

THE USE OF PROLONGED SOLITARY CONFINEMENT IN UNITED STATES PRISONS, JAILS, AND DETENTION CENTERS

Submission to the United Nations Universal Periodic Review of
United States of America
Second Cycle
Twenty Second Session of the UPR
Human Rights Council
April-May 2015

Submitted by: Center for Constitutional Rights (CCR), Legal Services for Prisoners with Children (LSPC), California Prison Focus (CPF)

Contact Name: Alexis Agathocleous

Contact Phone/Email: 212-614-6478, aagathocleous@ccrjustice.org

Organization website: www.ccrjustice.org; www.prisonerswithchildren.org; www.prisons.org

The Center for Constitutional Rights (CCR) is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

Legal Services for Prisoners with Children (LSPC) organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights and to reunify families and communities. We build public awareness of structural racism in policing, the courts and prison system and we advance racial and gender justice in all our work. Our strategies include legal support, trainings, advocacy, public education, grassroots mobilization and developing community partnerships.

California Prison Focus (CPF) works to abolish the California prison system in its present condition. We investigate and expose human rights abuses with the goal of ending long term isolation, medical neglect, and all forms of discrimination. We are community activists, prisoners, and their families educating and inspiring the public to demand change.

Endorsed by: American Civil Liberties Union (ACLU), Assistance to the Incarcerated Mentally Ill, California Coalition for Women Prisoners, California Families Against Solitary Confinement (CFASC), Californians United for a Responsible Budget, Center for Human Rights and Constitutional Law, Community Futures Collective, Dignity and Power Now, Homies Unidos, Interfaith Communities United for Justice and Peace (ICUJP), National Coalition to Free the Angola 3, Psychologists for Social Responsibility, National Lawyers Guild (NLG), New York Law Collective, Peoples' Action for Rights and Community, Prison Activist Resource Center, Prisoner Hunger Strike Solidarity Coalition, Ramsay Merriam Fund, Siegel & Yee, Sin Barras, Social Justice Committee – UU Congregation at Shelter Rock, Solitary Watch, Stop Mass Incarceration Network - National, T'ruah: The Rabbinic Call for Human Rights, Uptown People's Law Center.

I. SUMMARY

The United States currently detains approximately 80,000 prisoners in solitary confinement in its jails, prisons, and detention centers. Solitary confinement – which typically involves being held in a cell in a state of near-total solitude for between 22 and 24 hours a day – is well-known to result in severe psychological and physical harm. The extensive use of solitary confinement in US prisons, jails, and detention centers implicates concerns about torture or cruel, inhuman or degrading treatment or punishment, abuses in the criminal justice system, due process violations, racial discrimination, and discrimination on the basis of gender identity and sexual orientation.

CCR, LSPC, and CPF are currently litigating *Ashker et al. v. Governor of California et al.*, 09-cv-5796 (N.D. Cal.) (Wilken, J.), a federal class action lawsuit that challenges the constitutionality of prolonged solitary confinement at California’s Pelican Bay Security Housing Unit (SHU).¹ In *Ashker*, we represent hundreds of prisoners who have been held in solitary confinement for a decade or more, and who have been placed into indefinite SHU confinement as a result of their validation as so-called gang members or associates.

We recommend that prolonged solitary confinement (i.e. in excess of 15 days) in the US should be banned, except under exceptional circumstances. Where solitary confinement is used, its duration must be as short as possible and for a definite term that is properly announced and communicated. The practice of solitary confinement in pre-trial detention should also end. The US Government should ensure that those prisoners who are sent to solitary confinement are only sent for the most serious disciplinary infractions, where no other less restrictive alternatives exist, and receive meaningful process prior to such confinement. The US Government should also develop standards to ensure that actual or perceived race, political affiliation, religion, association, vulnerability to sexual abuse, and challenging violations of one’s rights as a prisoner plays no role in the decision to confine a prisoner to solitary confinement. Federal, state, and local governments should compile data on the use of solitary confinement in their jurisdictions, including data on the effect of isolation on detainees.

II. LEGAL FRAMEWORK

The Eighth Amendment to the US Constitution prohibits cruel and unusual punishment, while the Fifth and Fourteenth Amendments to the US Constitution guarantee the right to due process. While no specific recommendation was made with respect to solitary confinement in the 2011 report of the Human Rights Council, the US government accepted recommendation 177 – to “ensure the full enjoyment of human rights by persons deprived of their liberty, including by way of ensuring treatment in maximum security prisons in conformity with international law.”

III. U.S. COMPLIANCE WITH ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS WITH RESPECT TO SOLITARY CONFINEMENT

The US currently detains approximately 80,000 prisoners in solitary confinement in its jails, prisons, and detention centers. Prisoners in solitary confinement are typically warehoused in

¹ More information about *Ashker et al. v. Governor of California et al.* is available at www.ccrjustice.org/pelican-bay.

cramped, concrete, windowless cells in a state of near-total solitude for between 22 and 24 hours a day – whether in Special Housing Units (SHUs), in Supermax facilities, or in lockdown. Cells often contain a toilet and a shower, and a slot in the door only large enough for a guard to slip a food tray through. “Recreation” involves being escorted, frequently in handcuffs and shackles, to another solitary cell where prisoners can pace alone for an hour before being returned to their cell. Prisoners in solitary confinement are frequently deprived of meaningful access to visits and telephone calls home, furthering their isolation and despair and preventing them from maintaining the family and community ties pivotal to their ability to successfully reintegrate into society upon release. As such, prisoners often live for years alone, without any normal human interaction, stimulation, or meaningful programming or vocational opportunities.

These conditions can be exacerbated by Special Administrative Measures (“SAMs”), an additional set of contact and communication restrictions that can be imposed by the US Department of Justice on federal prisoners already in solitary confinement, including in pre-trial detention. These restrictions frequently bar a prisoner’s attorneys and family members from sharing any information received from that prisoner with third parties, under threat of criminal sanction. Separate from the implications for zealous advocacy and free speech, these gags, together with DOJ’s refusal to provide meaningful information, mean that the public knows very little about a critical aspect of the government’s treatment of prisoners in federal custody.²

Solitary confinement is disproportionately used against prisoners of color, and other vulnerable incarcerated populations. At Pelican Bay in California, for example, 85% of the prisoners in solitary confinement are Latino. So too are African American prisoners disproportionately overrepresented in SHU populations across the country. Prisoners with mental illness are all too frequently confined in solitary confinement, only exacerbating their symptoms; and gender identity, sexual identity, and vulnerability to sexual assault are inappropriately used to confine prisoners in solitary confinement, ostensibly for prisoners’ own protection.

Like prisoners placed in isolation units around the country, prisoners at the Pelican Bay SHU are confined to windowless cells for between 22½ and 24 hours a day, without access to natural light, telephone calls, contact visits, and vocational, recreational, or educational programming. At Pelican Bay, hundreds of prisoners have been held in solitary confinement for over a decade; and dozens of prisoners have languished under these conditions for over 20 years – in contravention of human rights standards.³ They are retained in the SHU on the basis of flimsy

² The DOJ has refused to make virtually any information publicly available about the use of SAMs, including who and how many are subject to the measures, where these individuals are being held, and what the measures entail. The only available official data is from 2009, when DOJ reported that there were 44 prisoners subject to SAMs in Bureau of Prisons (“BOP”) facilities. *See* U.S. Dep’t Justice, Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System, June 9, 2009, available at <http://www.justice.gov/opa/pr/2009/June/09-ag-564.html>.

³ The U.N. Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment has found that prolonged solitary confinement is prohibited by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). The Special Rapporteur concluded that use of solitary confinement is appropriate only in exceptional circumstances, and where imposed, its duration must be as short as possible and for a definite term that is properly announced and communicated. He called specifically for States to end the practice of solitary confinement in pre-trial detention. He also called for a complete ban of the

evidence of “gang affiliation.” Evidence used by the California Department of Corrections and Rehabilitation (CDCR) to purportedly demonstrate gang affiliation – and keep these prisoners in brutalizing conditions for *decades* at a time – includes appearance on lists of alleged gang members discovered in an undisclosed prisoner’s cell, or possession of allegedly gang-related drawings.

The devastating psychological and physical effects of prolonged solitary confinement have been well documented by psychological experts. Solitary confinement, these experts have found, results in severe psychological and physical harm. Common psychological effects of prolonged solitary confinement include a persistent and heightened state of anxiety, and paranoid and persecutory fears, as well as hallucinations, headaches, ruminations and irrational anger, violent fantasies, oversensitivity to stimuli, extreme lethargy, and insomnia. This mindset commonly persists long after prisoners are released from solitary confinement.

Our clients at the Pelican Bay SHU report that they experience unrelenting and crushing mental anguish as a result of the years they have spent under these conditions, and they fear that they will never be released from the SHU. Echoing the findings of psychological experts on solitary confinement, prisoners have described their confinement there as “a living nightmare that does not end and will not end.” As our client Luis Esquivel puts it, “I feel dead. It’s been 13 years since I have shaken someone’s hand and I fear I’ll forget the feel of human contact.” And as our client Gabriel Reyes wrote in 2011:

You don’t really know what makes [the SHU psychological torture] unless you live it and have lived it for 10, 15, 20 plus years 24/7. Only the long term SHU prisoner knows the effect of being alone between four cold walls with no one to confide in and only a pillow for comfort. How much more can any of us take? Only tomorrow knows. Today I hold it all in hoping I don’t explode.

Similarly, our client Todd Ashker experiences great feelings of anger at his situation, which he tries to control and suppress, but this just deadens his feelings. He feels that he is “silently screaming” 24 hours a day.

Professor Craig Haney, Professor of Psychology at the University of California Santa Cruz and a leading expert on the impact of solitary confinement, interviewed a number of prisoners in the Pelican Bay SHU as part of our litigation. In a Declaration to the Court, he reported:

The magnitude of the suffering that they have endured, and the full measure of what they have lost over the course of the last two decades of their lives, is difficult to fathom. They are all men in their 50s who have matured into middle age without having had any of the adult experiences that lend meaning to that stage of someone’s life. Because they could

practice on juveniles (under 18) and on persons with mental disabilities. The Special Rapporteur concluded that “any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment, depending on the circumstances” and called on the international community “to agree to such a standard and to impose an absolute prohibition on solitary confinement exceeding 15 consecutive days.” *See* Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Aug. 2011).

not remain connected in a meaningful way to the social world and social contexts in which they were raised and from which they came—the network of people and places that in essence, created them—they have lost a connection to the basic sense of who they “were.” Yet, because of the bizarre asocial world in which they have lived, it is not at all clear to most of them who they now “are.” There is a certain flatness or numbness to the way most of them talk about their emotions—they “feel” things, but at a distanced or disembodied way. The form of “social death” to which they were subjected has left them disconnected from other people, whom they regard more or less as “abstractions” rather than as real. Very few of them have had consistent social visits over the many years during which they have been in isolated confinement, so they have lost contact with the outside world, with the social world of even a mainline prison, and with themselves.⁴

Professor Haney’s observations comport with what is now clearly established about the impact of solitary confinement. The incidence of suicides, attempted suicides and the development of mental illness are much higher amongst prisoners in solitary confinement than those held in the general population. A recent peer-reviewed study published in the *American Journal of Public Health* has found that the risk of self-harm among prisoners (such as “ingestion of a potentially poisonous substance or object leading to a metabolic disturbance, hanging with evidence of trauma from ligature, wound requiring sutures after laceration near critical vasculature, or death”) is significantly higher for prisoners in isolation units.⁵ Moreover, as Professor Huda Akil, a neuroscientist at the University of Michigan, recently explained at the American Association for the Advancement of Science annual meeting, there is an increased understanding that the lack of physical interaction with the natural world, the lack of social interaction, and the lack of touch and visual stimulation associated by solitary confinement are each sufficient to dramatically change the brain.⁶

In 2011, as a result of the severe psychological distress, desperation, and hopelessness that they experience from languishing in the SHU for decades, hundreds of Pelican Bay prisoners engaged in two sustained hunger strikes. Those hunger strikes ended after CDCR promised to engage with prisoners and issue meaningful reforms to conditions and procedures. But CDCR has failed to do so. Hundreds of men are still languishing at the Pelican Bay SHU, and other isolation units in California. CDCR still uses the same affiliation-based evidence to retain prisoners at the SHU indefinitely. And so, on July 8, 2013, some 30,000 prisoners went on a third hunger strike in the largest prisoner protest in history. Many refused food for 60 days. Our clients, and many other prisoners, reported that the possibility of death by starvation was a worthwhile risk to draw attention to their plight, illustrating the gravity of their situation and the need for swift action on this issue. The prisoners have made five core demands.⁷ Central among these demands are that

⁴ Declaration of Craig Haney, Ph.D., J.D., In Support of Plaintiffs’ Motion for Class Certification, *Ashker*, Dkt. No. 195-4.

⁵ Fatos Kaba, MA, Andrea Lewis, PhD, Sarah Glowa-Kollisch, MPH, et. al, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUB. HEALTH 442, 443 (Mar. 2014).

⁶ <http://thinkprogress.org/justice/2014/02/18/3303721/solitary-confinement-dramatically-alter-brain-shape-just-days-neuroscientist-says/#>

⁷ For a detailed explanation of these demands, please visit <http://prisonerhungerstrikesolidarity.wordpress.com/the-prisoners-demands-2/>

solitary confinement must be used as a last resort, for a determinate period of time, and in response to specific acts of misconduct; and that it cannot involve torturous and punitive conditions such as deprivation of natural light, phone calls, physical contact with family, group recreation, educational programming, significant out-of-cell time that allows for normal human conversations with others, lack of adequate medical care, and lack of adequate, nutritious food.

The United States must take steps to address the human rights violations inherent in holding tens of thousands of prisoners in solitary confinement. As such, we make the following recommendations:

1. Prolonged solitary confinement (i.e. in excess of 15 days) in US prisons, jails, and detention centers should be banned, except under exceptional circumstances. Where solitary confinement is used, its duration must be as short as possible and for a definite term that is properly announced and communicated. The practice of solitary confinement in pre-trial detention should also end.
2. The US Government must ensure that those prisoners who are sent to solitary confinement are only sent for the most serious disciplinary infractions, where no other less restrictive alternatives exist, and receive meaningful process prior to such confinement.
3. The US Government must develop standards to ensure that actual or perceived race, political affiliation, religion, association, vulnerability to sexual abuse, and challenging violations of one's rights as a prisoner plays no role in the decision to confine a prisoner to solitary confinement.
4. Federal, state, and local governments should compile data on the use of solitary confinement in their jurisdictions, including data on the effect of isolation on detainees.

III. CONCLUSION

The US warehouses tens of thousands of prisoners in prolonged solitary confinement, a practice that is well-known cause to devastating psychological and physical effects. These harms are disproportionately visited upon people of color, politically-active prisoners, and those whose gender or sexual identity is perceived to make them vulnerable to sexual assault. The US Government must take concrete steps to end the use of prolonged solitary confinement; to ensure meaningful process prior to such confinement; to develop standards that prevent the discriminatory use of solitary confinement; and to compile data on the use of solitary confinement across the country.