missouri Supreme Court initially affirmed the conviction, but after the Supreme Court prohibited the execution of a "mentally retarded person" in *Atkins v. Virginia*, the Missouri Supreme Court granted post-conviction relief and set aside the death sentence. *Id.* at 559 (citing Atkins v. Virginia, 536 U.S. 304 (2002)). The Supreme Court then granted certiorari to hear this case. *Id.* at 560.

of the death penalty on offenders under the age of eighteen.[85] In arriving at that conclusion, the Court identified three general differences between juveniles under the age of eighteen and adults: (1) juveniles are less mature and have a less developed sense of responsibility, which results in impetuous and ill-conceived decisions; (2) juveniles are more vulnerable to negative influences and outside pressures; and (3) juveniles have transitory and less fixed personalities.[86] Those distinctions prompted the Court to hold that children have reduced culpability levels, and therefore, the penological justifications which support the death penalty for adults do not apply to juveniles.[87]

Five years after *Roper*, in *Graham v. Florida*,[88] the Court held that the Constitution also prohibits the imposition of a life without parole sentence on an offender younger than eighteen who has not committed homicide.[89] Relying heavily on the rationale in *Roper*, the Court found that the nature of non-homicide offenses and the age of juvenile offenders contrib-

85. *Id.* at 568, 578. Part of the Court's support for its holding was based on a survey of how the fifty states dealt with the issue of imposing the death penalty on youth offenders. *Id.* at 564–67 (analyzing how the states view the use of the death penalty with respect to juveniles). The Court found that the national consensus opposed the use of the death penalty for juveniles, as a majority of states rejected its use altogether, and amongst those where it was permitted, it was rarely used. *Id.* at 567 (finding that the objective indicia of consensus provided sufficient evidence that society viewed juveniles as categorically less culpable than criminals). *Compare id.* at 575–78 (emphasizing that the United States was the only country in the world at the time to officially sanction the death penalty for children), *with id.* at 623–28 (Scalia, J., dissenting) (critiquing the majority for looking to the views of other countries).

86. *Id.* at 569–70 (pointing out the three principal cognitive differences between juveniles and adults); *see also* Levick, *supra* note 13, at 293–99 (outlining neurological research that demonstrates the developmental differences between adults and adolescents in four areas: (1) independent functioning, (2) decision-making, (3) emotion regulation, and (4) general cognitive processing).

87. *Roper*, 543 U.S. at 570 ("These differences render suspect any conclusion that a juvenile falls among the worst offenders."). After finding that juveniles do in fact have diminished culpability, the Court demonstrated that the penological justifications for the death penalty apply with less force to juveniles than they do to adults. *Id.* at 571–75 (finding that neither retribution nor deterrence justifies the use of the death penalty for juvenile offenders).

88. 560 U.S. 48 (2010). In *Graham*, a seventeen-year-old juvenile was found guilty of armed burglary and attempted armed robbery and sentenced to life in prison. *Id.* at 57. The court of appeals affirmed, believing that the juvenile offender was incapable of being rehabilitated. *Id.* at 58. After the Florida Supreme Court denied review, the Supreme Court of the United States granted certiorari. *Id.* at 58.

89. *Id.* at 74, 82 (holding that penological theories do not justify life without parole for juvenile non-homicide offenders, given the severity of the punishment and the reduced culpability levels of juveniles). The Court was clear, however, that while a state does not need to guarantee the juvenile offender eventual release, it must provide a meaningful opportunity to obtain release at some point. *Id.* at 75, 82.

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ute to a diminished level of culpability.[90] Accordingly, a strict penalty like life without parole would be disproportionate to the crime.[91]

The Court expanded the *Graham* holding two years later in *Miller v. Alabama*.[92] There, the Court concluded that it is unconstitutional to have a mandatory sentencing scheme that automatically imposes life without parole on juveniles for *any* offense.[93] It stated, "*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing."[94] Because mandatory penalty schemes prevent factfinders from considering an offender's age and culpability level, the Court held that judges and juries must have the opportunity to consider mitigating circumstances before imposing a harsh sentence like life without parole.[95] While *Roper*, *Graham*, and *Miller* were concerned with sentencing rather than access to mental health care claims, the same principles endorsed in this line of cases influenced the Fourth Circuit's holding in *Doe 4*.[96]

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90. *Id.* at 69 ("It follows that, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability. The age of the offender and the nature of the crime each bear on the analysis."). Engaging in the same two-step analysis utilized in *Roper*, the Court first looked to objective indicia showing that only 109 juvenile offenders were serving life sentences without parole for purely non-homicide offenses—most of whom were imprisoned in Florida. *Id.* at 62–67 (analyzing the prevalence of juvenile non-homicide offenders serving life without parole sentences across the fifty states).

91. *See id.* at 67–75 (starting the second step of the analysis and assessing whether the severity of the punishment was proportionate to the crime). In light of the conclusions in *Roper*, the Court found that no penological theory could justify the imposition of a lifetime sentence without parole upon juveniles who had reduced culpability levels. *Id.* The Court also noted that life sentences are more severe for juveniles than adults because juveniles on average will spend more years in prison. *Id.* at 70 ("Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender.").

92. 567 U.S. 460 (2012). In *Miller*, the Court consolidated cases from Alabama and Arkansas, two states with mandatory sentencing schemes that resulted in the automatic sentencing of juveniles to life without parole for homicide-related offenses. *Id.* at 465–69 (laying out the facts and procedural history of both cases).

93. *Id.* at 479 ("[T]he Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.").

94. *Id.* at 471.

95. *Id.* at 471–78 (explaining how mandatory penalties necessarily preclude sentencers from considering the distinctions between juveniles and adults outlined in *Roper* and *Graham*). "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences." *Id.* at 477. "*Graham*, *Roper*, and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles." *Id.* at 489.

96. For a discussion on how *Roper*, *Graham*, and *Miller* influenced the holding in *Doe 4*, see *infra* notes 153–55 and accompanying text. Additionally, for an argument as to why this line of cases refutes the use of the Eighth Amendment's deliberate indifference standard, see *infra* notes 168–72 and accompanying text.

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C. *A Bitter Pill to Swallow: The Third Circuit Falls Back on Eighth Amendment Standards*

Despite the important role that *Roper*, *Graham*, and *Miller* would play in *Doe* 4, the decision that was most on point—and the one that the Fourth Circuit would ultimately split with—was a Third Circuit case from 2004: *A.M. ex rel. J.M.K. v. Luzerne County Juvenile Detention Center*.[97] There, the juvenile plaintiff, A.M., was arrested for indecent conduct in Pennsylvania and detained at the Luzerne County Juvenile Detention Center ("the Center") for approximately one month while awaiting disposition.[98] The Center was aware that A.M. suffered from multiple behavioral disabilities, and that he was taking medication to treat his ADHD.[99]

Despite having knowledge of A.M.'s previous diagnoses, the Center failed to address his serious physical and mental health needs.[100] For example, the Center was initially unable to fill the prescription for A.M.'s ADHD medication.[101] Further, in the entire month he was held at the Center, only one mental health specialist treated A.M.[102] This specialist determined that A.M.'s behavior was "influenced by delusions or hallucinations or serious impairment in communication or judgment . . . or inability to function in almost all areas."[103] Because A.M.'s conditions

97. *See* Doe 4 *ex rel.* Lopez v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 348, 351–52 (4th Cir. 2021) (Wilkinson, J., dissenting) (pointing out that the Fourth Circuit's holding split with the Third Circuit's holding in *A.M.*); *see also* J.H. v. Williamson Cnty., 951 F.3d 709, 722 (6th Cir. 2020) (applying deliberate indifference to the inadequate access to mental health care claim of a juvenile detainee). In *J.H.*, the Sixth Circuit used the Eighth Amendment's deliberate indifference test, but the plaintiff never alleged any other standard, and the court did not declare that the standard was appropriate for all claims by juvenile detainees. *Id.* at 722–23 (finding that the detention staff was not deliberately indifferent to the plaintiff's mental health needs because it adhered to the instructions of professional medical providers).

98. A.M. *ex rel.* J.M.K. v. Luzerne Cnty. Juv. Det. Ctr., 372 F.3d 572, 575 (3d Cir. 2004) (explaining that A.M. was taken to a secure detention facility on July 12, 1999, where he remained until August 19, 1999).

99. *Id.* at 576 (indicating that the Center was made aware of A.M.'s prior conditions and that it could have also deduced that he had disabilities based on his displayed behavior). A.M. had been hospitalized eleven times for behavioral problems, he was taking ADHD medications, and he was suffering from anxiety disorder, depressive disorder, atypical bipolar disorder, and intermittent explosive disorder. *Id.*

100. *Id.* at 575–77.

101. *Id.* at 576 (detailing that the Center did not give A.M. his medication because it could not obtain authorization to refill his prescription).

102. *Id.* ("After Dr. Gitlin's evaluation of A.M., and during the remainder of his detention, no mental health professional was called in to see A.M. or consult with the Center's staff about A.M.'s behavior, despite the ongoing difficulty child-care workers were having with him.").

103. *Id.* (describing findings of the one psychiatric evaluation that A.M. had while detained at the Center). After evaluating A.M., the treating physician recommended that A.M. have a highly structured schedule in order to reduce his impulsivity and restlessness. *See id.*

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impaired his ability to interact socially, he suffered physical abuse and psychological torment at the hands of other juvenile detainees, resulting in humiliation, fear, and severe emotional distress.[104] Administrators recommended that he be placed on the girls' side of the Center, but staff routinely failed to abide by the directive.[105] This left A.M. susceptible to subsequent attacks from his abusers.[106] After his disposition hearing, where he was committed to the Northwestern Intermediate Treatment Facility ("Northwestern"), a counselor there noticed an untreated puncture wound on A.M.'s chest.[107] The Northwestern counselor ultimately filed an incident report, detailing the Center's knowledge of A.M.'s ongoing abuse and its failure to prevent him from suffering more harm.[108]

Following the counselor's incident report, in 2001, A.M.'s mother sued the Center on A.M.'s behalf, alleging that it had violated A.M.'s Fourteenth Amendment rights by failing to protect him from harm and failing to provide appropriate medical treatment.[109] In response, the Center filed a motion for summary judgment, which the district court granted.[110] On appeal, A.M. asserted that four of the Center's practices or customs provided a basis for liability: (1) deficient hiring and staffing policies, (2) inadequate training programs for child-care workers, (3) insufficient established protocols to ensure youth safety, and (4) insufficient established policies to address the mental and physical needs of youth residents.[111] The Third Circuit, believing that conscience-shocking activities amount to violations of the Fourteenth Amendment, decided that deliberately indifferent conduct may, in some circumstances, shock the conscience.[112]

The court ultimately found that A.M. had alleged sufficient facts to survive summary judgment with respect to each of the Center's allegedly deficient practices.[113] But the court did not use A.M.'s preferred standard, which was for the court to analyze his inadequate access to treatment

104. *Id.* at 575–76 (noting that other detainees spit on A.M., punched him, placed him in a garbage can, urinated on his bed, threw a ping-pong paddle at the back of his head, choked him, whipped him with towels, threatened him, and punctured his chest with an unknown object). These attacks left A.M. with bruises, wounds, and black eyes. *Id.* at 576.

105. *Id.*

106. *Id.*

107. *Id.* at 576–77.

108. *Id.* at 577.

109. *Id.*

110. *Id.* at 577–78.

111. *Id.* at 580.

112. *Id.* at 579 (finding that deliberately indifferent conduct may sometimes rise to the level of conscience-shocking); *see generally* Rosalie Berger Levinson, *Time to Bury the Shocks the Conscience Test*, 13 CHAP. L. REV. 307 (2010) (arguing that the shocks the conscience test for substantive due process challenges should be overturned).

113. *Id.* at 584–85.

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claim under the Fourteenth Amendment.[114] The Court agreed that his claims should be assessed under the Fourteenth Amendment, but noted that "the contours of a state's due process obligations to detainees with respect to medical care ha[d] not been defined by the Supreme Court."[115] Because of the lack of guidance from the Supreme Court, the Third Circuit concluded that juvenile detainees were entitled to at least the same protections as convicted prisoners under the Eighth Amendment, and therefore held that A.M.'s claims were subject to a deliberate indifference analysis.[116]

III. REVIEWING *Doe 4*'s Charts: Relevant Facts and Procedure

The Fourth Circuit took a different approach than the Third Circuit with respect to juvenile detainees' claims when it decided *Doe 4* in 2021.[117] Doe 4's story began in Honduras in 2001, when he was born into a fractured family living in a city riddled with gang violence.[118] Doe 4 endured a challenging and traumatic childhood—he was raised by his maternal grandparents because his father was incarcerated and his mother abandoned him.[119] After gang members murdered Doe 4's friends and attacked him with a machete and a switchblade, he and a friend fled to the United States.[120] Upon crossing the U.S. border, Customs officers arrested Doe 4 and nearly knocked him unconscious while attempting to detain him.[121] The officers first placed Doe 4 in a facility in Arizona, which shortly thereafter transferred him to another detention center in

114. *Id.* at 584 (explaining how A.M. argued that the court should not analyze his inadequate access to treatment claim under the Eighth Amendment's deliberate indifference standard because he was not a convicted prisoner).

115. *Id.*

116. *Id.*; *see also* McDermott, *supra* note 15, at 739 (discussing the strange phenomenon of courts that purport to analyze juvenile claims under the Fourteenth Amendment but still use the Eighth Amendment's deliberate indifference test).

117. *See* Doe 4 *ex rel.* Lopez v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 348, 351–52 (4th Cir. 2021) (Wilkinson, J., dissenting) (pointing out that the Fourth Circuit's holding split with the Third Circuit's holding in *A.M.*); *see generally* Porter Wells, *Detained Immigrant Kids' Inadequate Healthcare Claims Revived*, BLOOMBERG L. (Jan. 12, 2021, 2:13 PM), https://www.bloomberglaw.com/bloomberglawnews/health-law-and-business/XFB3D82O000000?bna_news_filter_alth-law-and-business#jcite [permalink unavailable] (providing an overview of the analysis in *Doe 4* and pointing out the circuit split).

118. *See Doe 4*, 985 F.3d at 331; Christina Sterbenz, *Here's What It's Like in The Most Dangerous City in the World*, BUS. INSIDER (Dec. 31, 2017, 4:10 PM), https://www.businessinsider.com/san-pedro-sula-is-the-most-violent-city-on-earth-photos-2014-12 [https://perma.cc/H8GU-CF9D] (labeling San Pedro Sula, Honduras "the most violent [city] in the world").

119. *See Doe 4*, 985 F.3d at 331.

120. *Id.* Doe 4 also experienced violence on his journey to the United States, including being robbed, beaten, and shot in the foot. *See id.*

121. *Id.* (stating that when United States Customs and Border Protection officers found Doe 4, they threw him to the ground while proceeding to handcuff him, knocking him almost unconscious).

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New York, only for that center to transfer him again in December of 2017 to SVJC because of behavioral problems.[122]

Once he arrived at SVJC, a physician named Dr. Gorin diagnosed Doe 4 with PTSD and ADHD.[123] Dr. Gorin also labeled Doe 4 a "medium risk factor" to engage in self-harm or attempt suicide, and recommended that he be placed in residential treatment.[124] Following Dr. Gorin's recommendation, SVJC attempted to transfer Doe 4 but was unable to find another location willing to care for him due to his history of violent misconduct.[125]

While at SVJC, Doe 4 never admitted to having suicidal thoughts but he engaged in several instances of self-harm.[126] On one occasion, he tied a shirt around his neck, prompting the staff to place him in a suicide blanket.[127] In addition to hurting himself, Doe 4 was involved in multiple disciplinary incidents.[128] As a result of his erratic behavior, Doe 4 was removed from programming on twenty-one separate occasions, and over a period of seven months he spent over eight hundred hours "alone or restricted from contact with others."[129] Doe 4 was not the only juvenile detainee in SVJC to exhibit severe mental health needs; indeed, forty-five

122. *Id.* at 331–32. SVJC is a Virginia state facility that provides education, housing, and medical care to unaccompanied alien children who, at the discretion of the Department of Health and Human Services' Office of Refugee Resettlement, are placed there for safety concerns. *Id.* at 329–30 (describing SVJC and its stated goals).

123. *Id.* at 332. When a child is referred to SVJC, licensed medical professionals review relevant medical records and are supposed to determine whether the facility can adequately address the mental needs of the child. *Id.* at 330. If the child is accepted, then the supervisor completes an initial intake, which includes a mental health evaluation. *See id.*

124. *Id.* at 332. Dr. Gorin labeled Doe 4 as a "medium risk factor" after consulting clinic records, noting a prior incident where Doe 4 punched a wall and broke bones, leading Dr. Gorin to conclude that he had a history of self-harm or suicide attempts. *See id.* In addition to Dr. Gorin's assessment, Doe 4 received mental health services, including weekly meetings with a clinician for counseling, as well as occasional visits from a psychiatrist that would prescribe antidepressants and insomnia medications. *See id.* (describing additional mental health services that were offered to Doe 4).

125. *Id.*

126. *Id.*

127. *See id.* (noting that while Doe 4 never reported suicidal thoughts, a number of instances of self-harm had been observed). Instances of Doe 4 engaging in acts of self-harm included: (1) tying a shirt around his neck, causing staff to place him in a suicide blanket, (2) scratching his arms on his bunk, and (3) after fighting with staff members and being locked in his room, Doe 4 began punching the door and sink in his room. *Id.* at 332–33.

128. *Id.* at 332 (describing "several major disciplinary incidents" where the staff punished Doe 4 for refusing to eat his dinner and trim his nails).

129. *Id.* (describing the punishments Doe 4 received for his infractions, many of which involved confinement and isolation).

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children detained at SVJC intentionally harmed themselves or attempted suicide between June 2015 and May 2018.[130]

In October 2017, several detainees brought a class action against the SVJC Commission ("the Commission") in the Western District of Virginia, alleging that it had engaged in unlawful patterns of conduct through: (1) excessive use of force, physical restraints, and solitary confinement; (2) failure to provide a constitutionally adequate level of care for plaintiffs' serious mental health needs; and (3) discrimination on the basis of race and national origin.[131] After the court certified the class, SVJC transferred the first three plaintiffs, and Doe 4 became the substitute class representative.[132] The Commission moved for summary judgment on all claims.[133] At the summary judgment hearing, the plaintiffs withdrew the discrimination claim.[134] Subsequently, the district court denied summary judgment for the excessive use of force claim because it presented genuine issues of material fact.[135] However, the court granted the motion for summary judgment with respect to the mental health care claim because Doe 4 failed to meet the subjective component of the deliberate indifference test.[136]

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130. *Id.* at 333–34 (detailing some of the instances where other children at SVJC exhibited self-harming behaviors). One former staff member of SVJC testified that other staff routinely acted with indifference to the mental health needs of the detained children by mocking them and allowing them to self-harm. *Id.* at 334 (describing the testimony of a former SVJC employee, who alleged that shift supervisors reacted to incidents of self-harm with comments such as "let them cut themselves"). Dr. Gregory Lewis, an expert for the plaintiffs in the case, concluded that SVJC's practices and failure to appropriately treat the unaccompanied children likely exacerbated the trauma that many of them had already experienced. *Id.*

131. *Id.* In an amended complaint, the plaintiffs sought declaratory and injunctive relief under 42 U.S.C. § 1983. *Id.* § 1983 prohibits any person who acts under the color of state law from depriving an individual of any rights or immunities secured by the United States Constitution. 42 U.S.C. § 1983. In an amended complaint, plaintiffs alleged that the Commission violated their Fifth and Fourteenth Amendment rights. *See* Doe 4 *ex rel.* Lopez v. Shenandoah Valley Juv. Ctr. Comm'n, 355 F. Supp. 3d 454, 458 (W.D. Va. 2018) (documenting plaintiffs' allegations of constitutional violations).

132. *See Doe 4*, 985 F.3d at 335 (defining the class as unaccompanied alien children, currently detained or to be detained in the future, who either: (1) have been or will be subject to the disciplinary measures utilized by SVJC staff; or (2) have needed or will in the future require treatment for mental health issues while being housed at the facility).

133. *Id.*

134. *Id.*

135. *Id.* (indicating that the court found genuine disputes of material fact with respect to the plaintiffs' first claim). The district court split the first claim into separate excessive use of force and room confinement claims, finding that the legal standards applicable to both scenarios were distinct. *See Doe 4*, 355 F. Supp. 3d at 467 (finding that excessive force claims are properly analyzed under an objectively reasonable test, while room confinement for the juvenile plaintiffs is subject to the Fourteenth Amendment analysis laid out in *Bell*). For a discussion regarding the *Bell* test, see *supra* notes 49–53 and accompanying text.

136. *Doe 4*, 355 F. Supp. 3d at 468–69 (finding that the Commission was not deliberately indifferent because it provided an initial psychological evaluation,

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The only matter that the plaintiffs appealed to the Fourth Circuit was their inadequate access to mental health care claim.[137] The plaintiffs argued that the appropriate test for assessing the validity of their claim was the *Youngberg* professional judgment standard.[138] The Fourth Circuit agreed with the plaintiffs, reversed the district court's grant of summary judgment, and held that "a facility caring for an unaccompanied child fails to provide a constitutionally adequate level of mental health care if it substantially departs from accepted professional standards."[139]

IV. GETTING A SECOND OPINION: DISCUSSING THE FOURTH CIRCUIT'S ANALYSIS IN *Doe 4*

The primary question in *Doe 4* was which standard the Fourth Circuit should utilize in assessing the adequacy of mental health care provided to detained children.[140] Because the plaintiffs had alleged that the professional judgment standard should govern, the court turned to *Youngberg*.[141] In an earlier case, the Fourth Circuit had applied the *Youngberg* professional judgment standard to the claim of an involuntarily committed mental health patient.[142] It found that there were sufficient differences

gave Doe 4 prescribed medication, offered individual and group counseling, and scheduled visits for Doe 4 with a psychiatrist at least every six weeks). The complaint alleged inadequate mental health care under both the deliberate indifference and professional judgment standards, but the district court, relying on the contentions made in the Commission's brief, decided to employ the deliberate indifference test. *Id.* at 458, 468 (deciding that deliberate indifference was the more suitable test because, as set forth in the defendant's brief, "courts have repeatedly applied the deliberate indifference standard to civil detainees, including immigrant detainees").

137. *Doe 4*, 985 F.3d at 336 (stating that after the court granted summary judgment, the plaintiffs abandoned the excessive force and conditions-of-confinement claims and only appealed the inadequate mental health care claim).

138. *Id.* at 339 (noting that the plaintiffs urged the court to apply the *Youngberg* standard). For a more elaborate discussion regarding the *Youngberg* professional judgment test, see *supra* notes 54–57 and accompanying text.

139. *Id.* at 342 (holding that a detention facility is liable for constitutional violations when the mental health care provided substantially departs from accepted professional standards); *see also id.* at 346–47 (finding that the district court erred by not applying the *Youngberg* standard and dismissing the case on summary judgment). *But see* A.M. *ex rel.* J.M.K. v. Luzerne Cnty. Juv. Det. Ctr., 372 F.3d 572 (3d Cir. 2004) (applying deliberate indifference to the mental health care claims of juvenile detainees). For an analysis of the Third Circuit's reasoning in *A.M.*, see *supra* notes 109–16 and accompanying text.

140. *See Doe 4*, 985 F.3d at 339 (indicating the Court had not yet decided what standard is appropriate for assessing the adequacy of mental health care provided to detained children).

141. *See id.* ("'[L]iability may be imposed only when the decision by the professional' represents a 'substantial departure from accepted professional judgment'" (quoting Youngberg v. Romeo, 457 U.S. 307, 320, 323 (1982))). For an analysis contrasting the *Youngberg* standard from the competing deliberate indifference standard, see *supra* notes 39–57 and accompanying text.

142. Patten v. Nicholas, 274 F.3d 829, 842 (4th Cir. 2018). In *Patten*, the court concluded that there are three fundamental differences between pre-trial detain-

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between pre-trial detainees and involuntarily committed psychiatric patients—most importantly, the purpose of their confinement—to warrant the use of a more protective standard.[143] Using that precedent to guide its analysis in *Doe 4*, the court looked to the statutory and regulatory scheme governing UACs to determine the stated purpose of their commitment.[144]

The Department of Health and Human Services' Office of Refugee Resettlement (ORR) oversees the care and placement of UACs.[145] The court interpreted the ORR's duties as being care-oriented, and further concluded that the ORR's obligations extended to SVJC, as the facility consented to provide care for UACs placed there.[146] Finding that the purpose of the UACs' commitment to SVJC was akin to the involuntary commitment of psychiatric patients, the court held that the *Youngberg* standard governed.[147]

The Commission, believing that deliberate indifference was the correct standard, argued that the primary purpose of the UACs' detainment was not care, but security.[148] However, the court pointed out that security and treatment purposes may sometimes be intertwined, and that the exis-

ees and involuntarily committed psychiatric patients: (1) the purpose of commitment, security and punishment for the former and treatment for the latter; (2) the location of their detention, jails staffed by law enforcement officials for pre-trial detainees and hospitals staffed by medical personnel for the involuntarily committed; and (3) the duration of their confinement, where pre-trial detainees retain that status for a short period of time, involuntarily committed patients face lengthy and sometimes lifelong periods of confinement. *Patten*, 274 F.3d at 840–41 (distinguishing between pre-trial detainees and involuntarily committed psychiatric patients).

143. *Id.* at 840 ("The most obvious and most important difference [between a pre-trial detainee and an involuntarily committed psychiatric patient] is the reason for which the person has been taken into custody.").

144. *See Doe 4*, 985 F.3d at 339–40.

145. *See* 6 U.S.C. § 279 (2002) (laying out the general responsibilities of the ORR, which includes overseeing the care and placement of UACs).

146. *See* 8 U.S.C. § 1232(c)(2)(A) (2018) (requiring the ORR to place children in the least restrictive facilities that are in the best interest of the children); 8 U.S.C. § 1232(c)(3)(A) (requiring the ORR to place a child in a facility that is "capable of providing for the child's physical and mental well-being"); 45 C.F.R. § 410.102 (2019) (explaining that the ORR ought to "hold UACs in facilities that are safe and sanitary and that are consistent with ORR's concern for the particular vulnerability of minors"). Based on the cited statutes and regulations, the court surmised that the intended purpose of holding UACs is to provide them care. *Doe 4*, 985 F.3d at 339. The court also explained that the ORR's duties are incorporated to SVJC through the cooperative agreement which exists between the two. *Id.* at 340 ("These duties are reflected in SVJC's cooperative agreement with ORR, which tasks SVJC with being a 'care provider' . . . ."). Earlier in the case, the defendant tried to argue that the plaintiffs lacked standing by excluding the ORR from the suit, but the court rejected this argument and found that plaintiffs met the non-onerous requirements for redressability. *See id.* at 336–38 (rejecting the defendant's argument that the plaintiffs lacked standing).

147. *Doe 4*, 985 F.3d at 339.

148. *Id.* at 340.

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tence of some security motives do not negate the importance of providing care to UACs.[149] The court rejected the Commission's contention that because SVJC is not a hospital *Youngberg* should not apply, concluding that the nature of a facility where one is confined is secondary to the reason for the confinement.[150] In SVJC's final argument, it asked the Fourth Circuit to follow other circuits that have treated immigrant detainees as equivalent to pre-trial detainees, employing the deliberate indifference standard.[151] But the court distinguished the present case by pointing out that the plaintiffs were not just immigrant detainees, but *juvenile* immigrant detainees.[152]

In addition to using the purpose of the UACs' commitment at SVJC to justify the application of the *Youngberg* standard, the court also emphasized that the very nature of the plaintiffs' adolescence warranted the use of a more protective test.[153] The majority cited *Roper*, *Graham*, and *Miller* to

149. *Id.* (rejecting the Commission's argument as a false binary because care and safety purposes are not mutually exclusive). The court also pointed out that the plaintiff in *Youngberg* was institutionalized not only because of his need for mental health treatment, but also because his mother was unable to "control his violence." *Id.* at 340–41 (quoting Youngberg v. Romeo, 457 U.S. 307, 309 (1982)); *see also* Hafemeister, *supra* note 12, at 79 (suggesting that courts throughout the country accept that the dual purposes of rehabilitation and punishment can coexist).

150. *Id.* at 340–41 (rejecting the Commission's argument and stating that the nature of the facility is not dispositive). The court explained that if SVJC's goal is to correct negative behavior, and if that negative behavior stems from a history of trauma, then it follows that SVJC's efforts to correct the child's behavior should be geared towards treating the underlying trauma which precipitates that behavior. *See id.* (finding that improving the behavior of children is connected to treating the mental health issues which cause children to misbehave).

151. *Id.* at 342. Contrary to the defendant's apparent beliefs, the test for pre-trial detainees alleging inadequate conditions of confinement, as laid out by the Supreme Court, does not endorse an Eighth Amendment deliberate indifference analysis. *Compare* Bell v. Wolfish, 441 U.S. 520, 535–39 (1979) (adopting a Fourteenth Amendment analysis for pre-trial detainees alleging unconstitutional conditions of confinement, which requires a court to decide whether the confinement condition at issue is reasonably related to a legitimate government objective), *with* Farmer v. Brennan, 511 U.S. 825, 837 (1994) (laying out the deliberate indifference test for prisoners alleging inadequate conditions of confinement). For more discussion surrounding the Supreme Court's rationale in each of those cases, see *supra* notes 45–53 and accompanying text.

152. *See Doe 4*, 985 F.3d at 342. The court paid particular attention to *E.D. v. Sharkey*, a Third Circuit case upon which the Commission relied for support. *See id.* The court found that *Sharkey*, which involved immigrant adult detainees being held in anticipation of removal proceedings, was too different from the present case. *See id. See generally* E.D. v. Sharkey, 928 F.3d 299, 309 (3d Cir. 2019) (applying a deliberate indifference analysis to an adult immigrant detainee that alleged her detention facility failed to safeguard her from the sexual abuse perpetrated by one of its employees).

153. *See Doe 4*, 985 F.3d at 342 (recognizing that the unique psychological needs of children, combined with the state's obligation to care for them, made the use of the *Youngberg* standard particularly warranted in this instance). *See generally* McDermott, *supra* note 15 (advocating for a youth-specific Eighth Amendment analysis given the sensitive psychological needs of children).

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support the proposition that "children are constitutionally different."[154] With the acute needs of children in mind, the court declared that the appropriate lens for assessing the mental health claims of juvenile detainees is the *Youngberg* professional judgment standard.[155]

V. THE RESULTS ARE IN: A CRITICAL LOOK AT THE FOURTH CIRCUIT'S EXPERIMENTAL PROCEDURE

Given the motley of prior constitutional tests applied to conditions-of-confinement claims by juvenile detainees, this Note asserts that the Fourth Circuit's approach is the strongest because (1) it is consistent with the Supreme Court's holding in *Youngberg*, and (2) it appropriately appreciates the gravity of the distinction between children and adults.[156] In *Youngberg*, the Court explicitly avoided analyzing involuntarily committed mental health patients' claims under the Eighth Amendment, and instead found that they were entitled to more considerate treatment than

154. *Doe 4*, 985 F.3d at 342 (citing *Roper*, *Graham*, and *Miller* and other Supreme Court cases to demonstrate that children are constitutionally different). The court also pointed to an earlier opinion that stressed the importance of protecting society's youngest members from harm. *See id.* (citing Schleifer by Schleifer v. City of Charlottesville, 159 F.3d 843, 848 (4th Cir. 1998)).

155. *Doe 4*, 985 F.3d at 342 (holding that "a facility caring for an unaccompanied child fails to provide a constitutionally adequate level of mental health care if it substantially departs from accepted professional standards"). The court defined the professional judgment standard as an objective test and said that courts applying it are required to do more than determine that some treatment has been provided; they must assess whether treatment was adequate under a relevant standard of professional judgment. *Id.* at 343–44. Additionally, the court clarified that under this standard, courts should refrain from determining what is the most appropriate medical decision. *Id.* at 343. Instead, they should only look to see whether a decision was so out of bounds professionally, as to make it arbitrary. *See id.*; Levick, *supra* note 13, at 313 (arguing that maintaining a subjective component for youth detainees alleging inadequate access to mental health care undermines the rehabilitative nature of the juvenile system). *But see Doe 4*, 985 E.3d at 353 (Wilkinson, J., dissenting) (asserting the majority's holding enables judges to second-guess medical professionals just because children are implicated).

156. *See* McDermott, *supra* note 15, at 715 (arguing that juvenile systems fall into an ambiguous void between civil and criminal matters, and further, that this ambiguity contributes to widely different lenses through which to evaluate the claims of juvenile detainees asserting a right to mental health care). Some courts rely on a strict Eighth Amendment analysis. *See, e.g.*, Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974); Morales v. Turman, 562 F.2d 993 (5th Cir. 1977). Other courts purport to apply a Fourteenth Amendment analysis, but in reality, rely on Eighth Amendment principles. *See, e.g.*, A.M. *ex rel.* J.M.K. v. Luzerne Cnty. Juv. Det. Ctr., 372 F.3d 572 (3d Cir. 2004). Even when courts agree on which test to apply, it is applied inconsistently, which generates incongruous results. *See* McDermott, *supra* note 15, at 716 (pointing out that outcomes are jurisdiction-specific, rather than fact-specific, in cases where juvenile detainees allege violations of their constitutional right to mental health treatment). Compare the analysis in *A.M.*, *supra* notes 109–16 and accompanying text with the discussion of *Doe 4*'s analysis, *supra* notes 140–55 and accompanying text.

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criminals whose confinement is designed to punish.[157] Considering *Youngberg*'s endorsement of the professional judgment standard hinged on the purpose of the plaintiff's confinement, the Fourth Circuit had substantial reason to look to the statutes and regulations that govern the placement of UACs and to conclude that the purpose of their commitment is to provide care.[158] While these statutes and regulations do not apply when detained juveniles are not UACs, virtually every state still views rehabilitation as the primary function of the juvenile justice system.[159] Adopting the professional judgment standard as the default test for juvenile offenders' claims of inadequate mental health treatment will help to ensure the proper balance between the legitimate interests of states and the liberty interests of plaintiffs, as the Due Process Clause of the Fourteenth Amendment demands.[160]

157. *See* Youngberg v. Romeo, 457 U.S. 307, 321–22 (1982) ("Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish."). Additionally, the Court repudiated the district court for erroneously applying the Eighth Amendment's deliberate indifference standard in this case. *Id.* at 312 n.11, 325.

158. *See Doe 4*, 985 F.3d at 336–37 (analyzing the statutory and regulatory scheme that governs the placement of UACs). For more information on the specific statutes and regulations analyzed and how the Fourth Circuit concluded that the purpose of the UACs' commitment was for treatment, see *supra* notes 145–47 and accompanying text.

159. *See* Hafemeister, *supra* note 12, at 79, 94 (explaining that courts and state legislatures still recognize that the primary purpose of the juvenile system is rehabilitation); Holland & Mlyniec, *supra* note 13, at 1794 (arguing that despite the modern shift to punitive goals for juvenile detention, state laws continue to preserve their original rehabilitative goals). Even states that openly endorse punishment objectives in their statutes—for example: California, Florida, New Jersey and Washington—remain devoted to the cause of rehabilitating youth offenders. *See* Holland & Mlyniec, *supra* note 13, at 1812–13. Additionally, state courts still exercise jurisdiction as *parens patriae*, meaning that states are obligated to provide delinquent children with the equivalent of parental care. *See* Holland & Mlyniec, *supra* note 13, at 1812.

160. *Cf. Youngberg*, 457 U.S. at 320 (stating that the inquiry into whether rights protected by the Due Process Clause have been violated requires a court "to balance 'the liberty of the individual' and 'the demands of an organized society'" (quoting Poe v. Ullman, 367 U.S. 497, 542 (1961) (Harland, J., dissenting))). In *Youngberg*, the Court found that the professional judgment standard reflected the proper balance between the interests of the State and the liberty rights of the involuntarily committed. *Id.* at 321. *Compare* Petition for Writ of Certiorari, Doe 4 *ex rel.* Lopez v. Shenandoah Valley Juv. Ctr. Comm'n, 2021 WL 2986394, 14, 24–25 (2021) (No. 21-48) (arguing that *Youngberg* should be limited to the involuntarily committed and that the Fourth Circuit adopted a standard more akin to medical malpractice, which the *Youngberg* court clearly rejected), *and Doe 4*, 985 F.3d at 349–50 (Wilkinson, J., dissenting) (arguing that *Youngberg* should be construed narrowly because the Supreme Court cautioned against the expansion of substantive due process in Washington v. Glucksberg, 521 U.S. 702, 720 (1997)), *with* Petition for Writ of Certiorari, Baptiste v. Exec. Off. Of Health & Hum. Servs., 2021 WL 859712, 13–15 (2021) (No. 20-1234) (arguing that the application of a deliberate indifference standard is contrary to *Youngberg* and the decisions of other circuit courts).

Contrary to the Fourth Circuit's approach, the Third Circuit in *A.M.* never considered the purpose of the juveniles' confinement in the detention facility.[161] Instead, it applied the deliberate indifference standard without assessing whether it was an appropriate standard for juvenile plaintiffs.[162] While the court acknowledged that the Fourteenth Amendment entitles detainees to more protection, it still made use of the Eighth Amendment's deliberate indifference analysis.[163] Recognizing the existence of separate protections for juveniles, but failing to implement those protections simply because the Supreme Court has yet to sufficiently define their scope, erodes the fundamental purpose of the separate juvenile justice system and constitutes an abdication of judicial duties.[164]

Paradoxically, the Fourteenth Amendment only seemingly fails to provide additional protections to children within the realm of mental health care treatment, as circuit courts frequently reject the use of deliberate indifference and employ some version of the *Bell* test with respect to general conditions-of-confinement claims made by youth offenders.[165] Implicit in each of these decisions is the idea that requiring juvenile plaintiffs to show both an objective and a subjective component is too onerous and runs afoul of the juvenile justice system's goal of rehabilitation.[166]

161. *See* A.M. *ex rel.* J.M.K. v. Luzerne Cnty. Juv. Det. Ctr., 372 F.3d 572, 584 (3d Cir. 2004) (applying deliberate indifference to the claims of juvenile offenders primarily because the Supreme Court had yet to lay out a clear test for assessing a state's obligations to detainees with respect to medical care).

162. *See Doe 4*, 985 F.3d at 342 n.14 ("And while *A.M.* applied the deliberate indifference standard, it did so without any analysis addressing the propriety of the standard in a case involving children.").

163. *See A.M.*, 372 F.3d at 584 (agreeing that A.M.'s claims should be analyzed under the Fourteenth Amendment, yet still choosing to apply deliberate indifference); *see also* McDermott, *supra* note 15, at 731 ("In many cases, however, even those courts that purport to apply a Fourteenth Amendment due process approach in practice import Eighth Amendment language, tests, and considerations into their analysis."). McDermott details the phenomenon of courts that absentmindedly use the deliberate indifference standard in youth contexts "without fully unpacking the doctrinal justifications supporting that choice." *See id.* at 733.

164. *See A.M.*, 372 F.3d at 584 ("However, the contours of a state's due process obligations to detainees with respect to medical care have not been defined by the Supreme Court."); *see also* McDermott, *supra* note 15, at 736 ("A major drawback of engaging in a pure Eighth Amendment analysis is that doing so essentially concedes that adult-style punishment is a legitimate purpose of the juvenile justice system.").

165. *See* Levick, *supra* note 13, at 311 (pointing out that most jurisdictions have opted to apply the Fourteenth Amendment rather than the Eighth Amendment to juvenile conditions-of-confinement claims). Levick explains that despite the lack of clarity from the Supreme Court, lower courts understand that there is less deference to detention officials when punishment is not the primary goal. *See id.* For a discussion of circuit courts addressing juvenile conditions-of-confinement claims and their use of the *Bell* test, see *supra* notes 70–81 and accompanying text.

166. *See* McDermott, *supra* note 15, at 753 (arguing that where confinement conditions are not meant to punish, courts should not feel bound to use the criminal recklessness test outlined in *Farmer*); *see also* Levick, *supra* note 13, at 313 (suggesting a test that includes a subjective component is inapt for juveniles). *Compare*

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Also, as noted before, if the Supreme Court truly believes that mental health and conditions-of-confinement claims should be treated equally, as it said in *Wilson*, then analyzing each of those claims for juveniles with different standards seems counterintuitive.[167]

In addition to realizing the rehabilitative goals of the juvenile justice system and adhering to *Youngberg*, the Fourth Circuit appropriately appreciated the developmental differences between children and adults.[168] While the Third Circuit in *A.M.* did not have the benefit of the Supreme Court's wisdom in *Roper*, *Graham*, and *Miller*; conversely, the Fourth Circuit relied on those teachings to find that the *Youngberg* standard was warranted in *Doe 4*.[169] The court's decision to apply a more protective standard for juvenile detainees was more consistent with the Supreme Court's understanding in those cases that youth offenders are entitled to additional protections.[170] If science and public opinion support the conclusion that children are less culpable and can be rehabilitated, then detention centers should take steps to ensure that their practices do not exacerbate the vulnerabilities associated with childhood, especially when the children involved come from traumatic backgrounds.[171] Using the

Levick, *supra* note 13, at 313 (implying that juveniles should still be able to win under deliberate indifference because corrections staff are likely aware of juveniles' unique vulnerability), *with* Farmer v. Brennan, 511 U.S. 825, 841–42 (rejecting the idea that a judge could find constructive knowledge as a matter of law, but acknowledging that a factfinder is entitled to conclude that an official knew of a substantial risk because of its obviousness).

167. *See* Wilson v. Seiter, 501 U.S. 294, 303 (1991) (finding no difference between claims alleging inadequate access to medical care and inadequate conditions of confinement). In *Wilson*, the Court extended the deliberate indifference test outlined in *Estelle* to general conditions-of-confinement claims as well. *See id.*

168. *See* Doe 4 *ex rel.* Lopez v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 342 (4th Cir. 2021) (critiquing the failures of both the district court and the Commission to appreciate the fact that the plaintiffs were children).

169. *See id.* (pointing out that Supreme Court precedent appreciates the fact that children are psychologically and developmentally different from adults, to the extent that they are seen as constitutionally distinct). The court asserted that the state's strong interest in protecting youth from harm warranted the use of the professional judgment standard in this case. *See id.* ("Thus, the *Youngberg* standard is particularly warranted here, given the unique psychological needs of children and the state's corresponding duty to care for them.").

170. *See* McDermott, *supra* note 15, at 747–56 (suggesting that the rationale behind *Graham* and *Miller* supports the conclusion that a youth-specific standard should be applied to juvenile detainees' claims alleging inadequate access to mental health care).

171. *See Doe 4*, 985 F.3d at 334 (referencing expert testimony about SVJC's failure to implement trauma-informed care, which, combined with the practices used for disciplining children, may have actually exacerbated their mental health problems); *see also* Roper v. Simmons, 543 U.S. 551, 569–70 (2005) (outlining three general differences between juveniles under eighteen and adults: (1) youth are less mature and are likely to make impetuous decisions; (2) juveniles are more vulnerable to outside influences and pressures; and (3) the character of a juvenile is less fixed); McDermott, *supra* note 15, at 747–50 (arguing that the rationale from *Graham* and *Miller* should extend beyond the adjudication context); Levick, *supra* note 13, at 311 ("The recognition in *Roper* and *Graham* that juveniles are

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Youngberg professional judgment standard will likely incentivize facilities like SVJC to be more proactive about administering care, as a defense related to a lack of resources will not enable them to avoid liability.[172]

Even if the *Youngberg* professional judgment standard is to be construed narrowly, as only applying to involuntarily committed psychiatric patients, the fact that juvenile detainees are not convicted criminals and retain Fourteenth Amendment liberty interests means that courts should be precluded from using stringent Eighth Amendment tests in these contexts.[173] If courts were to adopt some version of the *Bell* test for juvenile access to mental health care claims, it would be hard to argue that allowing children with mental illnesses to languish in detention centers serves some legitimate government objective.[174] At the very least, courts ought to employ tests that are uniquely tailored to children and account for their reduced levels of capacity and culpability.[175]

While most of the Fourth Circuit's analysis in *Doe 4* is commendable, the court fell short of declaring that professional judgment demands a trauma-informed course of treatment.[176] Toward the end of the opinion,

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categorically less mature in their decision-making capacity, more vulnerable to outside pressures including peer pressure, and have personalities that are more transitory and less fixed, underscores that courts cannot simply apply the adult constitutional standard to juveniles." (footnote omitted)). For more information on how neurological differences between adults and children contributed to the Supreme Court's holding in *Roper*, *Graham*, and *Miller*, see *supra* notes 84–95 and accompanying text.

172. *See* Levinson, *supra* note 57, at 573–74 (explaining how the *Youngberg* test may not insulate state officials from liability when inadequate mental health care is purely due to a lack of funding from the legislature).

173. *See* Levick, *supra* note 13, at 312 (suggesting that regardless of what test courts decide to use, the standard needs to be appropriately tailored to children and more than a reiteration of adult standards). Deliberate indifference on the whole is inappropriate for juvenile offenders and an objective standard would better protect the needs of adolescent offenders. *See id.* at 313. *Contra Doe 4*, 985 F.3d at 349–52 (Wilkinson, J., dissenting) (arguing that the Fourth Circuit's adoption of the professional judgment standard was inappropriate because the Supreme Court has never expanded *Youngberg* beyond its narrow confines).

174. *See* Bell v. Wolfish, 441 U.S. 520, 539 (1979) (holding that conditions of confinement for pre-trial detainees must be tied to a legitimate government interest, and further, that those which are arbitrary or purposeless will be unconstitutional); *see also* Santana v. Collazo, 714 F.2d 1172, 1179–80 (1st Cir. 1983) (finding that the state cannot assert punishment as a legitimate objective for both involuntarily committed psychiatric patients and juvenile detainees, and because of that, their conditions of confinement are subject to more scrutiny than those of criminals); McDermott, *supra* note 15, at 726 ("Even conceding that punishment can be a legitimate purpose of the juvenile justice system, needless suffering surely cannot have a place in that punishment."). For a discussion regarding the *Bell* test, see *supra* notes 49–53 and accompanying text.

175. *See* Levick, *supra* note 13, at 310–312 (arguing that the unique developmental needs of children—recognized by the Supreme Court in *Roper*, *Graham*, and *Miller*—warrant the adoption of a new juvenile standard).

176. *See Doe 4*, 985 F.3d at 346 (leaving it to the trial court to determine whether "the trauma-informed approach should be incorporated into the professional judgment standard").

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the court spent some time explaining what a trauma-informed system of care would entail, stating that it would involve heightened screening procedures and less reliance on restraints and seclusion as disciplinary measures.[177] The Commission argued that trauma-informed care is "cutting edge" and aspirational, but the court responded by saying that it is well-established and already used in several states.[178] Instead of finding that professional judgment requires a trauma-informed approach, however, the Fourth Circuit declined to decide the issue in this particular case and left it to the trial court to determine whether trauma-informed care should be incorporated into the professional judgment standard.[179] At the very least, the court could have established a presumption that professional judgment necessarily entails a trauma-informed approach to care.[180] Despite this shortcoming, the Fourth Circuit's decision to adopt the professional judgment standard for juvenile detainees' claims was a monumental step forward in the battle for improved mental health care.[181]

VI. THE POTENTIAL LONG-TERM SIDE EFFECTS OF PROFESSIONAL JUDGMENT: ASSESSING THE IMPACT OF THE FOURTH CIRCUIT'S HOLDING IN *Doe 4*

Recent studies show that approximately two-thirds of detained juveniles suffer from some type of mental illness.[182] Between seventy-five

177. *Id.* at 344 (finding that a trauma-informed approach would require (1) appropriate trauma-informed polices; (2) appropriate screening methods for assessing and treating traumatized youth; (3) "culturally sensitive, trauma-informed programs that strengthen the resilience of youth"; and (4) "culturally sensitive, trauma-informed staff education and training"). Dr. Lewis also testified that staff would have to rely less on the use of restraints and seclusion. *Id.* at 345 (outlining Dr. Lewis' testimony on a trauma-informed standard of care).

178. *Id.* at 345. The Fourth Circuit pointed out that at least twelve states make use of a trauma-informed system of care, and that the Department of Justice, as well as other national organizations, "endorse trauma-informed care as a governing professional standard for children in detention." *Id.* at 345–46 (listing several states and national organizations that support the adoption of a trauma-informed standard of care).

179. *Id.* at 346 (declining to decide at this time whether trauma-informed care should be incorporated into the professional judgment standard). *See generally* Buckingham, *supra* note 2, (arguing that reliance on incarceration should be replaced by a trauma-informed approach with respect to juvenile justice). The author proposes four specific reforms: (1) creating a presumption of trauma, (2) mandating trauma identification of youth in the system, (3) implementing trauma-informed procedures, and (4) utilizing trauma-informed dispositions. *See id.*

180. *See* Buckingham, *supra* note 2, at 679 (asserting that juvenile detainees "have a substantive due process right to appropriate, trauma-informed care, regardless of the cost or current availability").

181. For a brief discussion on the ongoing fight to improve mental health care for detained juveniles, see *supra* notes 13–24 and accompanying text.

182. *See, e.g.*, McDermott, *supra* note 15, at 718 (citing a statistic that twelve to fifteen percent of youth in the general population suffer from mental disorders, while sixty-five to eighty percent of incarcerated youth suffer from mental illnesses).

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and ninety-three percent of children in the juvenile justice system report having experienced at least one traumatic life event.[183] Despite the high prevalence of trauma and mental health issues among juvenile offenders, a 2018 census of juvenile residential facilities revealed that only fifty-nine percent of reporting public facilities performed an in-house mental health evaluation for all of their detainees.[184] Of those that reported, ten percent were entirely unequipped to provide onsite mental health treatment.[185]

By adopting the professional judgment standard, the Fourth Circuit has prompted state legislatures and juvenile detention centers to act on their treatment goals and take affirmative steps toward addressing the medical needs of detained children.[186] *Doe 4*'s discussion of trauma-informed care may also bolster support for new culturally-sensitive approaches that will alleviate trauma rather than exacerbate it.[187] Advocates for immigrant children have celebrated the Fourth Circuit's opinion as a step toward securing much-needed mental health treatment for a highly traumatized class.[188] However, the Fourth Circuit's holding in *Doe 4* is not limited to unaccompanied immigrant children; thus, it is likely to increase the level of care that all juvenile detainees receive.[189]

Despite the fact that the Supreme Court has declined to hear an appeal, in light of *Doe 4*'s split with the Third Circuit, there is still a need for the Court to provide clarity on the obligations states have with respect to

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183. *See* Buckingham, *supra* note 2, at 654 (documenting the percentage of children entering the juvenile justice system after having experienced at least one traumatic life event).

184. *See* Sarah Hockenberry & Anthony Sladk, *Juvenile Residential Facility Census 2018: Selected Findings*, JUV. JUST. STATS. NAT'L. REP. SERIES BULL. (Off. of Juv. Just. and Delinq. Prevention, Wash., D.C.) Dec. 2020, at 12, https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/juvenile-residential-facility-census-2018.pdf [https://perma.cc/2DTJ-TQG6].

185. *See id.*

186. *See* Youngberg v. Romeo, 457 U.S. 307, 321 (1982) (explaining that the professional judgment standard demands that courts verify that relevant state actors exercised professional judgment); *see also* Levinson, *supra* note 57, at 572–74 (suggesting that the demands of exercising professional judgment will likely prompt more legislative funding for mental health services, as budgetary shortfalls may not insulate state actors from liability).

187. *See generally* Buckingham, *supra* note 2, at 678–79 (arguing that trauma-informed care aligns with the juvenile justice system's purported goal of rehabilitating youth offenders).

188. *See* Brad Kutner, *Fourth Circuit Revives Challenge to Mental Health Treatment of Unaccompanied Minors*, COURTHOUSE NEWS SERV. (Jan. 12, 2021), https://www.courthousenews.com/fourth-circuit-revives-challenge-to-mental-health-treatment-of-unaccompanied-minors/ [https://perma.cc/PR2A-NHLY] (noting the positive response that advocates for immigrant children had with respect to the Fourth Circuit's holding in *Doe 4*).

189. *See* Doe 4 *ex rel.* Lopez v. Shenandoah Valley Juv. Ctr. Comm'n, 985 F.3d 327, 344–46 (4th Cir. 2021) (suggesting that the professional judgment standard may require facilities like SVJC to implement protocols related to trauma-informed care).

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juvenile detainees.[190] Without guidance in this area, lower courts will continue to haphazardly conflate Eighth and Fourteenth Amendment principles, and detained children will remain at risk of being treated like adult criminals.[191] Until the Court offers some direction, other judiciaries should follow in *Doe 4*'s footsteps and ensure that the conditions of confinement for juveniles are consistent with the purpose of their commitment: to provide treatment.[192] After decades of reforms that made it easier to process youth offenders like adult criminals, *Doe 4* serves as a revindication of the juvenile detainee's right to rehabilitation and a reminder that children are, in fact, "constitutionally different."[193]

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190. *See* Wells, *supra* note 117 (noting that the Fourth Circuit's holding in *Doe 4* created a split with the Third Circuit). SVJC filed a petition for a writ of certiorari, but the Supreme Court has declined to hear the case. *See Doe* 4, 985 F.3d 327, *cert. denied*, 142 S. Ct. 583 (U.S. Dec. 6, 2021) (No. 21-48).

191. *See* McDermott, *supra* note 15, at 715–16 (explaining that courts differ widely in how they treat incarcerated juveniles asserting a right to mental healthcare, and that the lack of consistency will lead to uncertainty in preventing constitutional violations). "A major drawback of engaging in a pure Eighth Amendment analysis is that doing so essentially concedes that adult-style punishment is a legitimate purpose of the juvenile system." *Id.* at 736.

192. *See Doe 4*, 985 F.3d at 339–40 (looking to the purpose of the UACs' detention at SVJC and finding that the *Youngberg* standard applies); *see also* Hafemeister, *supra* note 12, at 94 (arguing that rehabilitation remains a primary goal for virtually every state juvenile justice system).

193. Miller v. Alabama, 567 U.S. 460, 471 (2012) (detailing how Supreme Court precedent shows that children are "constitutionally different" from adults); *see Doe 4*, 985 F.3d at 342 (stressing the need for more protections for juvenile detainees, "given the unique psychological needs of children and the state's corresponding duty to care for them").