COMPASSIONATE RELEASE, DEMENTIA, AND THE LIMITS OF PUNISHMENT UNDER THE EIGHTH AMENDMENT

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I. INTRODUCTION

Imagine a prisoner who cannot remember their own name, much less the crime they committed. For inmates with advanced dementia, the passage of time turns a life sentence into something more tragic—a punishment that persists as their identities erode.[1] Prisons in the United States are increasingly assuming the role of nursing homes as they house a growing population of elderly inmates with complex medical needs.[2] Compassionate release offers a potential solution to this growing crisis, yet its inconsistent and often contentious application to inmates with advanced dementia highlights the tension between the goals of punishment and the realities of aging behind bars.[3]

The Eighth Amendment prohibits the infliction of "cruel and unusual punishments."[4] This standard has long governed the conditions and limits of punishment within the U.S. criminal justice system, particularly with regard to incarceration.[5] In recent years, however, the rise in incarcerated individuals with advanced dementia has raised questions about whether their continued confinement serves any legitimate penological purpose.[6] As these individuals lose the ability to understand their surroundings, recall their crimes, or engage with rehabilitative efforts, the justifications for continued incarceration begin to erode.[7]

This Note begins by examining the structure and purpose of the federal compassionate release process and its historical development.[8] In Part II, it explores the medical and logistical challenges of incarcerating individuals with dementia, the costs associated with their care, and the failure of prisons to provide adequate support.[9] Part III assesses whether the continued incarceration of this population aligns with the Eighth Amendment's prohibition on cruel and unusual punishment, particularly

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1. *See* MEGAN MOORE & ANGIE W. GAMMELL, WILSON CTR. FOR SCI. & JUST. DUKE L., THE AGING PRISON POPULATION AND DEMENTIA: BEST PRACTICES FOR CARE AND RELEASE 3 (May 2024) (estimating that by 2030, U.S. prisons will incarcerate 400,000 seniors—one-third of the total prison population—and projecting that more than half of these seniors may develop dementia).
2. *See id.*
3. *See* Megan Horner, *Broken and Underutilized: Understanding Compassionate Release Programs for Older Adult Prisoners*, 44 BIFOCAL: J. A.B.A. COMM'N ON L. & AGING 39, 48–49 (2023) (discussing how compassionate release is "underutilized, inefficient, and limited in scope").
4. U.S. CONST. amend. VIII.
5. *See infra* Section II.B.
6. *See* MOORE & GAMMELL, *supra* note 1, at 3–9.
7. *See infra* Part III.
8. *See infra* Part II.
9. *See infra* Part II.

in light of the penological goals traditionally used to justify imprisonment.[10] It concludes that the continued incarceration of individuals with advanced dementia, particularly when compassionate release is available, violates the Eighth Amendment by subjecting them to inadequate care and imposing punishment that no longer serves any legitimate penological purpose.[11]

II. BACKGROUND

"Compassionate release is the process by which those incarcerated may seek early release, whether to community supervision or to their communities, due to extraordinary or compelling circumstances."[12] Such circumstances are defined under the U.S. Sentencing Guidelines to include advanced age, terminal or debilitating medical conditions, or the death or incapacitation of a caregiver for a minor child.[13] However, recent amendments have substantially broadened these grounds and expanded judicial discretion.[14] Judges may now consider cases involving long sentences where the incarcerated individual "has served at least 10 years," and an intervening "change in the law" likely would have resulted in a shorter sentence had it been in place at the time of sentencing.[15] They may also review cases involving incarcerated individuals who were sexually assaulted by corrections officers, those who seek release to care for a loved one whose caregiver has died or become incapacitated, and other extraordinary factors that, individually or together, justify relief.[16]

The process of seeking compassionate release begins with the submission of a written request to the prison warden where the inmate is held.[17] The incarcerated individual, an attorney, a legal guardian, or

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10. *See infra* Part III.

11. *See infra* Part IV.

12. *Compassionate Release Changes Finally Approved*, A.B.A. (Apr. 27, 2023), https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/april-23-wl/sentencing-comm-0423wl/ [https://perma.cc/9ZZ7-DKUU].

13. U.S. SENT'G GUIDELINES MANUAL § 1B1.13 (U.S. SENT'G COMM'N 2023).

14. *See Sentencing Commission Votes to Expand Compassionate Release*, DEF. SERVS. OFF. TRAINING DIV. (Apr. 7, 2023), https://www.fd.org/news/sentencing-commission-votes-expand-compassionate-release [https://perma.cc/7KBS-9346].

15. U.S. SENT'G GUIDELINES MANUAL § 1B1.13(b)(6).

16. *Id.* § 1B1.13(b)(4), (b)(3).

17. *Id.* § 1B1.13(a); *see Understanding the Federal Compassionate Release Process*, FAMS. AGAINST MANDATORY MINIMUMS, https://famm.org/wp-content/uploads/2018/04/Federal-Compassionate-Release-Process.pdf [https://perma.cc/54CQ-R8H2] (last visited Jan. 31, 2026) (describing the compassionate release process broadly); *see also* Memorandum from Kenneth Hyle & Andre Matevousian, Fed. Bureau of Prisons Corr. Programs Div., to Chief Exec. Officers on Motion for Compassionate Release (Oct. 26, 2020),

another designated representative may submit this request, articulating the grounds for compassionate release, such as advanced age, "medical conditions, family circumstances," or other extraordinary and compelling reasons.[18] The request must include a release plan detailing where the individual will reside and how their medical or other needs will be met.[19] The Bureau of Prisons (BOP) instructs wardens to review requests promptly but imposes no specific deadlines, leaving the timeline for review largely within each warden's discretion.[20] This discretion often results in significant delays as there are no oversight mechanisms, tracking systems, or timeliness standards to ensure prompt review, and some incarcerated individuals die before receiving a decision.[21]

Once the warden approves the request, it undergoes multiple layers of BOP review, starting with its general counsel, who evaluates the warden's recommendation and seeks input from the medical director for medical cases or the Correctional Programs Division for non-medical cases.[22] The Assistant United States Attorney (AUSA) in the sentencing district may also provide input before the request is forwarded to the BOP director for final approval.[23] After reviewing these recommendations, the general counsel forwards the case to the BOP director for a final decision.[24] If the BOP director grants the request, the general counsel drafts a motion and contacts the AUSA in the sentencing district, who files a motion with the sentencing court on behalf of the BOP.[25] The court then evaluates the motion, considering whether extraordinary and compelling reasons justify

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https://www.bop.gov/foia/docs/Motion_Compassionate_Release_10262020.pdf [https://perma.cc/G5UW-2G5J] (providing guidance for and a template of a motion for compassionate release).

18. *See Understanding the Federal Compassionate Release Process*, *supra* note 17; U.S. SENT'G GUIDELINES MANUAL § 1B1.13.

19. *Understanding the Federal Compassionate Release Process*, *supra* note 17.

20. *See id.*

21. *See* OFF. INSPECTOR GEN., U.S. DEP'T. JUST., I-2013-006, THE FEDERAL BUREAU OF PRISONS' COMPASSIONATE RELEASE PROGRAM 34–43 (2013) [hereinafter OFF. INSPECTOR GEN. COMPASSIONATE RELEASE] (explaining that the BOP does not require staff to inform inmates about the compassionate release program, lacks consistent procedures for initiating or tracking requests, and fails to provide oversight or review of denials by wardens or regional directors, contributing to delays that have, in some cases, resulted in inmates dying before a decision is made).

22. *Understanding the Federal Compassionate Release Process*, *supra* note 17.

23. *Id.* at 2–3.

24. *Id.*

25. *Id.* at 3. Additionally, before rendering a final opinion, the OIG found that the Office of the Deputy Attorney General's opinion has been solicited by the BOP director before in nonmedical requests and, conversely, at the opposite end of the spectrum when an inmate has an "indeterminate life expectancy," even though such "consultation" is not required. *See id.* at 4.

the release, and if it decides to grant compassionate release, it may impose conditions such as supervised release to ensure public safety.[26]

Alternatively, if the BOP does not act on a compassionate release request within thirty days of its submission, or if the prisoner has appealed a denial through all required steps of the BOP's Administrative Remedy Program—including grievances submitted to the warden, regional director, and Central Office—the incarcerated individual or their attorney may file a motion directly with the sentencing court.[27] The First Step Act of 2018 amended 18 U.S.C. § 3582(c)(1)(A), the statute governing compassionate release, to authorize incarcerated individuals to file motions directly with the sentencing court in order to reduce inefficiencies and delays in the BOP's handling of such requests.[28] Despite these procedural reforms, the compassionate release process remains ill-equipped to address the systemic challenges posed by an aging prison population and the rise of dementia behind bars.[29]

A. The Growing Crisis of Dementia in U.S. Prisons

"Dementia is an umbrella term used to describe a range of progressive neurological conditions that impair brain function over time, characterized by the loss of cognitive abilities such as memory, thinking, language, and the capacity to perform everyday tasks."[30] Alzheimer's disease is the most common type of dementia, marked by the buildup of plaques and tangles in the brain, which disrupt communication between brain cells.[31] Vascular dementia, another major form, results from reduced blood flow to the brain, often caused by strokes or other cardiovascular issues.[32] Lewy body dementia involves abnormal protein deposits that affect cognitive and

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26. *See id.* at 1.

27. *See* 18 U.S.C. § 3582(c)(1)(A) (allowing a motion to be filed after the lapse of thirty days or exhaustion of administrative rights); 28 C.F.R. § 542.15 (1996) (establishing the Administrative Remedy Program for inmate grievances, whereby inmates may submit a formal grievance detailing why they believe their compassionate release request, among other issues, was improperly denied); FED. BUREAU PRISONS, PROGRAM STATEMENT 5050.50, COMPASSIONATE RELEASE/REDUCTION IN SENTENCE: PROCEDURES FOR IMPLEMENTATION OF 18 U.S.C. §§ 3582 AND 4205(G) 15 (2019), https://www.bop.gov/policy/progstat/5050_050_EN.pdf [https://perma.cc/FN2T-8XPE].

28. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194; *see* NATHAN JAMES, CONG. RSCH. SERV., R45558, THE FIRST STEP ACT OF 2018: AN OVERVIEW (2019).

29. *See infra* Section II.A.

30. *What Is Dementia?*, ALZHEIMERS.GOV (Jan. 21, 2026), https://www.alzheimers.gov/alzheimers-dementias/what-is-dementia [https://perma.cc/LT7H-5E68].

31. *Id.*

32. *See id.*

motor functions, and frontotemporal dementia, one of the rarest, primarily impacts behavior, personality, and language.[33]

These conditions are generally classified under the umbrella of dementia, and early signs often include memory loss, though it is only one of many symptoms, which vary depending on the form of dementia and the parts of the brain involved.[34] Beyond memory loss, symptoms may include confusion and disorientation, difficulties with language and communication, impaired judgment and reasoning, and challenges performing everyday tasks.[35]

The intersection of an aging prison population and the increasing prevalence of dementia presents a significant challenge for the U.S. correctional system.[36] The average age of the U.S. prison population is rising significantly, outpacing the aging of the general population.[37] While the median age of the U.S. population has increased by about "three and a half years" over the past two decades—from roughly thirty-five years to 38.9 years—the prison population has aged more rapidly, with individuals aged fifty-five and older now accounting for fifteen percent of incarcerated individuals, a fivefold increase from three percent in 1991.[38]

Although the total prison population has steadily declined since peaking in 2008,[39] the number of older adults in prison has surged, driven by a thirty percent increase in elder arrests from 2000 to 2020 and legislative changes that imposed harsher sentencing policies.[40] Some of these arrests involve seniors with dementia, whose confusion or inability to follow commands may be misinterpreted as defiance, prompting officers to escalate situations that might otherwise be resolved peacefully.[41] Mandatory minimum and three-strikes laws enacted in the

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33. *Id.*
34. *See id.*
35. *See id.*
36. *See* MOORE & GAMMELL, *supra* note 1, at 3–9.
37. Emily Widra, *The Aging Prison Population: Causes, Costs, and Consequences*, PRISON POL'Y INITIATIVE (Aug. 2, 2023), https://www.prisonpolicy.org/blog/2023/08/02/aging/ [https://perma.cc/86CZ-LTH2].
38. *See id.*; *see also* U.S. CENSUS BUREAU, *2010 Census Shows Nation's Population is Aging* (May 26, 2011), https://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn147.html [https://perma.cc/V7MC-CCUR] (demonstrating the quickly aging prison population).
39. John Gramlich, *America's Incarceration Rate Falls to Lowest Level Since 1995*, PEW RSCH. CTR. (Aug. 16, 2021), https://www.pewresearch.org/short-reads/2021/08/16/americas-incarceration-rate-lowest-since-1995/ [https://perma.cc/WW9C-P3FM].
40. MOORE & GAMMELL, *supra* note 1, at 6.
41. *See* Christie Thompson & Weihua Li, *As Police Arrest More Seniors, Those with Dementia Face Deadly Consequences*, MARSHALL PROJECT (Nov. 22, 2022, at 05:30 ET), https://www.themarshallproject.org/2022/11/22/police-arrests-deadly-texas-florida-

1980s and 1990s have driven this trend, resulting in individuals now in their fifties and sixties serving decades-long or natural life sentences for crimes committed many years before.[42] Mandatory minimums require fixed prison sentences for specific offenses, usually violent or drug-related crimes.[43] Three-strikes laws impose mandatory life sentences on individuals convicted of a third felony, sometimes including non-violent offenses, with the goal of deterring repeat offenders.[44] Commentators have noted that three-strikes laws expand prison populations by imposing life sentences that contribute to the aging prison population.[45]

This demographic shift places unique pressures on correctional systems, particularly as carceral environments exacerbate age-related conditions.[46] Incarcerated individuals experience accelerated aging compared to the general population, with those over age fifty considered ten to fifteen years older physiologically due to chronic stress, poor healthcare, and harsh conditions, with each year in prison reducing life expectancy by about two years.[47] These effects are compounded by factors

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seniors-dementia-mental-health [https://perma.cc/6W43-M73Q] (citing numerous instances of elders with dementia being arrested, injured, or killed during interactions with law enforcement, reflecting systemic failures to address their cognitive impairments).

42. MOORE & GAMMELL, *supra* note 1, at 6.

43. *See* DAVE S. SIDHU, CONG. RSCH. SERV., LSB10910, WHEN IS A MANDATORY MINIMUM SENTENCE NOT MANDATORY UNDER THE FIRST STEP ACT? (2023) (describing how the First Step Act has begun to address the harsh impact of mandatory minimum penalties from the 1980s and 1990s, particularly for certain drug offenses, by expanding judicial discretion to sentence below statutory minimums); *How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It*, SENT'G PROJECT (Feb. 14, 2024), https://www.sentencingproject.org/fact-sheet/how-mandatory-minimums-perpetuate-mass-incarceration-and-what-to-do-about-it/ [https://perma.cc/MAU6-6HWW].

44. Apoorva Joshi, *What Are "Three-Strikes Laws"?*, INTERROGATING JUST. (July 23, 2021), https://interrogatingjustice.org/mandatory-minimums/three-strikes-laws-and-effects/ [https://perma.cc/H9TL-8THK].

45. *See* Michael Vitiello, *Three Strikes Laws: A Real or Imagined Deterrent to Crime?*, A.B.A. (Apr. 1, 2002), https://www.americanbar.org/groups/crsj/resources/human-rights/archive/three-strikes-laws-real-or-imagined-deterrent-crime/ [https://perma.cc/LD39-TNMX] ("'[T]hree strikes' will have a significant cumulative effect on the size of the prison population, an expense that will grow over time.").

46. MOORE & GAMMELL, *supra* note 1, at 6; *see also* Peter T. Tanksley et al., *History of Incarceration and Age-Related Neurodegeneration: Testing Models of Genetic and Environmental Risks in a Longitudinal Panel Study of Older Adults*, 18 PLOS ONE, Dec. 2023, at 9 (presenting research that age-related cognitive impairments, such as dementia, are more prevalent among individuals with a history of incarceration compared to the general population).

47. *See* Lori Gonzalez, *How the Aging Population Is Changing Prison*, CLAUDE PEPPER CTR., https://claudepeppercenter.fsu.edu/wp-content/uploads/2021/08/Older-Prisoners-Issue-Brief.docx [https://perma.cc/5JSZ-W8JU] (last visited Feb. 25, 2026); Julia Vitale, *A Look at the United States' Aging Prison Population Problem*, INTERROGATING JUST. (Apr. 7, 2021), https://interrogatingjustice.org/ending-mass-incarceration/aging-prison-

such as social isolation, poor nutrition, and inactivity, rendering prisons particularly ill-suited environments for individuals with advanced cognitive decline.[48]

Offenders with advanced dementia who cannot comprehend their incarceration or remember why they are there raise difficult questions about the goals of punishment, such as rehabilitation.[49] One report from a dementia ward, also known as a memory disorder unit, in Massachusetts illustrates how prisoners require assistance from the guards with bathing, managing incontinence, and remembering to eat.[50] This approach,[51] unlike that of a typical prison, which lacks these resources,[52] provides a more supportive environment for individuals with dementia but requires significant resources, raising questions about the challenges of maintaining specialized care in prisons.[53]

The increasing prevalence of dementia in prisons underscores the urgent need for systemic change.[54] The BOP struggles to maintain the high costs of housing and caring for inmates with dementia, reflecting shortcomings in staffing, funding, infrastructure, and training that further exacerbate these expenses.[55] A significant consideration and challenge in

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population/ [https://perma.cc/YB96-C4KD] (describing the growth of the aging prison population and noting that incarceration accelerates psychological aging and shortens life expectancy); Katie Rose Quandt & Alexi Jones, *Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health*, PRISON POL'Y INITIATIVE (May 13, 2021), https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/ [https://perma.cc/HUJ8-933M] (discussing the mental health harms associated with incarceration); Widra, *supra* note 37 (discussing how incarceration worsens health outcomes for older adults and reduces life expectancy).

48. *See* Kimberly A. Skarupski et al., *The Health of America's Aging Prison Population*, 40 EPIDEMIOLOGIC REVS. 157 (2018) (observing that unhealthy lifestyles and limited health care in prisons accelerate aging-related health conditions); Mario Christodoulou, *Locked Up and at Risk of Dementia*, 11 LANCET: NEUROLOGY 750 (2012).

49. *See* Katie Engelhart, *I've Reported on Dementia for Years, and One Image of a Prisoner Keeps Haunting Me*, N.Y. TIMES (Aug. 11, 2023), https://www.nytimes.com/2023/08/11/opinion/dementia-prisons.html [https://perma.cc/H5SA-QNYN].

50. *Id.*

51. *Id.*

52. *See* David M. N. Garavito, Note, *The Prisoner's Dementia: Ethical and Legal Issues Regarding Dementia and Healthcare in Prison*, 29 CORN. J.L. PUB. POL'Y 211, 228–29 (2019).

53. *See* discussion *infra* Section II.A.1.

54. *See* MOORE & GAMMELL, *supra* note 1, at 3.

55. *See* OFF. INSPECTOR GEN., U.S. DEP'T. JUST., THE IMPACT OF AN AGING INMATE POPULATION ON THE FEDERAL BUREAU OF PRISONS 10–23 (2016), https://www.oversight.gov/sites/default/files/documents/reports/2017-11/e1505.pdf [https://perma.cc/YFY4-MZC5] [hereinafter OFF. INSPECTOR GEN. AGING INMATE POPULATION].

assessing aging in prison is determining the appropriate cutoff to define old age.[56] While sixty-five years is the conventional benchmark for older age in the general U.S. population, the BOP often uses "fifty years or older" in its research, analysis, and classifications due to the accelerated onset of chronic conditions caused by unhealthy lifestyles and inadequate healthcare in prison environments.[57] However, this benchmark is not applied consistently across correctional systems, agencies, or research, which complicates efforts to measure health needs, allocate resources, and evaluate outcomes for older incarcerated populations.[58]

1. The High Costs of Incarcerating Elderly Inmates with Dementia and the Potential Savings of Compassionate Release

Aging inmates, as a group, are more expensive to incarcerate than younger inmates primarily due to their medical needs.[59] For example, using inmate population and cost data from fiscal year 2013, the Office of Inspector General (OIG) found that the "average cost to the BOP per inmate significantly rises with age, with one example showing 8,831 inmates aged eighteen to twenty-four cost $18,505 per person annually, while the 157 inmates aged eighty or older in the sample cost an average of $30,609 in annual cost per inmate."[60] That same year, the BOP used an estimated nineteen percent of its total budget, approximately $881 million, to incarcerate older adults.[61]

A cost savings report by the OIG on the BOP in 2013 concluded that more effective management and expansion of compassionate release could significantly reduce the institutional costs of housing elderly inmates—a critical consideration in a system where dementia is increasingly prevalent.[62] Moreover, as organizations like the Prison Policy Initiative

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56. Skarupski et al., *supra* note 48, at 158.
57. *See id.*; FED. BUREAU PRISONS, U.S DEP'T. OF JUST., PROGRAM STATEMENT 5241.01, MANAGEMENT OF AGING OFFENDERS (Apr. 2022), https://www.bop.gov/policy/progstat/5241_001.pdf [https://perma.cc/TV6G-DEV9].
58. Skarupski et al., *supra* note 48, at 158.
59. OFF. INSPECTOR GEN. AGING INMATE POPULATION, *supra* note 55, at 10.
60. *Id.* (citation modified).
61. *Id.* at 48.
62. OFF. INSPECTOR GEN. COMPASSIONATE RELEASE, *supra* note 21, at 1. Similarly, although focused on state prison systems, the American Civil Liberties Union explains that "incarceration is always the most expensive way to deal with aging prisoners" and estimates that "states can save over $66,000 per year per aging prisoner released," further noting that such policies will "save taxpayers billions in the long-run." *See* AT AMERICA'S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY, AM. C.L. UNION 40 (June 13, 2012), https://www.aclu.org/publications/americas-expense-mass-incarceration-elderly [https://perma.cc/T98V-HS8S].

have noted, the current landscape remains ill-suited for the expansion of compassionate release, even as the elderly federal prison population and the prevalence of dementia within it continue to grow steadily.[63]

2. Limitations of the Federal Bureau of Prisons in Caring for Inmates Diagnosed with Dementia

Among the aging prison population, where chances for severe cognitive impairments like dementia are exacerbated due to carceral conditions,[64] prisons are typically neither designed nor staffed to adequately care for this population.[65] The BOP currently operates only one dedicated memory disorder unit, located at the Federal Medical Center (FMC) Devens in Massachusetts, the same facility from the report mentioned above, which is designed to meet the needs of incarcerated individuals with dementia and other serious cognitive impairments.[66] A December 2024 unannounced inspection by the OIG found the unit severely understaffed, with only two physicians for a population of over 900, and revealed that cognitively impaired individuals were not being properly screened or prioritized for care.[67] The unit's restrictive criteria excludes individuals with dementia who exhibit violent behavior, and the OIG review found that it was misused to house inmates with other behavioral issues who lacked a qualifying diagnosis, further limiting access for those with confirmed cognitive decline.[68] The documented deficiencies at FMC Devens underscore potential challenges that may be more pronounced at other facilities lacking specialized dementia care resources.[69]

People diagnosed with cognitive impairments, such as dementia, often require specialized medical and mental health care, with some needing twenty-four seven assistance due to their decision-making abilities and their need for support with activities of daily living.[70] Many inmates living

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63. *See* Widra, *supra* note 37.

64. Christodoulou, *supra* note 48; *see* Skarupski et al., *supra* note 48, at 162–63.

65. Erin Kitt-Lewis & Susan J. Loeb, *Emerging Need for Dementia Care in Prisons: Opportunities for Gerontological Nurses*, 48 J. GERONTOLOGICAL NURSING 3 (2022).

66. Engelhart, *supra* note 49; OFF. OF THE INSPECTOR GEN., U.S. DEP'T OF JUST., INSPECTION OF THE FEDERAL BUREAU OF PRISONS' FEDERAL MEDICAL CENTER DEVENS (2024) [hereinafter FEDERAL MEDICAL CENTER DEVENS].

67. FEDERAL MEDICAL CENTER DEVENS, *supra* note 66, at 35.

68. *Id.* at 23–24.

69. *Id.* Concomitant deficiencies in the BOP's classification system further undermine effective care. The OIG found that approximately twenty-five percent of inmates housed in the Memory Disorder Unit did not have a dementia diagnosis. *See id.* at 24.

70. *See* Hui Jun Guo & Amit Sapra, *Instrumental Activity of Daily Living*, *in* STATPEARLS [INTERNET] (Nov. 14, 2022), https://www.ncbi.nlm.nih.gov/books/NBK553126/

with dementia are unable to perform these activities of daily living, such as bathing, feeding, and dressing, and will eventually need care similar to that of a nursing home.[71] It is not unusual for inmates with dementia to go undiagnosed for extended periods, as their symptoms often progress to a point where they can no longer advocate for themselves to seek support.[72] Even skilled healthcare practitioners may overlook a dementia diagnosis, especially in prison environments where health screenings typically fail to assess cognitive decline.[73] Moreover, the structured routines of prison can allow individuals with dementia to mask their cognitive struggles.[74] Masking may occur because the monotonous routines of prison life allow individuals to follow familiar patterns, making their symptoms harder to spot, especially for staff who may not be trained to recognize dementia.[75] The early symptoms of dementia, which precede memory loss, often include emotional shifts, violent outbursts, and disinhibition, which causes impulsive behavior that disregards social conventions.[76] Due to a lack of specialized training to recognize early symptoms, prison or medical officials often mislabel these behaviors as misconduct, rather than signs of early onset dementia.[77]

The mislabeling of inmate behaviors is just one manifestation of the broader harms and abuse that dementia patients can face in prison.[78] Older incarcerated individuals with dementia are particularly vulnerable to victimization, including sexual assault and bullying.[79] If prison staff overlook an inmate's dementia symptoms, and the individual reaches a point where they can no longer understand the rules, they may require protection from both other inmates and themselves.[80] Often, this leads to their placement in solitary confinement, opening the door for an entire array of challenges that could further erode their mental capacity.[81] These

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[https://perma.cc/AN5Q-JELN] (describing the differences between instrumental activities of daily living and activities of daily living); MOORE & GAMMELL, *supra* note 1, at 7–8.

71. MOORE & GAMMELL, *supra* note 1, at 7–8.

72. DAVID M. GODFREY, A.B.A. COMM'N ON L. & AGING, PERSONS LIVING WITH DEMENTIA IN THE CRIMINAL LEGAL SYSTEM 15 (2022).

73. Kitt-Lewis & Loeb, *supra* note 65, at 1.

74. *Id.*

75. *Id.*

76. GODFREY, *supra* note 72, at 15.

77. *Id.*

78. MOORE & GAMMELL, *supra* note 1, at 7–8.

79. *Id.*

80. *Id.*

81. Rachel Lopez, *Prisoners in US Suffering Dementia May Hit 200,000 Within the Next Decade—Many Won't Even Know Why They are Behind Bars*, THE CONVERSATION (June 25, 2020, at 08:08 ET), https://theconversation.com/ prisoners-in-us-suffering-dementia-may-hit-200-000-within-the-next-decade-many-wont-even-know-why-theyare-behind-bars-138236 [https://perma.cc/DD7J-EYWY].

shortcomings, such as failures to recognize dementia, provide appropriate care, and protect affected individuals, are compounded by the fact that such individuals rarely pose a risk to public safety.[82]

3. Elderly Individuals Pose a Lower Risk of Recidivism

Elderly individuals, including those with advanced dementia, pose a significantly lower risk of recidivism as compared to younger incarcerated populations.[83] In 2010, "the recidivism rate of older offenders (21.3%) was less than half that of offenders under the age of fifty (53.4%)."[84] Older offenders take longer to recidivate and experience fewer and less serious recidivism events than their younger counterparts, with the median number being one event for offenders over age fifty as compared to three events for those under age fifty.[85] Individuals aged sixty-five and older are the least likely of any age group to recidivate, and those who do have been described by courts as rare exceptions.[86] Courts often weigh the low risk of recidivism for elderly inmates favorably when determining whether compassionate release aligns with sentencing goals like public safety, even though they cannot consider rehabilitation alone as an extraordinary and compelling reason for compassionate release.[87]

Taken together, the rise of older adults in prison,[88] the system's failure to meet the needs of those with dementia,[89] the high cost of their care,[90] and their low risk of reoffending point to a system increasingly out of step with its goals.[91] These conditions call into question the legitimacy and

82. *See* discussion *infra* Section II.A.3.

83. KRISTIN M. TENNYSON ET AL., U.S. SENT'G COMM'N, OLDER OFFENDERS IN THE FEDERAL SYSTEM 5 (2022) (describing how older offenders recidivate at significantly lower rates); *see* J.J. Prescott et al., *Understanding Violent-Crime Recidivism*, 95 NOTRE DAME L. REV. 1643, 1688 (2020).

84. TENNYSON ET AL., *supra* note 83, at 5.

85. *Id.* at 43.

86. Widra, *supra* note 37; *see* United States v. Pacheco-Martinez, 791 F.3d 171, 180 (1st Cir. 2015) (affirming a sentence at the top of the guideline range for defendant who "had been swindling unwary victims for years" and did not "express any contrition, or apologize to the victims whose life savings he stole"); *see also* United States v. Johnson, 685 F.3d 660, 662 (7th Cir. 2012) ("The 70–year–old criminal is a rara avis, and by engaging in criminal activity at such an age provides evidence that he may be one of the few oldsters who will continue to engage in criminal activity until they drop.").

87. *See* United States v. Almontes, No. 3:05-CR-58, 2020 WL 1812713, at *8 (D. Conn. Apr. 9, 2020); United States v. Stephenson, 461 F. Supp. 3d 864, 872–73 (S.D. Iowa 2020); United States v. Cantu-Rivera, 2019 WL 2578272, at *2 (S.D. Tex. June 24, 2019).

88. MOORE & GAMMELL, *supra* note 1, at 6.

89. *See supra* Section II.A.2.

90. OFF. INSPECTOR GEN. AGING INMATE POPULATION, *supra* note 55, at 10.

91. *See* Prescott et al., *supra* note 83, at 1643.

proportionality of continued incarceration for individuals with advanced cognitive decline, particularly under the standards set by the Eighth Amendment.[92]

B. The Eighth Amendment and Prison Sentencing: The Duty to Provide Adequate Care

The Eighth Amendment of the U.S. Constitution states that: "Excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishments inflicted.*"[93] The Eighth Amendment is central to evaluating whether continued incarceration of individuals with advanced dementia, especially when they can no longer care for themselves, constitutes cruel and unusual punishment.[94]

1. Judicial Interpretations of the Eighth Amendment: Incarcerated Illness

In *Rhodes v. Chapman*, the Supreme Court reaffirmed that the Eighth Amendment prohibits punishments that unnecessarily and wantonly inflict pain or are grossly disproportionate to the severity of the crime.[95] Eighth Amendment violations must be evaluated on objective factors, rather than the subjective assessments of judges.[96] The Court emphasized that prison conditions must be analyzed under "evolving standards of decency that mark the progress of a maturing society."[97] Under this framework, conditions of confinement violate the Eighth Amendment where they involve the wanton and unnecessary infliction of pain or are grossly disproportionate to the severity of the crime.[98]

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92. *See infra* Section II.B.
93. U.S. CONST. amend. VIII (emphasis added).
94. *See infra* Section III.A.
95. Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (establishing that an Eighth Amendment violation based on conditions of confinement involves demonstrating that the conditions, whether separately or in combination, result in unnecessary and wanton infliction of pain and violate the evolving standards of decency that characterize a progressing society).
96. *Id.* at 346 ("For example, when the question was whether capital punishment for certain crimes violated contemporary values, the Court looked for 'objective indicia' derived from history, the action of state legislatures, and the sentencing by juries.").
97. *Id.* (citing Trop v. Dulles, 356 U.S. 86, 101 (1958)). Additionally, as Justice Brennan reasoned, when the combined effects of prison conditions threaten inmates' physical, mental, or emotional health, or increase the likelihood of recidivism, the conditions may rise to the level of a constitutional violation. *See Rhodes*, 452 U.S. at 364–65 (Brennan, J., concurring) (citation omitted).
98. *Id.* at 347.

In *Estelle v. Gamble*, the Court held that deliberate indifference to the serious medical needs of incarcerated individuals constitutes cruel and unusual punishment in violation of the Eighth Amendment.[99] This case established the constitutional obligation of correctional institutions to provide adequate medical care to those they incarcerate, as the incarcerated have no choice but to rely on correctional facilities.[100] If prisons fail to provide adequate care for serious medical conditions, such as dementia, they may be violating the Eighth Amendment by subjecting individuals to unnecessary pain and suffering that society deems unacceptable.[101] These precedents are important for understanding the Eighth Amendment implications of denying compassionate release to inmates with advanced dementia.[102] When prisons fail to provide the necessary care for individuals who can no longer care for themselves, they not only risk causing unnecessary suffering but may also violate constitutional standards of decency.[103]

The question of whether the continued incarceration of individuals with terminal illnesses constitutes cruel and unusual punishment has received limited attention. *Engle v. United States*, a 2001 decision from the Sixth Circuit, and *Harmelin v. Michigan*, a Supreme Court case, stand out as key decisions, with *Engle* addressing the Eighth Amendment in the context of terminal illness and *Harmelin* examining sentencing proportionality more broadly.[104] In *Engle*, the court denied a motion for compassionate release filed by Thurman Engle, who had terminal lymphoma, and rejected his Eighth Amendment claim that his continued incarceration constituted cruel and unusual punishment.[105] The court held that the incarceration of a terminally ill prisoner may be cruel but is not unusual.[106] In *Harmelin*, the Supreme Court upheld a mandatory life sentence without parole for a nonviolent drug offense, holding that the Eighth Amendment does not guarantee proportionality in sentencing.[107]

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99. Estelle v. Gamble, 429 U.S. 97, 103–04 (1976) (explaining that "the infliction of unnecessary suffering is inconsistent with contemporary standards of decency" and that the public has an obligation to care for prisoners by virtue of their deprived liberty via incarceration); U.S. CONST. amend. VIII.

100. *Estelle*, 429 U.S. at 103.

101. *See* discussion *infra* Section III.

102. *See* discussion *infra* Section III.

103. *Estelle*, 429 U.S. at 103.

104. Engle v. United States, 26 F. App'x 394, 397 (6th Cir. 2001); Harmelin v. Michigan, 501 U.S. 957, 994 (1991) (discussing how severe mandatory penalties are cruel, but not unusual). *Harmelin,* though not focused on terminal illness, provides useful insight to guide analysis on sentencing proportionality.

105. *Engle*, 26 F. App'x at 397.

106. *Id.* (construing *Harmelin*, 501 U.S. at 994).

107. *Harmelin*, 501 U.S. at 965.

Instead, it prohibits only certain methods of punishment, such as torture, extreme physical pain, or practices grossly incompatible with contemporary standards of decency.[108] This reasoning aligned with the wave of mandatory minimum sentencing laws enacted in the 1980s and 1990s, which imposed fixed and severe penalties without regard for individual circumstances, such as age, health, or cognitive decline.[109]

Engle and *Harmelin* provide some insight into the intersection of terminal illness and Eighth Amendment claims for incarcerated individuals. However, *Engle* was decided when older individuals made up only a small share of the U.S. prison population, a figure that has since increased from roughly three percent in 1991 to about fifteen percent in 2021.[110] The scale and urgency of the aging prison population have changed drastically, with projections estimating that older adults could make up one-third of the prison population by 2030.[111] Furthermore, *Engle* relies on *Rhodes* in the context of comfortability during one's incarceration.[112] *Rhodes* held that the U.S. Constitution does not mandate comfortable prisons, and prisons that house persons convicted of crimes cannot be free of discomfort.[113] The evidence above demonstrating the current conditions and potential for victimization of dementia patients may go beyond uncomfortable living conditions and into the downright unlivable category after applying the three-prong test from *Rhodes*.[114]

In *Clark v. Coupe*, decided in 2022, the Third Circuit found that conditions causing a pronounced worsening of mental illness symptoms, without any penological purpose could be considered unlivable and violate the Eighth Amendment.[115] This case may align more closely with the symptoms associated with dementia to help determine what constitutes an unlivable situation. The prisoner in *Clark* demonstrated that prison officials, despite knowing about the potential consequences to his mental health, still subjected him to months of solitary confinement.[116] Drawing parallels to the mental struggles associated with dementia, the BOP, which often lacks adequate training, staffing, and infrastructure to address the unique needs of cognitively impaired inmates, similarly places these

108. *Id.* at 1001 (citation omitted).
109. MOORE & GAMMELL, *supra* note 1, at 6; *see* SIDHU, *supra* note 43.
110. Widra, *supra* note 37.
111. MOORE & GAMMELL, *supra* note 1, at 3.
112. Engle v. United States, 26 F. App'x 394, 397 (6th Cir. 2001).
113. *Id.* (citing Rhodes v. Chapman, 452 U.S. 337, 347–49 (1981)) (reaffirming that the Eighth Amendment does not mandate a prisoner must be housed without discomfort).
114. *Engle*, 26 F. App'x at 397; *see* discussion *infra* Section III.
115. Clark v. Coupe, 55 F.4th 167 (3rd Cir. 2022).
116. *Id.* at 173–74.

individuals at significant risk of experiencing unlivable conditions while being aware of the potential consequences to inmates.[117]

Together, these cases illustrate the narrow boundaries of Eighth Amendment protections for incarcerated individuals experiencing serious illness or cognitive decline.[118] While *Rhodes* and *Estelle* provide a foundation for challenging inhumane conditions or inadequate medical care,[119] *Engle* and *Harmelin* show that courts have been reluctant to extend that protection to the continued incarceration of those with terminal or degenerative conditions, with *Harmelin* reflecting the Court's narrow approach to proportionality in sentencing.[120] More recent decisions like *Clark* hint at a growing recognition that cognitive decline can make confinement unconstitutional, but prevailing doctrine still offers limited means to address how aging and dementia transform incarceration.[121]

2. Penological Theories of Punishment in the Context of Dementia

The criminal justice system traditionally recognizes four primary goals of incarceration: "retribution, deterrence, incapacitation, and rehabilitation."[122] Retribution is based on the idea that "people who break the law deserve to be punished."[123] Deterrence seeks to prevent crime by making punishments unpleasant enough to discourage both the individual and general public from engaging in criminal behavior.[124] Incapacitation protects society by removing individuals from the community so they cannot commit further crimes.[125] Rehabilitation focuses on changing an individual's behavior and thinking to reduce the likelihood that they will commit future offenses.[126] These rationales fail to justify the continued incarceration of individuals with advanced dementia.[127]

As individuals with advanced dementia lose the capacity to understand their punishment or participate in rehabilitative efforts, the relevance of traditional penological goals becomes increasingly unclear.[128] Retribution

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117. MOORE & GAMMELL, *supra* note 1, at 3–9.
118. *See infra* Section III.A.
119. *Rhodes*, 452 U.S. at 347–49; *Estelle*, 429 U.S. at 103.
120. *Engle*, 26 F. App'x at 397; *Harmelin*, 501 U.S. at 965.
121. *Clark*, 55 F.4th at 167.
122. DORIS LAYTON MACKENZIE, U.S. DEP'T JUST., SENTENCING AND CORRECTIONS IN THE 21ST CENTURY: SETTING THE STAGE FOR THE FUTURE 1 (2001).
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.*
127. *See infra* Section III.B.
128. Oliver Hallich, *Is It Morally Legitimate to Punish the Late Stage Demented for Their Past Crimes?*, 25 J. ETHICS 361, 361–83 (2021) (arguing that the moral justification for

relies on the premise that individuals deserve punishment for their crimes.[129] Yet when a person can no longer remember the offense or meaningfully connect to their past self, it prompts profound ethical questions about whether they are the same moral agent who committed the crime in the first place.[130] Deterrence carries less weight, both specific and general, as individuals with advanced dementia are no longer capable of internalizing the punitive message intended to discourage future wrongdoing, and their condition makes it unlikely that their incarceration serves as a meaningful warning to others.[131] Incapacitation becomes a less compelling justification given the low recidivism rates among older adults and the absence of clear data on reoffending among those with cognitive impairments.[132] Rehabilitation offers little justification for continued incarceration when cognitive decline prevents individuals with advanced dementia from understanding their punishment or engaging in efforts toward reform or reintegration.[133]

Courts have considered how the justification for a sentence may evolve as an individual's circumstances change over time.[134] In *Graham v. Florida*, decided in 2010, the Supreme Court noted: "A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense."[135] In the 2016 case of *Montgomery v. Louisiana*, the Supreme Court stated: "Protection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment and goes far beyond the manner of determining a defendant's sentence."[136] In *Madison v. Alabama*, decided in 2019, the Supreme Court further built on this logic, holding that punishment may be unconstitutional when a person's cognitive decline renders them unable to rationally understand the reason for it.[137] Although the case revolved around the constitutionality of executing an individual with dementia, its reasoning likely carries broader implications for individuals with advanced cognitive decline.[138] These principles present important questions about whether the continued

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punishing individuals with late-stage dementia is highly contested and often incompatible with traditional theories of punishment).

129. *Id.* at 362.

130. *Id* at 363.

131. *Id.* at 364–67.

132. *See* GODFREY, *supra* note 72, at 83.

133. John Anderson & Amee Baird, *Sentencing and Placement of Offenders with Dementia: A Significant Contemporary Challenge for the Criminal Justice System*, 0 PSYCHIATRY, PSYCH. & L. 1, 2 (2024).

134. *See* cases cited *infra* notes 135–37.

135. Graham v. Florida, 560 U.S. 48, 71 (2010).

136. Montgomery v. Louisiana, 577 U.S. 190, 206 (2016).

137. Madison v. Alabama, 586 U.S. 265, 278 (2019).

138. *See infra* Section III.C.

incarceration of individuals with advanced dementia, who may no longer be capable of understanding or responding to punishment, aligns with recognized penological justifications.[139]

III. ANALYSIS

The continued incarceration of individuals with advanced dementia raises serious constitutional concerns under the Eighth Amendment. Federal prisons are not equipped to provide adequate care for this population, which leads to prolonged suffering that may amount to deliberate indifference.[140] At the same time, individuals with advanced dementia are unable to comprehend their punishments, pose little risk of reoffending, and cannot benefit from rehabilitation, undermining the basic goals of incarceration.[141] Later Eighth Amendment jurisprudence further illustrates how severe cognitive decline can render continued punishment constitutionally impermissible when the individual can no longer comprehend or bear it.[142] This section analyzes these constitutional concerns and offers recommendations for how the federal system can more appropriately respond.

A. The BOP's Current Structure Fails to Prove Adequate Dementia Care

Federal prisons lack the resources and infrastructure to adequately manage the medical care, training, and staffing required to address the complex needs of elderly inmates with cognitive impairments such as dementia.[143] This deficiency undermines the BOP's obligations under 18 U.S.C. § 4042(a)(2)–(3), which mandates that the agency provide for the "safekeeping, care, and subsistence" of individuals in its custody and ensure they receive necessary medical care.[144] The BOP's statutory duty aligns with the constitutional standards established by the Eighth Amendment, reinforcing the BOP's responsibility to maintain humane and adequate conditions of confinement.[145] Yet, the persistent inability of the

139. *See infra* Section III.B.
140. *See infra* Section III.A.
141. *See infra* Section III.B.
142. *See infra* Section III.C.
143. *See supra* Section II.A.2.
144. 18 U.S.C. § 4042(a)(2).
145. *See* Spotts v. United States, 613 F.3d 559, 568–69 (5th Cir. 2010) (accepting for purposes of analysis that although 18 U.S.C. § 4042 affords prison officials discretion, that discretion may be constrained by "nondiscretionary duties" imposed by the Eighth Amendment); *see also* Krembel v. United States, 837 F. App'x 943, 948–49 (4th Cir. 2020) (discussing 18 U.S.C. § 4042 in the context of the Eighth Amendment and Federal Tort Claims Act).

BOP to fulfill these duties implicates serious questions about the federal prison system's compliance with constitutional standards.[146]

The Supreme Court in *Estelle* has recognized that deliberate indifference to an inmate's serious medical needs constitutes a violation of the Eighth Amendment's prohibition on cruel and unusual punishment.[147] The Court, however, stated that "an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.'"[148] Only one specialized ward exists to care for a growing population of dementia patients, yet it has been deemed inadequate.[149] Most other facilities lack trained staff and frequently misclassify or overlook signs of cognitive impairment, leaving many without the care they urgently need.[150] Yet despite these well-documented shortcomings, compassionate release remains underutilized for individuals with advanced dementia.[151] These ongoing failures reflect the kind of deliberate indifference to serious medical needs deemed unconstitutional by the Supreme Court in *Estelle*.[152]

B. The Failure to Fulfill the Core Goals of Punishment

The current system of incarcerating elderly individuals with advanced dementia fails to serve the core goals of imprisonment: retribution, incapacitation, deterrence, and rehabilitation.[153] Compassionate release, however, remains an underutilized tool that better aligns with these objectives by addressing the unique needs of this population while upholding principles of justice and efficiency.[154] The Supreme Court in *Ewing v. California* said that "[o]ur traditional deference to legislative policy choices finds a corollary in the principle that the Constitution 'does not mandate adoption of any one penological theory.'"[155] While the

146. *See* GODFREY, *supra* note 72, at 15.
147. Estelle v. Gamble, 429 U.S. 97, 104 (1976).
148. *Id.* at 105–06.
149. FEDERAL MEDICAL CENTER DEVENS, *supra* note 66, at 35.
150. Kitt-Lewis & Loeb, *supra* note 65, at 2; GODFREY, *supra* note 72, at 15.
151. Horner, *supra* note 3, at 48.
152. *Estelle*, 429 U.S. at 103.
153. *See* DORIS L. MACKENZIE ET AL., SENTENCING AND CORRECTIONS IN THE 21ST CENTURY: SETTING THE STAGE FOR THE FUTURE 1 (2001), https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/189106-2.pdf [https://perma.cc/JSZ6-FB7R] (describing the traditional goals of punishment, including retribution, incapacitation, deterrence, and rehabilitation).
154. *See* Horner, *supra* note 3, at 48–49.
155. Ewing v. California, 538 U.S. 11, 25 (2003) (quoting Harmelin v. Michigan, 501 U.S. 957, 999 (1991)).

Constitution allows for flexibility in the penological goals a legislature may pursue, continued incarceration of individuals with advanced dementia frustrates any plausible objective.[156] Punishment that lacks any legitimate penological justification may become so disproportionate that it violates the Eighth Amendment.[157]

1. Retribution, Incapacitation, Rehabilitation, and Deterrence

The rationale behind retribution is that a criminal sentence must be proportionate to the offender's personal culpability.[158] Advanced dementia severs the connection between the individual and their past conduct, often erasing the memory of the crime and diminishing moral agency, thereby undermining the justification for punishment.[159] The mentally competent individual who was aware of their commission of the crime and deserving of punishment is arguably no longer the same person once advanced dementia has taken hold.[160] Depending on the severity of their dementia, their cognitive impairment may prevent them from recognizing their punishment or even understanding why they are incarcerated.[161]

Incapacitation seeks to protect the public by removing dangerous individuals from society.[162] This justification is grounded in the belief that some individuals are too dangerous to remain in the community without risking further serious criminal offenses.[163] Older offenders have among the lowest recidivism rates of any age group.[164] Limited data exists on the specific recidivism rates of individuals with dementia.[165] However, their advanced cognitive decline makes the risk of recidivism exceedingly low.[166] Older individuals, including those living with terminal illness, are often unable to perform basic activities of daily living, such as bathing,

156. Lopez, *supra* note 81; Engelhart, *supra* note 49.
157. Montgomery v. Louisiana, 577 U.S. 190, 206 (2016); Graham v. Florida, 560 U.S. 48, 71 (2010).
158. *Graham*, 560 U.S. at 71.
159. Hallich, *supra* note 128, at 362.
160. *Id.* at 363.
161. Anderson & Baird, *supra* note 133, at 8–9.
162. *Id.* at 10.
163. *Id.*
164. *See* Prescott et al., *supra* note 83, at 1688 (explaining how the rate of recidivism declines from fifteen percent among individuals aged between eighteen and twenty-four to three percent among those aged fifty-five-plus).
165. *See* GODFREY, *supra* note 72, at 83.
166. *See supra* Section II.A.3 and accompanying text.

eating, or dressing, and are therefore unlikely to have the capacity or intent to reoffend.[167]

Rehabilitation seeks to reduce criminal offending by promoting behavioral change and preparing individuals for successful reintegration into society.[168] This theory relies on the presumption that relevant behavioral or social factors contributing to the offense can be identified and addressed through targeted treatment or support.[169] However, the BOP demonstrably struggles to properly diagnose individuals with dementia and lacks the resources necessary to provide adequate care.[170] More fundamentally, dementia is a progressive neurodegenerative condition for which there is no cure.[171] As cognitive function continues to decline, individuals with advanced dementia are no longer capable of benefiting from rehabilitative programming.[172] Any effort to reform behavior is futile when the individual cannot understand or engage with the process, let alone be meaningfully reintegrated into society.[173]

Deterrence as a penological goal assumes that punishment can influence future behavior, either by discouraging the individual from reoffending or by sending a message to others.[174] Individuals with advanced dementia are often incapable of processing or internalizing the consequences of their actions.[175] Their cognitive impairments limit self-reflection, memory, and rational decision-making, making it unlikely that punishment has any deterrent effect.[176] Some scholars have noted that even if punishment were structured to make prison especially distressing for those with dementia, any resulting deterrent effect would come at the

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167. *See* Guo & Sapra, *supra* note 70. Courts have considered whether an individual can perform activities of daily living in determining whether to grant a motion for compassionate release. United States v. Chambers, No. 87-80933, 2025 U.S Dist. LEXIS 13446, at *2–3 (E.D. Mich. Jan. 21, 2025) (holding that an elderly defendant suffering from advanced, "end-stage dementia," who "requires assistance with all activities of daily living," presents an extraordinary and compelling reason for compassionate release under 18 U.S.C. § 3582(c)(1)(A)); *see also* United States v. Gotti, 433 F. Supp. 3d 613, 619 (S.D.N.Y. 2020) (finding that the defendant did not qualify for compassionate release where his medical conditions did not substantially diminish his ability to provide self-care, as he remained independent in activities of daily living, and that, in any event, release could be denied in the court's discretion based on sentencing factors and public safety concerns).
168. Anderson & Baird, *supra* note 133, at 10–11.
169. *Id.* at 11.
170. *See supra* Section II.A.2.
171. *See What Is Dementia?*, *supra* note 30.
172. Anderson & Baird, *supra* note 133, at 10.
173. *Id.*
174. *Id.* at 9–10.
175. *Id.*
176. *Id.*

unacceptable cost of violating basic standards of human dignity.[177] More importantly, when punishment is administered in an inhumane manner, it is unlikely to deter either the individual or others, making deterrence an unconvincing justification for continued incarceration in these cases.[178]

None of the traditional justifications for incarceration apply meaningfully to individuals with advanced dementia.[179] Each theory of punishment relies on a baseline level of comprehension, agency, or public safety risk that is often absent in this population.[180] As the Supreme Court recognized in *Montgomery v. Louisiana*, punishment that no longer serves a legitimate penological purpose is constitutionally disproportionate.[181] When none of the recognized goals of punishment justify continued incarceration, as is the case with individuals with advanced dementia, that punishment violates the Eighth Amendment.

C. Madison v. Alabama: *The Case Against Punishment Without Understanding*

In *Madison v. Alabama*, the Supreme Court held that executing an individual with severe dementia violates the Eighth Amendment if they lack a rational understanding of the reason for their punishment.[182] Vernon Madison, a man who developed vascular dementia while on death row for a decades-old murder, experienced significant cognitive decline that left him unable to remember the crime or understand the reason for his execution.[183] The Court reasoned that when an individual is unable to understand the purpose of their punishment, that punishment ceases to serve any retributive function and becomes unconstitutional.[184] Although *Madison* addressed the death penalty, its rationale arguably applies with equal force to the prolonged incarceration of individuals with advanced dementia.[185]

In federal prisons, where the BOP lacks adequate staffing, training, and medical infrastructure to care for cognitively impaired individuals,[186] continued confinement amounts to a slow deterioration in custody.

177. Hallich, *supra* note 128, at 367.
178. *Id.*
179. *See supra* notes 157–77 and accompanying text.
180. Hallich, *supra* note 128, at 361–68.
181. Montgomery v. Louisiana, 577 U.S. 190, 206 (2016); Graham v. Florida, 560 U.S. 48, 71 (2010).
182. Madison v. Alabama, 586 U.S. 265, 275 (2019).
183. *Id.* at 269–70.
184. *Id.* at 276–77.
185. Anderson & Baird, *supra* note 133, at 9.
186. OFF. INSPECTOR GEN. AGING INMATE POPULATION, *supra* note 55.

Although incarceration of dementia patients is not a death sentence in the traditional sense, it becomes one when imposed on individuals whose cognitive decline renders them incapable of meaningfully receiving punishment.[187] *Madison*, decided in 2019, reflects the Court's recognition that severe cognitive decline fundamentally alters the constitutional limits of punishment under the Eighth Amendment.[188] Incarcerating individuals who can no longer comprehend or bear the weight of their sentence, especially when compassionate release offers a humane alternative, is not just inefficient; it is unconstitutional. Extending the reasoning of *Madison* one step further means recognizing that even when the punishment is not death, incarceration can still violate the Eighth Amendment if the individual is no longer capable of understanding or bearing it. When compassionate release is available and yet denied, continued imprisonment under these circumstances is likely incompatible with the Eighth Amendment's prohibition on cruel and unusual punishment.[189]

D. Recommendations

This Note urges recognition that the continued incarceration of individuals with advanced dementia violates the Eighth Amendment.[190] However, so long as the federal system persists in incarcerating this population,[191] urgent reforms are needed to mitigate the constitutional and human costs. These additional recommendations below will not rectify the key underlying constitutional issues, but they may reduce some harm within the aging population and improve consistency in compassionate release decision making until broader change is possible.

The First Step Act of 2018 was an important first leap toward expanding access to compassionate release by allowing incarcerated individuals to file motions directly with sentencing courts.[192] Further action is needed to streamline the process in light of the increasing population of incarcerated individuals with dementia in U.S. federal prisons.[193] Addressing this issue will require ground level changes, like improving the training process for correctional facility staff that engage with dementia patients to better identify those with serious cognitive decline.[194] Organizations such as the National Council of Certified

187. Anderson & Baird, *supra* note 133, at 9.
188. Madison v. Alabama, 586 U.S. 265, 275 (2019).
189. U.S. CONST. amend. VIII.
190. *See infra* Part IV.
191. MOORE & GAMMELL, *supra* note 1, at 6.
192. First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194.
193. MOORE & GAMMELL, *supra* note 1, at 3–9.
194. *Id.* at 17–18.

Dementia Practitioners offer certifications to help staff identify signs of cognitive decline and support appropriate release decisions.[195]

To ensure these reforms are effective, policymakers and researchers should direct more funding and attention toward understanding dementia in carceral settings, a growing yet understudied area of concern.[196] Increased funding would help lead to a standardized approach for recognizing and responding to cognitive decline across prison facilities.[197] It would also support the development of evidence-based practices that ensure compassionate release decisions are made efficiently, ethically, and in line with medical realities.[198] Rather than requiring new appropriations, a portion of the substantial costs currently spent on incarcerating elderly individuals could be redirected toward staff training.[199] As noted above, the BOP spends a considerable amount of money incarcerating older adults,[200] yet operates a system that consistently lacks in adequately addressing cognitive decline among the prison population.[201]

Finally, unlike the petition-based model of compassionate release in the United States,[202] countries like Spain and France offer automatic parole consideration once an inmate reaches seventy years of age.[203] This structured, age-based mechanism of release helps ensure that declining health, particularly cognitive decline, is proactively addressed rather than ignored until it becomes a crisis.[204] Importantly, it does not eliminate the option to petition for their version of compassionate release earlier based on advanced dementia or other serious conditions.[205] Adopting a similar automatic review process could curb the risks of prolonged incarceration for cognitively impaired individuals and ensure earlier, medically appropriate interventions.

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195. *Id.*; *Certified Corr. Personnel Dementia Trainer CCPDT*, NAT'L COUNCIL CERTIFIED DEMENTIA PRAC., https://www.nccdp.org/ccpdt.htm [https://perma.cc/4Y49-J6HW] (last visited Mar. 16, 2025).
196. MOORE & GAMMELL, *supra* note 1, at 17–18.
197. *Id.*
198. *Id.*
199. *Id.*
200. OFF. INSPECTOR GEN. AGING INMATE POPULATION, *supra* note 55.
201. *See* Kitt-Lewis & Loeb, *supra* note 65.
202. *Understanding the Federal Compassionate Release Process*, *supra* note 17.
203. Vicki Prais, *Elderly Life-Sentenced Prisoners: A Forgotten and 'Invisible' Group*, PENAL REFORM INT'L BLOG (Aug. 23, 2019), https://www.penalreform.org/blog/elderly-life-sentenced-prisoners-a-forgotten-and-invisible-group/ [https://perma.cc/7HAU-CJBS].
204. *Id.*
205. *Id.*

IV. CONCLUSION

While the Eighth Amendment has long prohibited cruel and unusual punishment,[206] its application to the incarceration of individuals with advanced dementia remains unresolved. Compassionate release offers a mechanism to address extraordinary medical circumstances, but its application to individuals with dementia has been inconsistent at best.[207]Although courts have not extended *Madison v. Alabama* beyond the death penalty for dementia patients,[208] the logic of the decision offers a clear path forward: when an individual can no longer understand the reason for their punishment, the punishment itself loses constitutional legitimacy.

Individuals with advanced dementia no longer satisfy the traditional goals of incarceration.[209] They cannot comprehend their punishment, they cannot be rehabilitated, they pose little risk to public safety, and they are often subject to conditions that may fall below constitutional standards.[210] Whether federal courts choose to apply *Madison* in this context remains to be seen; however, the basic principle is difficult to ignore. Incarcerating those who are no longer capable of bearing the weight of their sentence—when compassionate release is available—is not just inefficient. It is incompatible with the Eighth Amendment.

206. U.S. CONST. amend. VIII.
207. Horner, *supra* note 3, at 48–49.
208. Madison v. Alabama, 586 U.S. 265, 275 (2019).
209. *See supra* Section III.B.1.
210. *See supra* Section III.A.