

**Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences**

**Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights
February 25, 2014**

Statement of the Center for Constitutional Rights

Chairman Durbin and Members of the Subcommittee:

The Center for Constitutional Rights (CCR) would like to thank Chairman Dick Durbin and Members of the Subcommittee for holding this important follow-up hearing on the human rights, fiscal, and public safety consequences of solitary confinement in US prisons, jails, and detention centers. The June 2012 hearing before the Subcommittee was a critical step in raising national consciousness about this important human rights issue. We sincerely hope that this follow-up hearing will result in a fundamental reassessment of the widespread use of solitary confinement in the United States, and serve as a catalyst to end the brutalizing use of isolation for unconscionable periods of time in U.S. prisons, jails, and detention centers.

CCR submitted a lengthy statement¹ at the June 2012 hearing that addressed some of the human rights and constitutional implications of solitary confinement, and the kind of prolonged solitary confinement that our clients at the notorious Pelican Bay Security Housing Unit in California are suffering in particular.² We refer the Subcommittee back to that Statement. Here, we would like to briefly apprise the Subcommittee of developments in California since the last hearing. While this update focuses on California, it highlights the need for swift and meaningful Congressional action to limit the use of solitary confinement across the country.

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; 78 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 evidence of “gang affiliation.” Evidence used by the California Department of Corrections

¹ Statement of the Center for Constitutional Rights, June 19, 2012, available at <http://www.ccrjustice.org/ccr-written-testimony-solitary-confinement-us-congress>.

² In May 2012, CCR raised a constitutional challenge to prolonged solitary confinement in a federal class action complaint on behalf of prisoners at California’s notorious Pelican Bay SHU facility. *Ashker et al. v. Brown et al.*, 09-cv-5796 (N.D. Cal.) (Wilken, J.). That litigation is ongoing.

³ As noted in our June 2012 submission, 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 U.S. has ratified both the ICCPR and CAT. Moreover, the U.N. Special Rapporteur has also previously proposed a “15-day deadline for solitary confinement.” Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Aug. 2011).

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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 prisoners’ cell or possession of allegedly gang-related drawings.

The psychological and physical effects of this prolonged isolation have been drastic. Professor Craig Haney, who testified before the Subcommittee in June 2012, interviewed a number of prisoners in the Pelican Bay SHU in the context 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 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 new 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 The drastic effects of this practice on a prisoner’s brain and personality violate the U.S.’s obligations under the Convention Against Torture.

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/#>

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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 hunger strike in the largest prisoner protest in history. Many refused food for 60 days. Their protest resulted in unprecedented media coverage, a visit to California by Juan Mendez, the United Nations Special Rapporteur on Torture, and a promise by legislators to take action on the issue. Two legislative hearings were held in Sacramento to address the disgraceful conditions in California's isolation units, and California Assemblymember Tom Ammiano has since proposed legislation that could significantly restrict how solitary confinement is used in California prisons.

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 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 and nutritious food.

We join the many other human rights, civil rights, and prisoners' rights groups who are submitting statements today in urging Congress to:

- Support increased federal oversight, monitoring, transparency, and funding for alternatives for solitary confinement;
- Require reforms to the use of solitary confinement in federal facilities operated by the Bureau of Prisons (BOP);
- Ensure that the United States fully engages in the international effort to reform the use of solitary confinement; and
- Support rulemaking to reduce the use of solitary confinement in U.S. prisons, jails, detention centers and juvenile facilities.

Such measures will be an important step in ending the harmful, and indefensible, use of solitary confinement in California's prisons, and in jails, prisons, and detention centers around the country.

With strong leadership, effective policies, and sound practices, U.S. prisons can develop ways to house prisoners in settings that are less restrictive and more humane than solitary confinement, and thereby meet international human rights and Constitutional standards. We hope that today's hearing represents another important step in that direction.

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