

# **Violations of Human Rights Obligations under the International Covenant on Civil and Political Rights through the use of prolonged solitary confinement in United States prisons, jails, and detention centers**

(Violations of Article 7: protection from torture, and cruel, inhuman or degrading treatment or punishment; and Article 10: right to be treated with humanity and with respect for the inherent dignity of the human person when deprived of their liberty).

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. CCR is currently litigating a constitutional challenge to prolonged solitary confinement at California's Pelican Bay Security Housing Unit (SHU) in *Ruiz v. Brown*, 09-cv-5796 (N.D. Cal.) (Wilken, J.) on behalf of a class of prisoners who are held there.<sup>1</sup> CCR also represents a prisoner in the federal Administrative Maximum ("ADX") prison in Florence, Colorado.

## **I. Issue Summary**

The United States currently detains approximately 80,000 prisoners in solitary confinement in its jails, prisons, and detention centers. Prisoners in solitary confinement are typically warehoused in 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 also 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 on prisoners already in solitary confinement, including in pre-trial detention.

The devastating psychological and physical effects of these harsh conditions 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

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<sup>1</sup> More information about *Ruiz v. Brown* is available at [www.ccrjustice.org/pelican-bay](http://www.ccrjustice.org/pelican-bay).

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.

Moreover, 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. Solitary confinement, SAMs and other harsh measures also appear to be applied reflexively, including pre-trial, in the cases of Muslim defendants being prosecuted for terrorism, many of which rest on material support allegations that raise grave First Amendment concerns. So too are African American prisoners disproportionately overrepresented in SHU populations. 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.

The United States must take steps to address the human rights violations inherent in holding tens of thousands of prisoners under these conditions, and with these effects.

## II. Concluding Observations

In its 2006 Concluding Observations, the U.N. Human Rights Committee made the following observations:

The Committee reiterates its concern that conditions in some maximum security prisons are incompatible with the obligation contained in article 10 (1) of the Covenant to treat detained persons with humanity and respect for the inherent dignity of the human person. It is particularly concerned by the practice in some such institutions to hold detainees in prolonged cellular confinement, and to allow them out-of-cell recreation for only five hours per week, in general conditions of strict regimentation in a depersonalized environment. It is also concerned that such treatment cannot be reconciled with the requirement in article 10 (3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners. It also expresses concern about the reported high numbers of severely mentally ill persons in these prisons, as well as in regular in U.S. jails.

The State party should scrutinize conditions of detention in prisons, in particular in maximum security prisons, with a view to guaranteeing that persons deprived of their liberty be treated in accordance with the requirements of article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners.<sup>2</sup>

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<sup>2</sup> Human Rights Comm., 87th Sess., July 10-28, 2006, Concluding Observations of the Human Rights Committee: United States of America, ¶ 32, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (Dec. 18, 2006) available at <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html>.

The United States Government did not respond to this recommendation in its subsequent report.

### III. U.S. Government Report

In its December 2011 *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights*, the United States did not address the issue of solitary confinement in any meaningful way. In paragraph 234 of the Report, the United States noted that the United States Supreme Court has held that due process protections would be implicated if a prisoner's confinement is "atypical and significant," but that 30 days of disciplinary segregation does not give rise to such an interest, *Sandin v. Conner*, 515 U.S. 472 (1995); and that confinement to a "Supermax" maximum security prison facility constituted an "atypical and significant hardship" giving rise to a liberty interest under the *Sandin* standard, *Wilkinson v. Austen*, 545 U.S. 209 (2005), but that the procedures in place at Ohio's supermax facility were deemed sufficient.

### IV. Human Rights Committee General Comments

In General Comment 20, the Human Rights Committee noted that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7."<sup>3</sup>

### V. Other UN Body Recommendations

In August 2011, the U.N. Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued a Report on solitary confinement.<sup>4</sup> The report found that prisoners must, at a minimum, have access to windows and light, sufficient sanitary fixtures, outdoor exercise and programming, access to meaningful human contact within the prison, and contact with the outside world (including visits, mail, and phone calls from legal counsel, family and friends, and access to reading material, television or radio). The Special Rapporteur also 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. Prolonged solitary confinement, he found, 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) and includes the use of solitary confinement for 15 days or more. The Special Rapporteur concluded that "any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment

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<sup>3</sup> General Comment No. 20 at ¶ 6, available at <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/6924291970754969c12563ed004c8ae5?OpenDocument>.

<sup>4</sup> Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Aug. 2011), available at <http://ccrjustice.org/files/UN-Special-Rapporteur-Report-on-Solitary.pdf>.

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.”

And yet, thousands of prisoners have languished in solitary confinement U.S. prisons for years at a time. At Pelican Bay, California’s “Supermax” facility where CCR is challenging the use of prolonged solitary confinement as unconstitutional, more than 500 prisoners have been held under these conditions for over 10 years – which is more than 250 times the amount of time the U.N. has deemed acceptable. 78 prisoners have languished under these conditions there for over 20 years. Prisoners across the United States are held under these conditions for months and years, and sometimes even decades, at a time. For example, hundreds of prisoners have been held in solitary confinement at the ADX facility in Florence, Colorado. Solitary confinement and SAMs also continue to be imposed during pre-trial proceedings, particularly in terrorism-related prosecutions, with grave implications for the ability of prisoners to participate meaningfully in their defense.

In light of the Special Rapporteur’s observations, CCR believes that the U.S.’s human rights obligations can only be met if the use of solitary confinement in U.S. is severely limited or eliminated completely.

#### VI. **Recommended Questions**

1. In light of the well-documented harms of solitary confinement, what measures are being taken to eliminate (or severely limit) the use of prolonged solitary confinement in U.S. jails, prisons, and detention facilities?
2. What steps are required by federal, state, and local authorities to monitor and ultimately eliminate the imposition of solitary confinement on particularly vulnerable detainees such as children, non-citizens, persons with mental disabilities, and LGBTI people?
3. Please provide data regarding all individuals in the United States who are held in solitary confinement in jails, prisons, and other detention facilities, along with data about the duration of their confinement in these conditions. Please include data on the use of solitary confinement in pre-trial detention, and the use of SAMs.

#### VII. **Suggested Recommendations**

1. Prolonged solitary confinement (i.e. in excess of 15 days) should be banned. 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.

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2. 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. 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.