

No. 447 CD 2022

COMMONWEALTH COURT OF PENNSYLVANIA

BRETT SHOLTIS,

Respondent-Appellant,

v.

BUCKS COUNTY,

Petitioner-Appellee.

On Appeal from a Final Order of the
Court of Common Pleas of Bucks County
Case No. 2020-05950, Entered April 4, 2022

**BRIEF OF THE ABOLITIONIST LAW CENTER AND THE
PENNSYLVANIA INSTITUTIONAL LAW PROJECT
AS AMICI CURIAE SUPPORTING APPELLANT AND REVERSAL**

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INTERESTS OF THE AMICI CURIAE

The Abolitionist Law Center (ALC) is a non-profit public interest organization dedicated to defending and expanding rights of incarcerated people and challenging state violence through advocacy, public education, and litigation. The ALC has litigated numerous cases against Pennsylvanian jails and prisons for violating the constitutional and statutory rights of those held in custody at the facility, including cases challenging excessive force, unconstitutional solitary confinement, denial of medical and mental health care, inadequate precautions in response to the COVID-19 pandemic, and infringement on the rights provided to people with disabilities under the Americans with Disabilities Act.

The Pennsylvania Institutional Law Project (PILP) is a civil legal aid organization that aims to advance the constitutional and civil rights of people incarcerated, detained, and institutionalized in prisons, jails, and immigration detention centers located in Pennsylvania. PILP strives to ensure that the thousands of clients it serves every year are treated with dignity. PILP pursues humane conditions of confinement, safety from violence, and access to medical and mental health care, to the courts, and to religious and disability accommodations. The transparency available through Pennsylvania's right to know law is vital to PILP's investigations, advocacy, and litigation on behalf of incarcerated people throughout Pennsylvania. PILP has advocated for compassionate and constitutional treatment of individuals with serious mental illness in numerous carceral settings, and litigated

multiple cases involving the availability of healthcare, use of force, and other conditions of confinement.

SUMMARY OF ARGUMENT

Pennsylvania county jails have become the government's primary institutional response for attempting to address the mental health crisis and now incarcerate significant numbers of people with serious mental illness.¹ This approach has caused trauma and significant physical and psychological harm to people with serious mental illness who have become enmeshed in the carceral system.² The question of whether incarceration represents an effective, fiscally responsible, morally acceptable and compassionate strategy to handle the needs of those with serious mental illness increasingly demands a social reckoning, but this Court need not resolve this question—it must merely affirm that the public itself should have the basic

¹ See Azza AbbuDagga et al., *Individuals With Serious Mental Illnesses in County Jails: A Survey of Jail Staff's Perspectives* 1-2 (Pub. Citizens Health Research Grp. and The Treatment Advocacy Ctr., 2006), <https://www.citizen.org/wp-content/uploads/migration/2330.pdf>; E. Fuller Torrey et al., *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States* 8 (Treatment Advocacy Ctr, 2010), https://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf.

² See Elliott Oberholzer, *Police, Courts, Prisons and Jails All Fail Disabled People*, PRISON POLICY INITIATIVE (Aug. 23, 2017), <https://www.prisonpolicy.org/blog/2017/08/23/disability/>; Katie Rose Quandt and Alexi Jones, *Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health*, PRISON POLICY INITIATIVE (May 13, 2021), <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/>.

information necessary to consider and discuss this difficult question out in the open. Having “[a]ccess to information regarding public police activity is particularly important because it leads to citizen discourse on public issues, the highest rung of the hierarchy of First Amendment values.” *Fields v. City of Phila.*, 862 F.3d 353, 359 (3d Cir. 2017) (internal quotes omitted). Disclosure of the records requested here would serve not only the public discourse about the use of force against individuals with serious mental illness in Pennsylvania jails, but also a wider ongoing conversation about arrest practices, pretrial detention, and accountability in the criminal legal system.

This Court should consider the harmful long-term effects of shielding even the most basic details about the use of force against individuals with serious mental illness. First, information about the use of force against incarcerated individuals with serious mental illness matters because it goes to the heart of the integrity of the criminal legal system. Substantial evidence demonstrates that public trust in law enforcement has deteriorated over time, and that lack of trust inhibits law enforcement’s ability to function and promote justice. Declining to require disclosure here—possibly preventing the public from ever learning even basic details about the use of force against an individual with serious mental illness—would further erode that trust. When calls go out to members of the public to report criminal offenses, serve as witnesses, or otherwise work with law enforcement, evidence shows that the public will think twice—understandably wondering whether the system seeking their collaboration has their best interests at heart.

Second, shielding information about the use of force against seriously mentally ill individuals and, potentially, correctional officer misconduct, also undercuts budget and reform conversations, which can only be had from an informed posture if stakeholders have full knowledge of what—and whom—dollars spent on corrections ultimately fund. These records particularly implicate resources expended on the Bucks County Correctional Facility, as well as County costs to investigate, defend against, and settle claims of misconduct or inadequate care. Regardless of what happened here, these records also inform ongoing debates about responsibilities the County owes to people in its custody and care, and the potential impact when people are released if they have undergone traumatic effects beyond the norm during incarceration. All of this is true regardless of one's position on police and corrections funding.

Finally, *Amici* observe that transparency particularly matters here because of the overrepresentation of individuals with serious mental illness in jails and the heightened risk of use of force against such individuals. The use of jails as repositories for those with mental illness creates significant problems for those who are incarcerated, the corrections officers tasked with caring for the incarcerated, and the greater community. Bucks County Correctional Facility's persistent refusal to provide transparency regarding their use of force against individuals with serious mental illness inhibits accountability and contributes to the durability of those problems. Alternatives to records requests like the one at issue in this case do not adequately serve the same purpose here. This matters all the more because law

enforcement officers, including corrections officers, have unique professional standing relative to our civil rights and liberties as the only public officials who have authority to use force that can threaten or end someone's life.

Amici Curiae urge this Court to reverse the order of the Court of Common Pleas, and to order the disclosure of records requested by Appellants and previously ordered disclosed by the Office of Open Records.

ARGUMENT

I. Disclosing the details about the use of force at the Bucks County Correctional Facility promotes accountability in the criminal legal system and can mitigate distrust between law enforcement and communities.

Distrust between communities and law enforcement has substantially increased in recent years. *See* Aimee Ortiz, *Confidence in Police is at a Record Low, Gallup Finds*, THE N.Y. TIMES (Aug. 12, 2020)³ (finding for the first time in 27 years that the majority of American adults do not trust the police). This distrust owes to numerous factors, including but not limited to increased availability of cell phone and body camera footage, high profile incidents of law enforcement officers killing unarmed civilians, and the increasing propensity of officers to live outside of the communities in which they serve. *See, e.g.*, President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, Office

³ *Available at:* <https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>.

of Community Oriented Policing Services (May 2015);⁴ *see also* Cynthia Conti-Cook, *A New Balance: Weighing Harms of Hiding Police Misconduct Information from the Public*, 22 CUNY L. REV. 148, 159 (2019) (“Many people avoid calling the police, even when in danger, wanting to avoid future encounters, especially after high-profile police violence.”). But regardless of its origin, this distrust causes several problems for stakeholders across the criminal legal system. Among other effects, distrust generally undermines the ability of law enforcement to serve its ostensible function. *See* President’s Task Force at 1 (“Decades of research and practice support the premise that people are more likely to obey the law when they believe that those who are enforcing it have authority that is perceived as legitimate by those subject to the authority.”).

Disclosure of details about the use of force in custody would contribute to efforts to rebuild trust between law enforcement and communities. *See* President’s Task Force at 1 (“Law enforcement agencies should also establish a culture of transparency and accountability to build public trust and legitimacy.”). To be sure, disclosure in this one case will not completely remedy a multi-faceted problem. *See* Section III, *supra*. But communities in and around Bucks County will have more reason to trust the criminal legal system if conditions at the jail—and what happens

⁴ *Available at:*

<https://d3n8a8pro7vhmx.cloudfront.net/nacole/pages/115/attachments/original/1570474092/President-Barack-Obama-Task-Force-on-21st-Century-Policing-Final-Report-min.pdf?1570474092>.

to community members there—do not remain shrouded from view. Community members might have more confidence in law enforcement if they need not wonder whether a key part of the law enforcement framework facilitates unchecked violations of constitutional rights, and if they can trust that grave misconduct will come to light and result in accountability. See Sunita Patel, *Toward Democratic Police Reform: A Vision for “Community Engagement” Provisions in DOJ Consent Decrees*, 51 WAKE FOREST L. REV. 793, 802 (2016) (“When police processes are perceived as procedurally just, communities are more likely to cooperate with the police, and policing, in turn, is more effective”); see *Harms of Hiding*, 22 CUNY L. REV. at 158 (“The deflections, delays, and denials of responsibility for police violence cause more unrest and distrust.”). Transparency here could also address one of the most pernicious double standards that engenders suspicion and mistrust in law enforcement: law enforcement regularly attempts to portray victims of law enforcement violence as imperfect or flawed—all the more so where, as here, they have already lost their liberty—but often does not release any comparable information that exists about officers or the system itself. See *Harms of Hiding*, 22 CUNY L. REV. at 154-56 (“Following any violent encounter, the power of releasing a person’s history of violence is indisputable. The police know this; they often unlawfully and recklessly release the sealed arrest history of people police have killed. . . . As the police push their narrative of events, they almost never reveal an officer’s history of violence”).

Disclosure of details about the use of force against incarcerated individuals also fits into precedents that recognize the rights of nongovernmental actors,

including concerned community members and investigative journalists, to help hold the criminal legal system accountable. Federal courts have long recognized the right of community members to record law enforcement officers. *See Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir. 1995). That public right is vital, but bare recordings alone hardly vindicate the public’s interest—as the Third Circuit has recognized, the right to record matters in part because it “complements the role of the news media” in reporting on the criminal legal system. *Fields*, 862 F.3d at 359. Investigative journalism serves an especially important function because it can identify persistent problems that undermine efficacy and trust in the system, and spur work by all stakeholders to address them. *See Harms of Hiding*, 22 CUNY L. REV. at 159 (“Many people do not engage with the governmental oversight systems because they cannot learn what penalty, if any, an officer receives”); *see also id.* at 166 (discussing officers’ inability to compare their own discipline to other officers’ discipline to assess discrimination or proportion). Preventing community members and the news media from learning even basic details about the use of force against incarcerated individuals stymies those important functions and stops members of the public from identifying systemic issues with possible misconduct, failure to follow policies, mistreatment of detainees, understaffing, lack of resources, or other problems at Bucks County Correctional Facility. *See Citizens Police Data Project*, Invisible Inst., <https://perma.cc/HC4Z-JW3V>.

Indeed, the Government itself benefits from transparency about the use of force against incarcerated individuals and associated details for exactly that reason.

As it stands, much that occurs behind bars is hidden from view, and the opportunity for increased transparency through personal cell phone videos by the public does not exist here. Thus, people have little idea about the circumstances surrounding the use of force against an individual, including whether it was caused by officer misconduct or civil rights violations, insufficient resources devoted to jail operations, entrenched social problems, or some combination of each. The Government does not have any interest in protecting or facilitating civil rights violations. And it often takes transparency about officers who have or are likely to engage in such violations for everyone involved to recognize patterns of misconduct and “spur[] action at all levels of government to address police misconduct and to protect civil rights.” *Fields*, 862 F.3d at 360 (internal quotations omitted). Transparency and public discourse, *see* section III, *infra*, related to law enforcement actually “help them carry out their work.” *Id.* Transparency in this context may also help prevent future violations across the Commonwealth, because it might bring to light particular officers who engaged in misconduct or help shed light on a common problem in jails. And if the use of force owes to factors other than misconduct, the Government similarly benefits from transparency, because it could change procedures, policies, training, funding levels, or other resources to address pervasive problems inside or outside the Jail. In that context, transparency-induced changes would similarly improve efficacy of the County’s work and prevent future deaths in custody.

II. Communities and elected officials can only make informed policy and budget decisions with knowledge of how corrections operate and the nature of potential problems at Bucks County Correctional Facility.

Beyond promoting trust and accountability that can improve the efficacy and the integrity of the criminal legal system, transparency about the use of force against individuals with serious mental illness at Bucks County Correctional Facility also has a vital role to play in our civic life and in our government. Robust civic deliberation about budgets and spending priorities relies on all stakeholders having informed perspectives on what public money funds. Elected officials and the people who vote for them need information about structural misconduct, policy violations, and officers' potential willingness to violate constitutional norms and rights because those abuses impact the public purse. Transparency helps the public understand what its money funds, including whether that money has been well spent under the circumstances. Taxpayers often must fund litigation defense costs, settlement awards, and paid leave when correctional officers engage in misconduct. Separately, taxpayers also must make decisions about how to fund both pretrial detention and services for people caught up in the criminal legal system, including decisions about medical and other care. Transparency in this context could help Bucks County community members and its officials make more informed decisions about public money, protecting taxpayers and ensuring that the County uses public funds responsibly.

Elected officials and voters must make difficult decisions about budgeting public money all the time. Communities and elected leaders deliberate carefully over those decisions and often have more things they would like to fund than money to pay for them. *See, e.g.,* Sam Levin, *These US cities defunded police: ‘We’re transferring money to the community’*, THE GUARDIAN (Mar. 11, 2021)⁵ (describing Seattle “maintain[ing] high rates of police spending in a budget that made cuts to affordable housing, parks, libraries, and transportation). Cost pressures force deliberators to assess the efficacy of existing or proposed programs in reference to statistics and data, and to make decisions accordingly. Many publicly-funded programs have enormous quantities of government-disclosed data to help inform those deliberations—K-12 education, for example, has many statistics that advocates use to discuss education budgeting. *See, e.g.,* The School District of Philadelphia, Philadelphia Public Schools Data for District, Charter, Alternative, and Other/Cyber Students and Schools.⁶ In contrast, there is little data available regarding the use of force against those who are incarcerated.⁷ *See Callous and Cruel: Use of Force Against Inmates with Mental*

⁵ *Available at:* <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community>.

⁶ *Available at:* <https://schoolprofiles.philasd.org/>.

⁷ Bucks County Correctional Facility is required to report the frequency and type of force correctional officers use on a monthly and annual basis per Pennsylvania Department of Corrections regulations. *See* PA. DEP’T OF CORR., *County Statistics*, <https://www.cor.pa.gov/Facilities/CountyPrisons/Pages/Inspection-Schedule,-Statistics-And-General-Info.aspx> (last visited Nov.16, 2022). For the past seven years, Bucks has not reported accurate use of force data. Thus, the only means to

Disabilities in US Jails and Prisons, HUMAN RIGHTS WATCH (May 12, 2015)⁸ (finding that “[t]here are no national statistics on the prevalence of staff use of force against inmates in general, or inmates with mental disabilities in particular, in the more than 5,100 jails and prisons in the United States”). Policing and corrections, which takes up increasingly large shares of public budgets—including across the Commonwealth—must not shield vital information from citizens and elected officials about what taxpayer money funds.

What data does exist suggests that violations of individual rights by government officers end up costing jurisdictions like Bucks County huge sums of money in civil rights lawsuits. *Amici* know a bit about this, because they regularly litigate such suits on behalf of incarcerated people, including against county jails. But that information can be hard to come by, difficult to aggregate, and necessarily undercounts all law enforcement misconduct—often it only becomes public because of the dogged efforts of investigative journalists to collect and contextualize it. See *The Force Report*, NJ.COM: PROJECTS & INVESTIGATIONS⁹ (describing difficulty of assembling information on officer use of force, and contextualizing settlements or verdicts based on widely varying factors separate from the misconduct itself). Stories

ascertain that data is from the use of force reports and videos, like those that Appellant has requested.

⁸ *Available at:* https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and#_ftnref62.

⁹ *Available at:* <https://perma.cc/U99S-A2MC>.

like *The Force Report* exist in no small part because of open public records laws, and reporters' pursuit of records through them.

The amount of money that places like Bucks County spend on lawsuits following misconduct that violates a person's civil rights undoubtedly bears on public discourse. Transparency about the use of force at the Bucks County Correctional Facility, including whether it involves officer misconduct, implicates ongoing public health crises, and might highlight both the cause and effect of misconduct on public budgets, and the shortcomings of relying on civil settlements or verdicts to track and deter misconduct in the first place. Robust investigative journalism, for example, can reveal further information about the County protecting officers who engaged in conduct contrary to constitutional norms and individual rights. See Jan Ransom, *In N.Y.C. Jail System, Guards Often Lie About Excessive Force*, THE N.Y. TIMES (Apr. 24, 2021) (quoting a city councilman saying that discipline data "highlights how broken this process is and a need to make real efforts to reform it.");¹⁰ see also *Harms of Hiding*, 22 CUNY L. REV. at 154 (discussing lack of transparency as depriving victims of law enforcement violence of key information in seeking redress).

Information about this particular instance of the use of force against an incarcerated individual is very important, but is itself insufficient to foster informed debates about law enforcement funding, public health, and public money. Ideally, it would fit into a wider conversation about those issues. And to be clear, transparency

¹⁰ Available at: <https://www.nytimes.com/2021/04/24/nyregion/rikers-guards-lie-nyc-jails.html>.

here contributes to a more robust discourse about corrections funding regardless of one's normative position. *See Fields*, 862 F.3d at 358 (observing that the “increase in the observation, recording, and sharing of police activity has contributed greatly to our national discussion of proper policing”). For people who might argue for defunding law enforcement or reallocating that money to other uses, information about the use of force against incarcerated individuals could bolster an argument that the County pays for a dangerous corrections system that fosters rampant civil rights violations, and should redirect those funds to address root causes in the community through social services and programming. For others, the same information could provide important context to argue for new or more funds for training programs, protocol reviews, more corrections officers, or other interventions.¹¹ Transparency enhances the conversation and increases the likelihood that jurisdictions like Bucks County ultimately make decisions from an informed posture.

All told, transparency about the use of force against incarcerated individuals would provide vital information to stakeholders on all sides of civic discourse around

¹¹ Compare Kendra Brooks, *Philadelphia Police Aren't Solving Crimes. It's Time To Divert Their Funding*, THE APPEAL (Apr. 15, 2021), <https://theappeal.org/philadelphia-police-arent-solving-crimes-its-time-to-divert-their-funding/> (observing that the police budget increased by \$115M over five years while police only even arrested alleged assailants in 20% of all shootings), with Matt Petrillo, *Philadelphia Mayor Kenney's Budget Proposal Includes \$35.5 Million Spending For Anti-Crime Measures, Police Reforms*, CBS PHILLY (Apr. 15, 2021), <https://www.cbsnews.com/philadelphia/news/philadelphia-mayor-kenneys-budget-proposal-includes-35-5-million-spending-for-anti-crime-measures-police-reforms/> (describing Mayor's proposal to add \$1.3M in funding for training and behavioral tracking of officers).

law enforcement, including corrections. In the absence of transparency, those same conversations will still take place—but among people whose best intentions cannot make up for the information void they face.

III. Transparency particularly matters here because of the overrepresentation of individuals with serious mental illness among the incarcerated population and the heightened risk of the use of force against such individuals.

Shedding light on the use of force against an incarcerated individual with serious mental illness particularly matters because of the prevalence of mental illness among those incarcerated inside jails and prisons, the frequent challenges institutional rules pose to individuals with serious mental illness, and the significant harm that results from the use of force against those individuals. Allowing the treatment of incarcerated individuals with serious mental illness to remain shrouded in secrecy enhances the extreme power that correctional officers hold over the incarcerated and increases the difficulty of adequately addressing the needs of those incarcerated with serious mental illness.

Individuals with serious mental illness are overrepresented in jails. When Congress passed the Community Mental Health Centers Act of 1963, state psychiatric hospitals across the U.S. either emptied or closed, but community mental health operations lacked funding to adequately care for those with serious mental illness. Azza AbbuDagga et al., *Individuals With Serious Mental Illnesses in County Jails: A Survey of Jail Staff's Perspectives* 1-2 (Pub. Citizens Health Research Grp.

and The Treatment Advocacy Ctr., 2006).¹² By default, county jails became a repository for significant numbers of people with serious mental illness. *Id.* at i (“Incarceration has largely replaced hospitalization for thousands of individuals with serious mental illnesses in the U.S., with state prisons and county jails holding as many as 10 times more of these individuals than state psychiatric hospitals”). See also *Managing Mental Illness in Jails: Sheriffs Are Finding Promising New Approaches*, POLICE EXECUTIVE RESEARCH FORUM 5 (Sept. 2018)¹³ (“Among prison inmates, up to one quarter have severe mental illness.”); E. Fuller Torrey et al., *More Mentally Ill Persons Are in Jails and Prisons Than Hospitals: A Survey of the States* 8 (Treatment Advocacy Ctr, 2010)¹⁴ (stating that jails and prisons in the United States house three times as many individuals with mental health problems as do state mental hospitals); *Mental Health Problems of Prison and Jail Inmates*, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT (NCJ 213600) 1 (Sept. 2006)¹⁵ (finding that in 2005 more than 1.25 million individuals with serious mental illness were incarcerated in jails and prisons in the United States, with 64% of individuals incarcerated in local jails reporting an impairment due to a mental health problem within the previous twelve months).

¹² Available at: <https://www.citizen.org/wp-content/uploads/migration/2330.pdf>.

¹³ Available at: <https://www.policeforum.org/assets/mentalillnessinjails.pdf>.

¹⁴ Available at:

https://www.treatmentadvocacycenter.org/storage/documents/final_jails_v_hospitals_study.pdf.

¹⁵ Available at: <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

Individuals with serious mental illness often experience disrupted thinking, poor impulse control, unregulated emotions and difficulty coping with stressful situations. *Callous and Cruel*, HUMAN RIGHTS WATCH, *supra*. Carceral institutions are, by necessity, highly regimented and require adherence to rules and responsiveness to orders. Not surprisingly, individuals with serious mental illness experience significant difficulty in complying with rules in prisons and jails. A study conducted by the Public Citizen’s Health Research Group and The Treatment Advocacy Center found that “most jails reported major problems with the seriously mentally ill inmates, including the necessity of watching them more closely for suicide, their need for additional attention, their disruption of normal jail activities, and their being abusive of, or abused by, other inmates.”¹⁶ AbbuDagga et al., *supra* at ii. A study conducted by the United States Department of Justice found that incarcerated people “who had a mental health problem were twice as likely as those without to have been charged with facility rule violations (19% compared to 9%)” and those “in local jails who had a mental health problem were also four times as likely as those without to have been charged with a physical or verbal assault on correctional staff or another inmate (8% compared to 2%).” Doris J. James & Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates* 10 (U.S. Dep’t of Justice, 2006).¹⁷

¹⁶ See survey respondent’s statement that “where a normal inmate can be predictable with a relative certainty, seriously mentally ill inmates are not predictable, therefore, require more attention, can be more prone to lashing out, or becoming a victim as they are different and respond differently from the norm.” *Id.* at 14-15.

¹⁷ Available at: <https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf>.

Corrections officers have a limited repertoire of options at their disposal when an incarcerated individual fails to respond to a directive or behaves in a manner perceived as threatening by those around them. Human Rights Watch found that the typical correctional response to difficult, disruptive, or dangerous behavior by individuals with mental illness differs little from the response to any other person who breaks the rules—punishment, solitary confinement, and the use of force. *Callous and Cruel*, HUMAN RIGHTS WATCH, *supra*. The increased needs and unpredictable actions of those incarcerated with serious mental illness place correctional officers in situations that they are ill-prepared to safely and effectively handle. AbbuDagga et al., *supra* at 53 (stating that caring for seriously mentally ill individuals in county jails is particularly unfair for jail law enforcement staff as they have been trained for corrections work, not as mental health professionals); *see also* Elliott Oberholzer, *Police, Courts, Prisons and Jails All Fail Disabled People*, PRISON POLICY INITIATIVE (Aug. 23, 2017)¹⁸ (“Although jails are being used as substitutes for mental health facilities, they do not have the resources or training to handle medical and mental health emergencies”). Jail staff responses to a survey conducted by the Public Citizens Health Research Group and The Treatment Advocacy Center about mental illness in county jails included the comments that “[w]e are challenged on a daily basis to try and provide care that our training hasn't prepared us for” and “our jobs are harder because we don't know what to do with these people.” AbbuDagga et al., *supra* at 21.

¹⁸ *Available at*: <https://www.prisonpolicy.org/blog/2017/08/23/disability/>.

Individuals with serious mental illness are injured both by experiencing and witnessing the use of force in carceral settings. Katie Rose Quandt and Alexi Jones, *Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health*, PRISON POLICY INITIATIVE (May 13, 2021);¹⁹ Emily Widra, *No Escape: The Trauma of Witnessing Violence in Prison*, PRISON POLICY INITIATIVE (Dec. 2, 2020).²⁰ In the short term, experiencing or witnessing the use of force can lead to an increase in the symptoms and severity of mental illness. Niloofar Ramezani et al., *The Relationship Between Community Public Health, Behavioral Health Service Accessibility, and Mass Incarceration*, BMC HEALTH SERV RES 22, 966 (2022)²¹ (finding that the experience of incarceration may exacerbate behavioral health conditions).

In the long term, those individuals with serious mental illness who experience the use of force will need to cope with the additional trauma of their incarceration experience. They will return to their communities with a decreased ability to navigate their mental illness, placing a heightened burden on their communities. *Managing Mental Illness in Jails*, POLICE EXEC. RESEARCH FORUM, *supra* at 6 (“Increasingly, sheriffs recognize that managing mental illness in jails affects not only the inmates

¹⁹ *Available at:*

<https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/>

²⁰ *Available at:* <https://www.prisonpolicy.org/blog/2020/12/02/witnessing-prison-violence/>.

²¹ *Available at:*

<https://bmchealthservres.biomedcentral.com/articles/10.1186/s12913-022-08306-6>.

and the jail staff members who work with them; it also affects the safety of the entire community”). The likelihood of recidivism among individuals with serious mental illness is increased when those individuals experience trauma in carceral settings. E. Fuller Torrey et al., *supra* at 18 (finding that “mentally ill prisoners are much more likely than regular prisoners to return to prison in a ‘revolving door phenomenon’”); AbbuDagga et al., *supra* at 16 (“About one-third of jails (31.7%) reported having a higher or much higher recidivism rate among these inmates [with serious mental illness] than among the general inmate population”). The use of force may lead to additional use of force. *Callous and Cruel*, HUMAN RIGHTS WATCH, *supra* (“If you have a well-run prison with good programming and mental health treatment, there will be less use of force”). This increases the risk of harm to both those who are incarcerated and the correctional officers tasked with the care of the incarcerated. *Managing Mental Illness in Jails*, POLICE EXEC. RESEARCH FORUM, *supra* at 6 (“Mental illness increases the risks of violence within the jails, which means a greater chance of deputies and inmates being injured, and deputies having to use force”).

Examples of the harm experienced by people with serious mental illness during incarceration are prevalent in Pennsylvania’s prisons and jails. In 2011, the U.S. Justice Department opened an investigation into the Pennsylvania State Correctional Institution at Cresson’s use of solitary confinement on prisoners with serious mental illness and intellectual disabilities, an investigation that was later expanded to include the entire Pennsylvania Department of Corrections. See U.S. DEP’T OF JUSTICE, *Investigation of the State Correctional Institution at Cresson and*

Notice of Expanded Investigation (May 31, 2013);²² U.S. DEP'T OF JUSTICE, *Justice Department Finds Pennsylvania State Prison's Use of Solitary Confinement Violates Rights of Prisoners Under the Constitution and Americans with Disabilities Act* (April 14, 2016).²³ The investigation uncovered systemic deficiencies that led to significant harm among individuals with serious mental illness, including mental decompensation, self-mutilation, and suicide. U.S. DEP'T OF JUSTICE, *supra* (May 31, 2013).

As specific examples, on July 23, 2021, Dauphin County Prison staff pepper-sprayed Ishmail Thompson, age twenty-nine, in the face, placed a spit hood over his head, and locked him in a restraint chair. Joshua Vaughn, *'Hiding a Homicide: New Details Emerge On Death of Man Held In Dauphin County Prison*, PENNLIVE (Aug. 9, 2022).²⁴ Twenty-one minutes later prison staff discovered that Mr. Thompson wasn't breathing and was experiencing cardiac arrest. *Id.* After his arrest on July 23, 2021, Dauphin County Prison officials recognized Mr. Thompson's mental health challenges and sent Mr. Thompson to the hospital for psychiatric care, but the hospital sent him back to jail the same day. Brett Sholtis, *In Pa. County Jails, People*

²² Available at:

https://www.justice.gov/sites/default/files/crt/legacy/2013/06/03/cresson_findings_5-31-13.pdf.

²³ Available at:

<https://www.justice.gov/opa/pr/justice-department-closes-investigation-after-pennsylvania-department-corrections-takes>.

²⁴ Available at: <https://www.pennlive.com/news/2022/08/hiding-a-homicide-new-details-emerge-on-death-of-man-held-in-dauphin-county-prison.html>.

With Mental Illness Are Routinely Met With Pepper Spray and Stun Guns, 90.5 WESA (Oct. 15, 2022).²⁵ When Mr. Thompson returned to jail, corrections officers tried to strip search Mr. Thompson, but he became confused and ran into the shower where he tried to wet himself down. *Id.* Prison staff responded with use of force. A short time later Mr. Thompson was in a coma from which he never woke up. He died on July 29, 2021. *Id.*

On August 18, 2022, Adam Caprioli, age thirty, tried to commit suicide while incarcerated at the Monroe County Correctional Facility in Stroudsburg, Pennsylvania. *Id.* Mr. Caprioli has a diagnosis of anxiety disorder and bipolar disorder and in August 2022 was struggling with significant paranoia and auditory hallucinations. *Id.* He called 911 for assistance, but when police arrived, they took him to jail.²⁶ While in jail, Mr. Caprioli “tied his shirt around his neck and choked himself until he passed out.” *Id.* Prison staff responded by sending four officers wearing helmets and body armor into Mr. Caprioli’s cell. One of the officers pressed a pepperball launcher against Mr. Caprioli’s back and fired three times. Mr. Caprioli still bears a scar from the impact. He was handcuffed, shackled and placed in a restraint chair. In later discussing the incident, Mr. Caprioli said, “That’s the sick part about it. You can see I’m in distress. You can see I’m not going to try and hurt anyone. I have nothing I can hurt you with.” *Id.* Stories like these are far too plentiful,

²⁵ Available at: <https://www.wesa.fm/courts-justice/2022-10-15/in-pa-county-jails-people-with-mental-illness-are-routinely-met-with-pepper-spray-and-stun-guns>

²⁶ Mr. Caprioli later pled guilty to a charge of “public drunkenness and similar misconduct,” a charge that resulted in no jail sentence. *Id.*

and our communities can only work towards an effective solution to prevent harm like this reoccurring with access to accurate information about incidents of use of force within our prisons and jails.

Pennsylvanians with serious mental illness who become enmeshed in Pennsylvania's carceral system deserve a system that fairly and openly reckons with their treatment inside that system. Pennsylvanian citizens and taxpayers deserve a carceral system that prioritizes transparency and accountability. The lack of transparency at the Bucks County Correctional Facility presents a particular danger because of the power that correctional officers wield. Officers have the authority to use force against people detained at the jail, up to and including taking someone's life, and may invoke this authority to justify unlawful actions. *See* Katherine J. Bies, Note, *Let the Sunshine In: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct*, 28 STAN. L. & POL. REV. 109, 142 (2017) ("police officers have the unique state-sanctioned ability to use force on other citizens"); *see also* *Harms of Hiding*, 22 CUNY L. REV. at 153.

No other public officials have such power. Unfortunately, other mechanisms to promote transparency in the treatment of individuals with serious mental illness in carceral settings either do not exist or are ineffective. *See Callous and Cruel*, HUMAN RIGHTS WATCH, *supra* ("There are no national statistics on the prevalence of staff use of force against inmates in general, or inmates with mental disabilities in particular, in the more than 5,100 jails and prisons in the United States"); Doris A. Fuller et al., *A Crisis in Search of Data: The Revolving Door of Serious Mental Illness in Super*

Utilization 2 (Treatment Advocacy Ctr., 2017)²⁷ (“Outside of small, localized studies in relatively few communities, statistics are not routinely collected about the impact [of SMI frequent utilizers] on law enforcement, corrections, emergency response, or homelessness”).

The stakes here could not be higher. Individuals with serious mental illness are being housed in a facility deliberately shielded from public view, where officers with little training in the care of those with mental illness have the legal authority to use deadly force against detained people—which sets them apart from virtually all other public officials. *Amici* urge the Court to consider this important context when deciding this case.

²⁷ Available at: <https://www.treatmentadvocacycenter.org/storage/documents/smi-super-utilizers.pdf>.

CONCLUSION

The incarceration system faces an ongoing crisis involving the use of force against incarcerated individuals with serious mental illness. Stonewalling the release of any records related to the use of force inhibits accountability and dialogue about solutions that might address that grave problem. Withholding records restricts public conversations among elected officials and others about possible solutions, and undermines attempts to ensure constitutionally compliant conditions at Bucks County Correctional Facility. *Amici* urge this Court to consider that context, reverse, and order the release of the requested records about the use of force against an incarcerated individual.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with the word count limitation of Rule 2135 of the Pennsylvania Rules of Appellate Procedure. This brief contains 6476 words. In preparing this certificate, I relied on the word count feature of Microsoft Word.

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