App #1 A

F I V E C O R E D E M A N D S

Indeterminate - SHU - prisoners (plaintiffs) respectfully requested/demand the following Five (5) core issues be granted:

1. **INDIVIDUAL - ACCOUNTABILITY:** This is in response to CDCR - PBSP's application of "Group - Punishment" as a means to address individual inmate's rule violations. This includes the adminstration's abusive - pretextual use of "Safety and Security" to justify what are unnecessary punitive acts, and it has been applied in the context of justifing Indefinit SHU - status, and to progressively restrict our programming and privileges.

2. **ABOLISH THE DEBRIEFING POLICY, AND MODIFY ACTIVE/INACTIVE GANG STATUS CRITERIA:** The debriefing policy is illegal and redundant, as pointed out in the Formal complaint... The active/inactive gang status criteria must be modified in order to comply with state law and applicable CDCR-rules and regulations as follows; **(a)** cease the use of innocuous association to deny inactive status; **(b)** cease the use of informant/debriefer allegations of illegal gang activity to deny inactive status - unless such allegations are also supported by factual corroborating evidence - in which case, CDCR - PBSP staff shall and must follow the regulations by issuing a rule violation report and afford the inmate his due process required by law.

3. **COMPLY WITH U.S. COMMISSION'S 2006 RECOMMENDATIONS RE: AN END TO LONG TERM SOLITARY CONFINEMENT:** CDCR shall implement the finding and recommendations of the U.S. Commission of Safety and Abuse in America's Prisons Final 2006 report, regarding CDCR - SHU - Facilities as follows: **(a) END CONDITIONS OF ISOLATION** (p.14), ensure that prisoners in (SHU) and (Ad/Seg.), have regular - meaningful contact, and freedom from extreme physical deprivations that are known to cause lasting harm (PP. 52 - 57); **(b) MAKE SEGREGATION A LAST RESORT** (p.14) create a more productive form of confinement, in the areas of allowing inmates in (SHU) and (Ad/Seg.) the opportunity to engage in meaningful self-help treatment, work, education, religious, and other productive activities relating to having a sense of being a part of the community; **(c) END LONG TERM SOLITARY CONFINEMENT**, and release inmates to the general prison population, who have been warehoused indefinitely in (SHU) for the last Ten (10) to Fourty (40) years, and counting; **(d) PROVIDE (SHU) INMATES IMMEDIATE - MEANINGFUL ACCESS TO:** adequate natural sunlight; quality health care and treatment - including the mandate of tranfering all PBSP-SHU inmates with chronic health care problems, to the new Folsom Medical SHU - Facility.

4. **PROVIDE ADEQUATE FOOD:** cease the practice of denying adequate food, and provide wholesome nutritional meals - including special - diet - meals, and allow inmates to purchase additional vitamin supplements. Also; **(a)** PBSP - Staff must cease their use of food as a tool to punish (SHU) inmates; **(b)** provide a SGT/LT. to indepently observe the serving of each meal, and ensure each tray has the complete issue of food on it; **(c)** Feed the inmates whose job it is to serve (SHU) meals, with meals that are separate from the pans of food sent from kitchens for (SHU) meals.

5. **EXPAND AND PROVIDE CONSTRUCTIVE PROGRAMMING AND PRIVILEGES FOR INDEFINITE (SHU) STATUS INMATES:** Examples are; **(a)** expand visiting re: amount of time and adding One (1) day per week; **(b)** One (1) photo per year: **(c)** a weekly phone call; **(d)** Two (2) annual property pachages per year - (30) lbs pachages based on "item" weight, and not packaging and box weight: **(e)** expand canteen and package items allowed; allow us to have the

items in their original packaging (and, the costs for cosmetics, stationary - envelopes - should not count towards the max draw limit); **(f)** more T.V. channels; **(g)** T.V./Radio combinations, or T.V. and a small battery operated radio; **(h)** hobby craft items - art paper, colored pens small pieces of colored pencils, water colors, chalk, etc; **(i)** sweat suits and watch-caps: **(j)** wall calenders; **(k)** install Pull-up and Dip-Bars on (SHU) yards; **(L)** allow correspondence courses - that requires proctored exams.

NOTE: the above examples of programs and privileges are all similar to what is allowed in other Supermax Prisons (e.g. Federal prison in Florence Colorado and Ohio), which supports the SHU - prisoner's position that CDCR - PBSP - staff claims that such are a threat to safety and security are exaggerations.

Respectfully ~~Submitted~~,

DATED: April 3, 2011

LUIS CASTELLANOS,

TODD ASHKER

SITAWA NANTAMBU JAMAA

GEORGE FRANCO

Appendix #1 (A)

App #1 B

ROCK

★ Working to Extend Democracy to All ★

★Volume 1, Number 10★ ★October 2012★

AGREEMENT TO END HOSTILITIES

To whom it may concern and all California Prisoners:

Greetings from the entire PBSP-SHU Short Corridor Hunger Strike Representatives. We are hereby presenting this mutual agreement on behalf of all racial groups here in the PBSP-SHU Corridor. Wherein, we have arrived at a mutual agreement concerning the following points:

1. If we really want to bring about substantive meaningful changes to the CDCR system in a manner beneficial to all solid individuals, who have never been broken by CDCR's torture tactics intended to coerce one to become a state informant via debriefing, that now is the time to for us to collectively seize this moment in time, and put an end to more than 20-30 years of hostilities between our racial groups.
2. Therefore, beginning on October 10, 2012, all hostilities between our racial groups… in SHU, Ad-Seg, General Population, and County Jails, will officially cease. This means that from this date on, all racial group hostilities need to be at an end… and if personal issues arise between individuals, people need to do all they can to exhaust all diplomatic means to settle such disputes; do not allow personal, individual issues to escalate into racial group issues!!
3. We also want to warn those in the General Population that IGI will continue to plant undercover Sensitive Needs Yard (SNY) debriefer "inmates" amongst the solid GP prisoners with orders from IGI to be informers, snitches, rats, and obstructionists, in order to attempt to disrupt and undermine our collective groups' mutual understanding on issues intended for our mutual causes [i.e., forcing CDCR to open up all GP main lines, and return to a rehabilitative-type system of meaningful programs/privileges, including lifer conjugal visits, etc. via peaceful protest activity/noncooperation e.g., hunger strike, no labor, etc. etc.]. People need to be aware and vigilant to such tactics, and refuse to allow such IGI inmate snitches to create chaos and reignite hostilities amongst our racial groups. We can no longer play into IGI, ISU, OCS, and SSU's old manipulative divide and conquer tactics!!!

In conclusion, we must all hold strong to our mutual agreement from this point on and focus our time, attention, and energy on mutual causes beneficial to all of us [i.e., prisoners], and our best interests. We can no longer allow CDCR to use us against each other for their benefit!! Because the reality is that collectively, we are an empowered, mighty force, that can positively change this entire corrupt system into a system that actually benefits prisoners, and thereby, the public as a whole… and we simply cannot allow CDCR/CCPOA – Prison Guard's Union, IGI, ISU, OCS, and SSU, to continue to get away with their constant form of progressive oppression and warehousing of tens of thousands of prisoners, including the 14,000 (+) plus prisoners held in solitary confinement torture chambers [i.e. SHU/Ad-Seg Units], for decades!!!

We send our love and respects to all those of like mind and heart… onward in struggle and solidarity… ●

Presented by the PBSP-SHU Short Corridor Collective (*August 12, 2012)*:
Todd Ashker, C58191, D1-119
Arturo Castellanos, C17275, D1-121
Sitawa Nantambu Jamaa (Dewberry), C35671, D1-117
Antonio Guillen, P81948, D2-106
And the Representatives Body:
Danny Troxell, B76578, D1-120
George Franco, D46556, D4-217
Ronnie Yandell, V27927, D4-215
Paul Redd, B72683, D2-117
James Baridi Williamson, D-34288, D4-107
Alfred Sandoval, D61000, D4-214
Louis Powell, B59864, D1-104
Alex Yrigollen, H32421, D2-204
Gabriel Huerta, C80766, D3-222
Frank Clement, D07919, D3-116
Raymond Chavo Perez, K12922, D1-219
James Mario Perez, B48186, D3-124

[**NOTE**: *All names and the statement must be verbatim when used & posted on any website or media, or non-media, publications.*]

CONTENTS

App #2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

GEORGE RUIZ, JEFFREY FRANKLIN, TODD ASHKER, GEORGE FRANCO, GABRIEL REYES, RICHARD JOHNSON, DANNY TROXELL, PAUL REDD, LUIS ESQUIVEL, and RONNIE DEWBERRY, on their own behalf, and on behalf of a class of similarly situated prisoners,

Plaintiffs,

v.

EDMUND G. BROWN, Jr., Governor of the State of California; MATTHEW CATE, Secretary, California Department of Corrections and Rehabilitation (CDCR); ANTHONY CHAUS, Chief, Office of Correctional Safety, CDCR; and G.D. LEWIS, Warden, Pelican Bay State Prison,

Defendants.

Case No.: 4:09-cv-05796-CW

PLAINTIFFS' SECOND AMENDED COMPLAINT

CLASS ACTION

I. INTRODUCTION

1. Plaintiffs George Ruiz, Jeffrey Franklin, Todd Ashker, George Franco, Gabriel Reyes, Richard Johnson, Danny Troxell, Paul Redd, Luis Esquivel, and Ronnie Dewberry sue on their own behalf and as representatives of a class of prisoners who have been incarcerated in California's Pelican Bay State Prison's Security Housing Unit ("SHU") for an unconscionably long period of time without meaningful review of their placement. Plaintiffs have been isolated at the Pelican Bay SHU for between 11 and 22 years. Many were sent to Pelican Bay directly from other SHUs, and thus have spent even longer – over 25 years – in solitary confinement.

2. California has subjected an extraordinary number of prisoners to more than a decade of solitary confinement at the Pelican Bay SHU. According to 2011 California Department of Corrections and Rehabilitation (CDCR) statistics, more than 500 prisoners (about half the population at the Pelican Bay SHU) have been there for more than 10 years. Of those people, 78 prisoners have been there for more than 20 years. As one federal judge in the Northern District of California noted, retention of prisoners in the Pelican Bay SHU for 20 years "is a shockingly long period of time." *See Griffin v. Gomez*, No. C-98-21038, slip op. at 10 (N.D. Cal. June 28, 2006).

3. California's uniquely harsh regime of prolonged solitary confinement at Pelican Bay is inhumane and debilitating. Plaintiffs and class members languish, typically alone, in a cramped, concrete, windowless cell, for 22 and one-half to 24 hours a day. They are denied telephone calls, contact visits, and vocational, recreational or educational programming. Defendants persistently deny these men the normal human contact necessary for a person's mental and physical well-being. These tormenting and prolonged conditions of confinement have produced harmful and predictable psychological deterioration among Plaintiffs and class members.

4. The solitary confinement regime at Pelican Bay, which renders California an outlier in this country and in the civilized world, violates the United States Constitution's requirement of due process and prohibition of cruel and unusual punishment, as well as the most basic human rights prohibitions against cruel, inhuman or degrading treatment. Indeed, the prolonged conditions of brutal confinement and isolation at Pelican Bay cross over from having any valid penological purpose into a system rightly condemned as torture by the international community.

5. The conditions at Pelican Bay have become so harsh and notorious that prisoners at the Pelican Bay SHU, as well as thousands of others incarcerated in facilities across the country, have engaged in two recent sustained hunger strikes.

6. California, alone among all 50 states and most other jurisdictions in the world, imposes this type of extremely prolonged solitary confinement based merely on a prisoner's alleged association with a prison gang. While defendants purport to release "inactive" gang members after six years in the SHU, in reality their so-called gang validation and retention decisions (and resulting indefinite SHU placement) are made without considering whether plaintiffs and class members have ever undertaken an illegal act on behalf of a gang, or whether they are – or ever were – actually involved in gang activity. As one example, defendants continue to detain plaintiff George Ruiz in the Pelican Bay SHU after 22 years, based on nothing more than his appearance on lists of alleged gang members discovered in some unnamed prisoners' cells and his possession of allegedly gang-related drawings.

7. Plaintiffs' and class members' only way out of isolation is to "debrief" to prison administrators (i.e., report on the gang activity of other prisoners); as such, defendants unreasonably condition release from inhumane conditions on cooperation with prison officials in a manner that places prisoners and their families in significant danger of retaliation. *See Griffin*,

No. C-98-21038 at 8. Accordingly, for those many prisoners who refuse or are unable to debrief, defendants' policies result in "effectively permanent" solitary confinement. *Id*.

8. The conditions at the Pelican Bay SHU are extremely harsh when compared to the experience of a typical California state prisoner, particularly given the extraordinary length of SHU confinement at Pelican Bay. Yet plaintiffs and the class they represent are incarcerated for years without any meaningful review of their SHU confinement or any notice of how they can earn their way back to the general population without becoming informants.

9. A few years after Pelican Bay opened its doors in December 1989, a class of Pelican Bay prisoners brought a constitutional challenge to the conditions, practices, and abuse at the facility. After an extensive trial, the court found that, for a subclass of prisoners at high risk for developing mental illness, the isolation and harsh conditions in the Pelican Bay SHU constituted cruel and unusual punishment. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995). Although the court rejected Eighth Amendment claims brought by prisoners outside this high risk group, it emphasized that it had only considered isolation lasting up to three years. The court could "not even begin to speculate on the impact on inmates confined in the SHU for periods of 10 to 20 years or more[.]" *Id.* at 1267. This case presents the substantial question left unanswered by *Madrid*.

10. Plaintiffs and the class seek a declaration that the ongoing practices of the defendants – the Governor of California, the Secretary and the Chief of the Office of Correctional Safety of the CDCR, and the Warden of Pelican Bay State prison – violate their constitutional rights, and injunctive relief compelling defendants to provide prisoners at Pelican Bay with meaningful review of their indeterminate SHU assignment and to cease holding prisoners in the inhumane conditions of solitary confinement for extremely prolonged periods.

II. JURISDICTION AND VENUE

11. Plaintiffs and the class bring claims pursuant to 42 U.S.C. § 1983 and the Eighth and Fourteenth Amendments to the United States Constitution.

12. This Court has jurisdiction for claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 1331 and 1343 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

13. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims brought by plaintiffs and the class have occurred in this District.

III. PARTIES

A. Plaintiffs

14. Plaintiff GEORGE RUIZ (B82089) is a 69-year-old prisoner who has spent 22 years at the Pelican Bay SHU, and the last 28 years in solitary confinement, due to his validation as a member of the Mexican Mafia (EME). He has had no significant rule violations since his incarceration began in 1980. Indeed, he has only had one disciplinary violation of any kind since 1986. He is serving a seven year to life sentence and has been eligible for parole since 1993, but multiple parole boards have indicated that he will never be paroled while he is housed in the SHU.

15. Plaintiff JEFFREY FRANKLIN (C08545) is a 52-year-old prisoner who has spent the last 22 years at the Pelican Bay SHU. In 2006, he was denied inactive Black Guerilla Family (BGF) status based solely on evidence that he associates with other gang members, shares a common ideology, and attempts to educate the community and other prisoners to his philosophy.

16. Plaintiff TODD ASHKER (C58191) is a 48-year-old prisoner who has spent over 25 years in solitary confinement, and 22 years at the Pelican Bay SHU. He was validated as an

Aryan Brotherhood member in 1988, and has been denied inactive status based on confidential memoranda from informants and artwork found in his cell. Ashker has never been charged with or disciplined for a proven gang-related act. As the Warden stated in response to one of Ashker's administrative grievances, unless Ashker debriefs, by "formally renounc[ing] his membership" in the Aryan Brotherhood and "divulg[ing] all of their secrets to the authorities," he will remain incarcerated in the SHU for the rest of his life.

17. Plaintiff GEORGE FRANCO (D46556) is a 46-year-old prisoner who has spent 20 years in solitary confinement at the Pelican Bay SHU. In 2008, Franco was denied inactive Nuestra Familia status based on confidential statements by informants regarding his role within the gang, and the fact that his name appeared on gang rosters found in other prisoners' cells. None of the source items relied on to retain Franco in the SHU for another six years alleged any gang activity or criminal conduct.

18. Plaintiff GABRIEL REYES (C88996) is a 46-year-old prisoner who has spent almost 16 years continuously in isolation in California, and has been kept in the Pelican Bay SHU for 14 and one-half years. Reyes is serving a sentence of 25 years to life as a result of California's "three strikes" law. At his last inactive review in 2008, he was denied inactive EME associate status solely on possession of artwork allegedly containing gang symbols.

19. Plaintiff RICHARD JOHNSON (K53293) is a 61-year-old prisoner who has spent almost 15 years in solitary confinement at the Pelican Bay SHU due to his validation as a BGF member. Under California's "three strikes" law, Johnson is currently serving 33 years to life for drug-related offenses. Johnson has never incurred a major disciplinary offense, yet continues to languish in the Pelican Bay SHU.

20. Plaintiff DANNY TROXELL (B76578) is a 59-year-old prisoner who has spent over 26 years in solitary confinement, and 22 years at the Pelican Bay SHU due to his validation

as a member of the Aryan Brotherhood. Troxell's only act of violence in the last 30 years involved a fist fight in 1997 in which nobody was significantly injured. He has been eligible for parole since 1996, but pursuant to a practice of denying parole to all SHU prisoners, he has no hope of being released from prison.

21. Plaintiff PAUL REDD (B72683) is a 55-year-old prisoner who has spent almost 33 of the past 35 years in solitary confinement in California and has spent the last 11 and one-half years in Pelican Bay's SHU. Redd was first validated as a BGF gang member in 1980 based on six confidential memoranda stating that he had communicated with other BGF prisoners and that his name was on a coded roster found in a validated BGF member's possession. Over 30 years later, he continues to be labeled a gang member based merely on association.

22. Plaintiff LUIS ESQUIVEL (E35207) is a 43-year-old prisoner who has spent the last 13 years in solitary confinement in the Pelican Bay SHU. He has never incurred a serious disciplinary violation. In 2007, after more than six years in the SHU, Esquivel was determined to be an inactive gang associate, but was nonetheless retained in the SHU. He was revalidated as an active EME associate a year later because he possessed allegedly gang-related Aztec artwork.

23. Plaintiff RONNIE DEWBERRY (C35671) is a 53-year-old prisoner who has spent the last 27 years in solitary confinement. He has been repeatedly validated as a BGF member based merely on his associations and his political, cultural, and historical writings. He has had no major disciplinary infractions since 1995. Dewberry would be eligible for parole consideration but for his retention in the SHU.

24. As detailed below, plaintiffs are suffering serious mental and physical harm due to their prolonged confinement in isolation at the Pelican Bay SHU.

B. Defendants

25. Defendant EDMUND G. BROWN, Jr., is the Governor of the State of California.

As such, he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at Pelican Bay SHU, as described below. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Brown is sued in his official capacity only.

26. Defendant MATTHEW CATE is the Secretary of the CDCR. As such, he has caused, created, authorized, condoned, ratified, approved, or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at the Pelican Bay SHU, as described below. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Cate is sued in his official capacity only.

27. Defendant ANTHONY CHAUS is the Chief of the Office of Correctional Safety of the CDCR. The Office of Correctional Safety houses and supervises the Special Services Unit (SSU), which is CDCR's primary departmental gang-management unit responsible for investigating prisoners suspected of gang affiliation. As such, he has caused, created, authorized, condoned, ratified, approved, or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at the Pelican Bay SHU, including but not limited to issues of gang validation. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Chaus is sued in his official capacity only.

28. Defendant G.D. LEWIS is the Warden of Pelican Bay State Prison. As such, he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs, and practices that prevail at the Pelican Bay SHU, as described below. He has, therefore, directly and proximately

caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Lewis is sued in his official capacity only.

IV. FACTUAL ALLEGATIONS

A. Conditions at the Pelican Bay SHU

29. California opened Pelican Bay State Prison on December 1, 1989. It is the most restrictive prison in California and one of the harshest super-maximum security facilities in the country.

30. The prison is split between general population units for maximum security prisoners and the Security Housing Unit (SHU). The SHU contains 1,056 cells explicitly designed to keep the alleged "worst of the worst" in the state prison system under conditions of extreme isolation, sensory deprivation, and restricted movement. Also characteristic of Pelican Bay's SHU are the extremely limited recreational and cultural opportunities afforded to prisoners, a near total lack of contact with family and loved ones, an absolute denial of work opportunities, limited access to personal property, and extraordinary levels of surveillance and control.

31. Pelican Bay was specifically designed to foster maximum isolation. Situated in rural Del Norte County, on California's northern border with Oregon, its lengthy distance from most prisoners' families was considered advantageous by the California correctional administrators who developed the facility. The prison is a 355-mile drive from San Francisco and a 728-mile drive from Los Angeles, where many of the prisoners' families live.

32. The original planners did not contemplate that prisoners would spend decades at Pelican Bay. Rather, they designed the prison under the assumption that prisoners would generally spend up to 18 months in the SHU – a term consistent with practices in the rest of the country.

33. According to CDCR, there were on average 1,106 people incarcerated in the

Pelican Bay SHU in 2011. About half (513) had been in the SHU for more than 10 years. Of those people, 222 had been incarcerated in the SHU for 15 or more years, and 78 had been there for more than 20 years. Of the remaining people, 544 had been in the SHU for five to 10 years, and the rest, 54, were there for five years or less.

34. Many plaintiffs and class members, including Ruiz, Ashker, Troxell, Franklin, and Dewberry, have been at Pelican Bay since the year it opened.

35. Some plaintiffs and class members have spent even longer in continuous isolation, as they were transferred directly from other solitary units to the Pelican Bay SHU. For example, Ruiz has been held in solitary confinement since 1984 – for approximately 28 years. Dewberry has been in isolation for 27 years. Troxell has spent over 26 years in isolation, and Ashker has spent over 25 years in isolation.

36. All plaintiffs have been held in the Pelican Bay SHU for over 10 years.

37. California's prolonged isolation of thousands of men is without equal in the United States. There is no other state in the country that consistently retains so many prisoners in solitary confinement for such lengthy periods of time.

38. The cost of housing a prisoner at the Pelican Bay SHU is considerably higher than the cost of incarcerating a prisoner in general population housing. CDCR reports that it cost the State $70,641 in 2010-2011 to house a single prisoner at the Pelican Bay SHU – tens of thousands of dollars more per prisoner than in the general population.

39. Plaintiffs and the hundreds of other long-term SHU residents at Pelican Bay are warehoused in cramped, windowless cells, are given almost no access to recreation or exercise, and have no access to programming or vocational activities. Prisoners never leave the Pelican Bay SHU except under rare circumstances for medical purposes or a court appearance.

40. Compounding the extremity of their situation, plaintiffs and class members must

face these conditions in a state of near total solitude. Pelican Bay prisoners have absolutely no access to group recreation, group education, group prayer, or group meals. Most are housed in a single-occupancy cell and cannot have a normal human conversation with another prisoner. Their only avenue of communication is by speaking loudly enough for the prisoner in the next cell, or a cell down the line, to hear. Guards, however, have discretion to issue warnings and punish any loud communication as a rule violation, and do so. Moreover, any communication with another validated gang member or associate, even just a greeting, may be and has been used by CDCR as evidence of gang affiliation justifying the prisoners' retention in the SHU.

41. For example, CDCR cited as evidence of Franklin's continued gang affiliation the fact that he was observed in 2006 "communicating by talking" between pods with another prisoner who is a validated member of a different gang.

42. Similarly, in March 2011, Franco received a disciplinary violation simply for speaking to a prisoner in the next pod as he passed by his cell on the way back from the shower. Redd, too, was disciplined in 2007 for talking to another prisoner in passing.

43. While some plaintiffs and class members have had cellmates at Pelican Bay, being locked up with a cellmate all day in an 80-square-foot cell does not compensate for the severe isolation of the Pelican Bay SHU, as the *Madrid* Court found. *See Madrid*, 889 F.Supp. at 1229-30. Instead, double-celling requires two strangers to live around-the-clock in intolerably cramped conditions, in a cell barely large enough for a single human being to stand or sit.

44. Plaintiffs' and class members' communication with loved ones outside the facility is also subject to severe restrictions.

45. Prisoners at the Pelican Bay SHU are prohibited from any access to social telephone calls absent an emergency. A single telephone call may be granted to a prisoner in the event of an emergency (such as a death in the family), but Pelican Bay staff retains complete

discretion to determine whether the circumstances allow for a call. Ashker, for example, was able to speak to his mother only twice in 22 years: once in 1998, and once in 2000. She has since died. Reyes was denied a telephone call home after his stepfather died, because he had been allowed a telephone call several months earlier when his biological father died.

46. Neither plaintiffs nor the experts they have consulted are aware of any other federal, local or state correctional system in the United States that forbids all non-emergency telephone communication.

47. The remote location of Pelican Bay means that most SHU prisoners receive no visits with family members or friends for years at a time. Many prisoners have thus been without face-to-face contact with people other than prison staff for decades.

48. When they do occur, family visits are limited to two two-hour visits on weekends. No physical contact whatsoever is allowed; visits occur behind plexiglass, over a telephone, in a cramped cubicle. This means that prisoners may not even hug or hold hands with visiting family members, children, or other loved ones. Despite the non-contact nature of the visits, prisoners are strip-searched before and after.

49. The visits are monitored and recorded, and the tapes are later reviewed by gang investigators seeking evidence of gang communication to use against the prisoner and his visitor.

50. When Ashker's disabled mother visited him, no accommodation was made for her wheelchair, causing a shortened and difficult visit. She never visited again. Dewberry, whose family lives in Oakland, has had less than one visit per year since his 1990 transfer to Pelican Bay. He had no visits between 2008 and February 2012. Franklin's last social visit was in 2005.

51. Troxell's family has given up trying to visit him because of the distance and cost of traveling to Pelican Bay and because non-contact visits are so upsetting. He has five grandchildren and one great-grandchild, but has never met them.

52. Esquivel sought a hardship transfer from Pelican Bay, due to his mother's difficulty in visiting him from San Diego. The transfer was denied, and he was told to debrief instead. As a result, Esquivel was unable to see or speak to his parents between 2000 and 2009, when his mother died. After her death, he was allowed one phone call with his father and sister – his only social call in nine years. As soon as he hung up the phone, Pelican Bay gang investigators told him to think about taking advantage of the debriefing program.

53. The lack of telephone calls and functional lack of visitation imposes considerable strain on family relationships; those relationships have frequently broken down entirely. Reyes has not hugged his daughters in almost two decades, since they were in pre-school. They are now adults. Reyes was only recently allowed to send his children a photograph of him – his first in 17 years. His aging mother is ill and cannot travel the considerable distance to Pelican Bay, and the rules forbid him to speak with her by phone.

54. Esquivel has not shaken another person's hand in 13 years and fears that he has forgotten the feel of human contact. He spends a lot of time wondering what it would feel like to shake the hand of another person.

55. Prisoners at the Pelican Bay SHU may receive non-legal mail, but they may only keep 10 pieces of social mail at a time; any other mail is confiscated. There are significant delays in the delivery of both social and legal mail to prisoners.

56. These extreme restrictions on human contact are imposed on plaintiffs and class members as a matter of official CDCR policy and have been approved or implemented by defendants.

57. In addition to the near total isolation that prisoners at Pelican Bay face, the physical conditions under which they live are stark.

58. The cells in the Pelican Bay SHU are completely concrete, measure approximately

80 square feet, and are eight feet high. They contain a bed made of concrete, a sink, and a toilet. Concrete slabs projecting from the walls and floor serve as a desk and stool. The cells have no window, so prisoners have no view of the outside world, nor any exposure to natural light. Until the summer 2011 hunger strike described below, prisoners were not allowed to put up any decorations, drawings, or photographs on their walls; now they are permitted one wall calendar. The doors to the cells consist of solid steel, rather than bars, and are perforated with small holes that allow for a partial view into a concrete hallway. The door has a food slot that an officer may unlock to insert food or mail, and that is also used to handcuff the prisoner before the door is opened. The cells do not contain an emergency call button, so prisoners must yell for help in the event of an emergency, or rely on a staff member noticing that they are in distress.

59. The unit is loud – guards' conversations echo down the tier all day. At night the guards stamp mail loudly, open and close doors, and walk the tier with rattling keys and chains for count. Prisoners who are not "showing skin" during these counts are awakened. As a result of these conditions, and the impact of their long-term isolation, many prisoners have developed sleep disorders, vision problems, and headaches.

60. Bedding consists of a hard, lumpy mattress, sheets, and two thin blankets.

61. The temperature in the cells can be excessively hot or cold. The ventilation consists of recycled air, which is cold in the winter and hot in the summer.

62. Property is tightly restricted. Plaintiffs and the class are allowed a total of only 10 books or magazines, and up to six cubic feet of property. They may purchase a television set or radio if they have the means, though available stations are limited. Prisoners at the Pelican Bay SHU are given one quarter of the regular monthly canteen allowance and may receive one annual package, not exceeding 30 pounds in weight, including packaging.

63. Plaintiffs and the class normally spend between 22 and one-half and 24 hours a

day in their cells. They are typically allowed to leave their cells only for "exercise" and to shower.

64. "Exercise" occurs in a barren, solid concrete exercise pen, known as a "dog run." It is supposed to last for one and one-half hours, seven times weekly. However, prisoners often do not receive even this minimal amount of exercise due to staff shortages and training days, disruptions, inclement weather, or arbitrary staff decisions.

65. The exercise pen is small and cramped, with high walls. Half of the roof is partially covered with painted plexiglass and a metal mesh grate that obstructs direct sunlight; the other half allows the only exposure Pelican Bay SHU prisoners ever have to the sky. Pelican Bay is situated in one of the wettest areas of California, with an average rainfall of 67 inches. Rain falls directly into the exercise pens, causing water to pool on the floor. The walls of the exercise pen have accumulated mildew or mold, aggravating respiratory problems among the prisoners.

66. Until the 2011 hunger strike, there was no equipment whatsoever in the exercise pen. Since then, prisoners have been provided one handball. Prisoners exercise alone, unless they share their cell, in which case they are permitted to exercise with their cellmate. If a prisoner with a cellmate wants to exercise alone to get a brief period of privacy, then his cellmate must forfeit his opportunity to exercise.

67. Plaintiffs and other Pelican Bay SHU prisoners have absolutely no access to recreational or vocational programming. While those prisoners who can afford them are allowed to take correspondence classes, there has been no consistent access to proctors for exams that would allow prisoners to get credit for their coursework. Until the 2011 hunger strike, prisoners at the facility were banned from purchasing art supplies or hobby or crafting materials. Prisoners who are discipline free for one year are now permitted to purchase and retain a limited amount of art supplies.

68. Prisoners at the Pelican Bay SHU are allowed one 15-minute shower in a single shower cell three times weekly.

69. Prisoners are allowed access to the law library for two hours, once a month, unless they have a court deadline within 30 days.

70. Whenever a prisoner is moved outside of the "pod" in which he is housed and in which the shower and exercise pen is located, he is handcuffed, his hands are shackled to his waist or behind his back, and he is escorted by two guards. The prisoner is also strip searched in public, near the door to the pod.

71. While prisoners in the SHU are supposed to be served the same meals as other prisoners in California, in practice it is common that the meals prisoners receive in the SHU are substandard in that they contain smaller portions, fewer calories, and often are served cold, rotten, or barely edible.

72. Conditions at Pelican Bay are so harsh, even compared to other California SHUs, that in 2011 Franklin requested to be transferred out of the Pelican Bay SHU to any of the other three SHUs in California so that he could have "minimal human contact" and not suffer the "extreme sensory deprivation" at Pelican Bay. In his request, he explained that other SHUs have windows in the cells, allow some time for prisoners to "see and talk with each other," and permit prisoners to "see grass, dirt, birds, people and other things."

73. Defendants are directly responsible for these stark conditions at Pelican Bay, and for the degree to which the conditions are compounded by other punitive measures, including a pattern and practice of coercive denial of standard medical care.

74. Plaintiffs have serious medical conditions, some of which, upon information and belief, have been caused or exacerbated by their confinement at the Pelican Bay SHU. Franklin, for example, has chronic back and eye problems, and Dewberry suffers from melanin deficiency

leading to severe pigmentation loss, vitamin D deficiency, chronic lower back problems and pain, stomach problems, and swollen thyroid glands. Redd suffers from hypertension, diabetes, vision problems, and a thyroid disorder for which he receives no medication.

75. Johnson has osteoporosis, arthritis, and cysts in both kidneys, and he has suffered renal failure. He also had a heart attack in 2009 while in the SHU, and takes heart medication. He was scheduled to be transferred to Folsom Prison because of his heart condition, but was later refused transfer after his participation in the Pelican Bay hunger strike.

76. Reyes suffers from several chronic medical ailments, including Sjogren's Disease, for which he was prescribed effective medications; those medications have been discontinued at the Pelican Bay SHU, and other medical treatment has also been withdrawn without explanation.

77. Ruiz has glaucoma and had a corneal transplant on his left eye. He may need one for his right. He has diabetes, which became aggravated after a change in his medication. He recently developed pneumonia, kidney failure, and difficulty breathing, and experienced a delay in being seen by a medical practitioner.

78. Despite these serious conditions, prisoners with medical concerns are routinely told by prison officials that if they want better medical care for their conditions or illnesses, or improved pain management, the way to obtain adequate care is to debrief.

79. Ashker, for example, who suffers from almost constant pain due in part to an old gunshot wound, was told by Pelican Bay medical staff in 2006 that he "holds the keys" to getting better medical care, presumably by debriefing and moving to the general population.

80. Ruiz and Johnson have also been told that the only path to better health care is debriefing.

81. The denial of adequate medical care at Pelican Bay is not isolated to a few doctors or correctional officials, but is rather a longstanding pattern and practice which, on information

and belief, has been officially sanctioned by defendants for the purpose of coercing plaintiffs and class members to debrief.

82. The serious mental-health impact of even a few years in solitary confinement is well documented, yet mental health care at the Pelican Bay SHU is grossly inadequate. Every two weeks, a psychologist walks past the prisoners' cells, calling out "good morning," or "you okay?" The psychologist walks past eight cells in approximately 30 seconds during these "rounds." It is incumbent on a prisoner to get the psychologist's attention to indicate that he wants to talk. As a result, prisoners in neighboring cells are aware when someone calls out to the psychologist for help. There is no opportunity during this brief encounter for a private consultation with a mental-health practitioner.

83. Indeed, beyond a brief intake screening upon their arrival to the SHU, the only mental health assessment that many SHU prisoners receive occurs at Institutional Classification Committee meetings, at which a mental health staff member is present. Each prisoner is asked two standard questions: (1) whether he has a history of mental illness; and (2) whether he wants to hurt himself or others. These questions are asked in front of the Warden, Correctional Captain, and numerous other correctional staff. No further mental health evaluation occurs.

84. For these reasons, plaintiffs and class members have received inadequate mental health care or none at all. Though prisoners may request mental-health services by filling out a form, some plaintiffs have declined to seek any mental health care while incarcerated because of concerns over lack of confidentiality. Others do not talk to mental health staff because those staff members seem uncaring, and because officers can overhear sessions or are told of prisoners' personal problems.

85. When one plaintiff actually requested mental health care, he was referred to a "self-help" library book.

86. SHU assignment also prolongs plaintiffs' and class members' time in prison. Since legislative changes in 2010, prisoners cannot earn "good time" or "conduct" credit while in the SHU for gang affiliation. Therefore, a prisoner with a determinate (fixed) sentence such as Esquivel, who was convicted in 1997 of robbery and burglary and is serving a flat 34-year sentence, will be released between four and five years later than he otherwise would have simply because he is incarcerated in the SHU.

87. In addition, an unwritten policy prevents any prisoner held in the SHU from being granted parole. Ruiz, Ashker, Troxell, Franklin, and Dewberry are all eligible for parole, but have been informed by parole boards that they will never attain parole so long as they are housed in the SHU.

88. Ruiz, for example, has been incarcerated in California since 1981, after he was convicted of robbery and kidnapping and sentenced to seven years to life in prison. He was told by the judge that he would likely serve 13 and one-half years, and has been eligible for parole since 1993. However, multiple parole boards have indicated that he will never get parole as long as he is housed in the SHU.

89. Franklin has been eligible for parole since 2000, and although the parole board has characterized his disciplinary history at Pelican Bay as "minimal," it has repeatedly denied him parole, citing, among other things, his refusal to disassociate with the gang through debriefing. In 2001, he was explicitly told that he needed to get out of the SHU to gain parole.

90. So too, Dewberry and Ashker have been eligible for parole since 1996 and 2004 respectively, but have been informed that they will not receive parole unless they first get out of the SHU.

B. Assignment to and Retention in the Pelican Bay SHU

i. Initial Assignment to the SHU

91. CDCR places prisoners who have been validated as gang affiliates into the above conditions in SHU for an indefinite term, served in repeatedly renewed six-year increments. *See* CAL. CODE REGS. tit. 15, § 3341.5(c)(2)(A)(2) (2012).

92. Ignoring prisoners' actual behavior, CDCR identifies prison gang affiliates through a process called prison gang validation. *See* CDCR, OPERATIONS MANUAL § 52070.21 (2009). Validation does not require CDCR to show that the prisoner has violated a prison rule, broken the law, or even acted on behalf of the gang. Indeed, many prisoners who have not engaged in any gang-related misconduct or rule violations before validation are placed in the SHU based merely on allegations that they have associated with a gang.

93. For example, Ruiz, Johnson, Redd, Esquivel and Dewberry were all validated as gang members or associates without allegations of actual gang activity or gang-related rule violations. Rather, the prison relied on confidential informants who claimed these plaintiffs were gang members or associates, on possession of allegedly gang-related art, tattoos, or written material, and/or on inclusion of their names on alleged lists of gang members and associates.

94. When validated, prisoners are classified as either gang members or gang associates. A "member" is a prisoner who has been accepted into membership by a gang. CAL. CODE REGS. tit. 15, § 3378(c)(3). An "associate" is a prisoner or any person who is involved periodically or regularly with members or associates of a gang. *Id*. at § 3378(c)(4). Both members and associates (referred to globally as "gang affiliates") are subject to indefinite SHU confinement.

95. California's practice of placing people in long-term SHU confinement simply because of gang association is unusual and does not comport with the general practice of other

states that maintain super-maximum security prisons.

ii. Periodic Review

96. Once a prisoner is validated as a gang affiliate and sent to the SHU for an indefinite term, he is entitled to periodic "reviews" of his validation. Pursuant to California regulations, a classification committee must review the prisoner's status every 180 days, allegedly so they can consider releasing the prisoner to the general population. *Id*. at § 3341.5(c)(2)(A)(1). In reality, classification reviews do not substantively review the prisoner's SHU assignment, but rather involve three steps. First, the prisoner is urged to debrief from the gang. Second, a mental health staff member asks two questions: (1) do you have a history of mental illness; and (2) do you want to hurt yourself or others? This mental health evaluation occurs in front of all members of the classification committee, including the Warden, Facility Captain, Correctional Captain, the Assignment Lieutenant, and other correctional staff. *See id*. at § 3376(c)(2). Third, the classification committee "reviews" the paperwork in the prisoners' file, to make sure that all required paperwork is accounted for.

97. Unless a prisoner is willing to debrief, the 180-day review allows absolutely no possibility of release from the SHU.

98. No examination of continued gang activity or association occurs at the 180-day review, nor is there any assessment of whether the prisoner's behavior requires continued SHU placement. For this reason, such reviews are meaningless, and few Pelican Bay SHU prisoners attend them.

99. The only review at which the classification committee team even purports to determine whether the prisoner should be released from the SHU occurs once every six years. *See id*. at § 3378(e). Therefore, all gang validated prisoners in the SHU must remain in solitary confinement for six years without even the possibility of any review to obtain their release. This

six-year interval is far longer than any equivalent classification review at other supermax or high-security systems in other states, the federal system, or other nations, and is far longer than the 120-day period that the Ninth Circuit deemed constitutionally permissible for prisoners housed in solitary confinement in *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1990).

100. Yet even this six-year inactive review is meaningless for most prisoners housed in the SHU.

101. In some cases, like that of plaintiffs Ashker and Troxell, defendants have made a predetermined decision to deny inactive status and thus retain the prisoner in the SHU until he either debriefs or dies. For example, in 2004, Pelican Bay Warden Joe McGrath wrote in response to one of Ashker's grievances that Ashker had been identified as an active member of the Aryan Brotherhood and that "such an inmate must formally renounce his membership in this group and divulge all of their secrets to the authorities. The alternative is remaining where extremely dangerous inmates belong: the SHU."

102. For many, the six-year review results in SHU retention even though the prison can produce no evidence (or even allegations) of gang activity. The review is supposed to determine whether the prisoner is "active" with the prison gang or has assumed "inactive" status. Under California regulations, "when the inmate has not been identified as being involved in gang activity for a minimum of six (6) years," he can achieve "inactive status" and may be released from the SHU. CAL. CODE REGS. tit. 15, § 3378(e).

103. Logically, one who achieves "inactive" status is still a gang member or associate, but not an "active" one, in that he does not engage in any gang activities. Yet CDCR routinely and regularly denies inactive status to prisoners even where there is no evidence whatsoever of any gang activity. This longstanding pattern and practice is not the result of failings by individual gang investigators, but is instead CDCR policy which, upon information and belief, has been

approved and implemented by defendants. Plaintiffs' experiences demonstrate this pattern.

104. Ruiz, for example, was denied inactive gang status in 2007 based on: (a) two 2006 searches of unnamed prisoners' cells that uncovered Ruiz's name on a laundry list of purported EME members and associates in "good standing"; and (b) possession of photocopied drawings in his cell. Ruiz openly possessed this artwork, drawn by other prisoners, for at least eight years without any complaint or objection from prison officials. Three days before his 2007 inactive review, CDCR asserted that the drawings contained symbols associated with the EME. Neither of these source items provides any evidence of active gang involvement.

105. Reyes too has been repeatedly denied inactive status based on association, without evidence of any gang activity. At his first inactive review, for example, Reyes was denied inactive status based on one source item: exercising with other validated prisoners in a group yard while in administrative segregation. At his last inactive review, in 2008, Reyes was denied inactive status based only on drawings found in his cell, including a drawing for a tattoo of his name with alleged Mactlactlomei symbols and a drawing of a woman, man and Aztec warrior, with a geometric pattern known as the G-shield. The G-shield also appears in a tattoo on Reyes' left pectoral and was rejected as a gang-related source item in 1996, 2003 and 2005.

106. Franklin has had similar experiences. In 2006, he was denied inactive status because he was listed as a board member of George Jackson University, claimed by CDCR to be a gang front, and because his name appeared on gang rosters confiscated from other prisoners. Shortly thereafter he was seen "communicat[ing] by talking" with a validated member of a different gang. CDCR officials instructed that this should be considered during Franklin's next inactive review.

107. Johnson's inactive reviews have also largely focused on association and shared ideology. In 1997, for example, he was denied inactive status based on a Black Power tattoo,

possession of a book about George Jackson (Paul Liberatore's *The Road to Hell: the True Story of George Jackson, Stephen Bingham, and the San Quentin Massacre*), and a photograph collage of him and George Jackson. Staff confidential informants also alleged, without any supporting facts attached, that Johnson was a high-ranking member of the BGF and that he communicated with BGF members through third parties. Johnson was denied inactive status in 2006 based on old source items and possession of a copy of "N-GOMA Pelican Bay Support Project, Black August 2005," a newsletter which includes dedications to alleged BGF members who have died. None of these source items provide any evidence of Johnson's active involvement in a prison gang in the prior six years.

108. Redd was denied inactive status in 2011 based purely on association and not on any gang-related actions. His SHU retention was based on possession of drawings, collages, and booklets related to George Jackson and the Black Panthers, as well as a card from a former Black Panther Party member and his appearance on a roster of purported gang affiliates found amid the property of another prisoner. In addition, according to confidential informants, Redd is a "captain" of BGF who has communicated with other BGF members. None of these source items provide any evidence of Redd's actions on behalf of a prison gang in the prior six years.

109. Dewberry was recently denied inactive status in November 2011 based on his name appearing on a coded roster in another prisoner's possession, as well as such materials as his political and historical writings, his possession of a pamphlet in Swahili, which defendants' inactive review materials state is "a banned language at PBSP," confidential memoranda stating that he is an "enforcer," and his participation in George Jackson University, which according to defendants' inactive review materials "is not a university at all," but rather a "concept," "to teach the philosophies and ideologies of all 'Political Prisoners'" and "to enlist individuals who are not in prison to help spread the ideologies of the BGF (Black Guerilla Family)." None of the

materials used to deny Dewberry inactive status and consign him to the SHU for at least six more years contained any evidence whatsoever that Dewberry was involved in any violent or gang-related activity.

110. The most recent review of Franco's validation was in 2008, when he was found inactive in the Northern Structure but was revalidated as an active Nuestra Familia member. His SHU retention was based on several confidential memoranda from informants regarding his status within the Nuestra Familia along with inclusion of his name on several gang rosters found in the cells of other validated gang members. None of the source items relied on to consign Franco to another six years in the SHU alleged any actual gang activity or criminal conduct.

111. At the same time that they were repeatedly denied inactive status, many plaintiffs have demonstrated their ability to follow prison rules by avoiding any significant prison misconduct. Ruiz, for example, has been disciplined only once for violating a prison rule in over 25 years. Indeed, his only rule violations in the past 30 years have been for missing count in 1981, possession of wine in 1983, possession of unlabeled stimulants and sedatives in 1986, and a 2007 rule violation entitled "Mail Violation With No Security Threat." Despite this innocuous prison record, he has spent over 25 years in harsh isolation, without access to normal human contact.

112. Similarly, Reyes' only disciplinary offenses in the last 12 years involved the recent hunger strike and unauthorized donation of artwork to a non-profit organization. Johnson has had only one rule violation in close to 15 years in the Pelican Bay SHU: in 2000, he was disciplined for a mail violation.

113. With the exception of violations in 2011 related to his involvement in the hunger strikes and his possession of a Black History scrapbook including information on the BGF's history, Dewberry has not been charged with violating any prison rule since 1995.

114. Redd's disciplinary offenses since 2000 consist mainly of simply speaking with other prisoners in passing, along with one mail violation.

115. When, in the rarest of cases, a long-term prisoner does achieve inactive status, even this is no guarantee of escape from solitary confinement. In 2007, after more than six years in the SHU with only minor disciplinary write-ups, including, for example, refusing handcuffs, refusing to leave the yard, and yelling, Esquivel was determined to be an inactive EME associate. Nevertheless, he was retained in the SHU for a 12-month observation period. In 2008, after one year of SHU observation, Esquivel was revalidated as an active gang associate based on one source item: a report that officers found three items of artwork with Aztec symbols in his cell.

116. CDCR informs prisoners that they can gain release from the SHU as an "inactive" gang member if CDCR has no evidence that they have been involved in "gang activity" for at least six years, but in practice it denies prisoners inactive status even where there is no evidence of any "gang activity" as that word is understood by the ordinary person. This denies meaningful review.

117. At the same time, plaintiffs and class members are not given information about an actual path out of the SHU, besides debriefing.

118. The disconnect between CDCR's stated policy and actual practice has been compounded by the settlement in the case of *Castillo v. Almeida*, C-94-2847 (N.D. Cal. 1994), agreed to on September 23, 2004. In that settlement, CDCR officials agreed that "laundry lists" – that is, lists by confidential sources, including debriefers, of alleged associates or members without reference to gang-related acts performed by the prisoner – would not be used as a source item to either validate a prisoner as a gang affiliate or deny him inactive status. CDCR officials also agreed that "the confidential source must identify specific gang activity or conduct performed by the alleged associate or member before such information can be considered as a

source item." *Id*. at ¶ 21.

119. The *Castillo* settlement was memorialized in a public document filed with the court and widely publicized to the prisoners at Pelican Bay prison. Despite the *Castillo* settlement, defendants continue to rely on "laundry lists" and on informants who identify no specific gang activity or conduct by the prisoner to retain plaintiffs and class members at the Pelican Bay SHU at the six-year inactive review. Such review violates due process a) by denying Plaintiffs and class members' fair notice of the evidence that can be used against them to deny inactive status, and b) by providing confusing and misleading notification of what they need to do to get out of the SHU.

120. Thus, CDCR's practice of denying prisoners release despite their record of inactivity operates as a cruel hoax. This bait-and-switch furthers the hopelessness and despair that plaintiffs and other prisoners experience in the SHU and leads them to reasonably believe that there is no way out of the SHU except to debrief or die.

121. Defendants' policy of retaining prisoners in the SHU who are not active gang affiliates, or against whom no reliable evidence exists that they present any threat of gang-related violence or misconduct, is unmoored from any legitimate penological purpose or security need.

122. These are not isolated aberrations limited to plaintiffs. Rather, defendants engage in an unwritten but consistent pattern and practice of equating gang association or shared ideology with "current gang activity." All prisoners in the Pelican Bay SHU are subject to this practice.

C. Psychological Harms

123. In addition to being deprived of the minimal civilized measure of life's necessities as described above, plaintiffs and class members are also experiencing unrelenting and crushing mental anguish, pain, and suffering as a result of the many years they have spent without normal

human interaction, in stark and restrictive conditions, without any hope of release or relief. Prisoners describe this confinement as "a living nightmare that does not end and will not end."

124. The devastating psychological and physical effects of prolonged solitary confinement are well documented by social scientists: prolonged solitary confinement causes prisoners significant mental harm and places them at grave risk of even more devastating future psychological harm.

125. Researchers have demonstrated that prolonged solitary confinement causes a persistent and heightened state of anxiety and nervousness, headaches, insomnia, lethargy or chronic fatigue (including lack of energy and lack of initiative to accomplish tasks), nightmares, heart palpitations, and fear of impending nervous breakdowns. Other documented effects include obsessive ruminations, confused thought processes, an oversensitivity to stimuli, irrational anger, social withdrawal, hallucinations, violent fantasies, emotional flatness, mood swings, chronic depression, feelings of overall deterioration, as well as suicidal ideation. Individuals in prolonged solitary confinement frequently fear that they will lose control of their anger, and thereby be punished further.

126. Plaintiffs suffer from and exhibit these symptoms.

127. While these symptoms are reported by people who have suffered from being placed in solitary confinement for days, months or a few years, they become more pronounced and cause greater pain and suffering when, as with plaintiffs and the class, one is incarcerated in these conditions for many years without any meaningful hope of release. As plaintiff 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.

128. As a result of their prolonged SHU placement, most plaintiffs suffer from extreme and chronic insomnia. For Johnson, "I am so busy suppressing feelings and isolating myself all day, and so much anger builds up in me from the conditions, that I can't sleep at night because the sound of a door opening or closing wakes me and I get anxious about someone coming in on me and I can't fall back to sleep."

129. Similarly, Ashker only gets approximately one to three hours of sleep a night both because his mattress is too short for him, causing him to sleep on bare concrete from his knees down, and because noise from the doors constantly slamming open and shut in the SHU at night wakes him and causes anger and anxiety. The startling loud noises cause flashbacks of the incident in which he was set up and shot unlawfully by a guard which began with the opening and slamming of his cell door.

130. Many of the plaintiffs also suffer from severe concentration and memory problems. For example, reading newspapers and books used to be a large part of Ruiz's daily routine, but the severe concentration and memory problems that he developed in the SHU now prohibit him from reading more than a few sentences at a time, and he forgets the paragraph he just read. Therefore he has essentially given up reading. Similarly, Franklin and Franco have trouble concentrating, and their attention span and memory are deteriorating because of the effects of long-term isolation in the SHU.

131. Plaintiffs experience life in the SHU as a struggle to avoid becoming mentally ill. They have done so thus far by developing responses that deaden feelings and emotions, suppress anger, and develop a psychological and physical state which removes much of what makes normal human beings human – namely, feelings, emotions, daily physical contact, regular social communication, and being able to see another person or living thing.

132. Plaintiffs experience growing and persistent rage at the conditions under which

they are incarcerated in the SHU. They attempt to suppress that rage in order to avoid self-destruction, irresponsible acts of violence, or a mental breakdown. Plaintiffs' attempts at suppression, in combination with their isolation, have led them to increasingly withdraw into themselves and become emotionally numb to the point of feeling "non-human."

133. Troxell, for example, does not initiate conversations, is not motivated to do anything, and feels as if in a stupor much of the time. He often becomes "blank" or out of touch with his feelings.

134. Ashker experiences great feelings of anger, which he tries to control and suppress, but this just deadens his feelings. He feels that he is "silently screaming" 24 hours a day.

135. Reyes copes with his years of SHU confinement by suppressing his anger, but to do so he has had to suppress all feelings to the point where he no longer knows what he is feeling.

136. Esquivel experiences a near-total loss of the capacity to feel. He states that he does not feel anything and this makes him "feel dead." He reports that days go by without him feeling anything, "as if I am walking dead." He watches some television but has no emotional reaction to the dramas he watches.

137. So too, when Redd suppresses his anger, he starts to not feel anything at all and becomes numb. He often "feels like a caged animal."

138. This mounting anger, and attempts to suppress it, is a recurring and predicable human reaction to the extreme situation that is isolated confinement. It is not a propensity unique to plaintiffs.

139. Plaintiffs also experience a range of other psychological symptoms stemming from their confinement in the SHU, including hallucinations, anxiety disorder, hypersensitivity, severe mood swings, violent nightmares and fantasies, and panic attacks. At least one plaintiff hears voices when no one is talking to him. Redd experiences frequent nightmares about

violence, something that he never experienced before being in the SHU.

140. The harm to plaintiffs is compounded by their prolonged and indefinite lack of contact with their families and others. For example, Ashker speaks of never having any face-to-face communication with others; he just hears disembodied voices. Other plaintiffs describe the pain of not being able to hug, share photos with, have phone calls with, or in some cases even see, family members for what they expect will be the rest of their lives.

141. Plaintiffs are convinced that they will be kept in the SHU for the rest of their sentences, or the rest of their lives. This causes them acute despair.

142. These psychological symptoms are precisely those reported in the literature about individuals placed in prolonged solitary confinement. But the extreme duration of plaintiffs' and class members' confinement has meant that the isolative and emotionally numbing effects of solitary confinement have become even more pronounced. Plaintiffs' symptoms are almost identical to those described in psychological literature about the long-term effects of severe trauma and torture.

143. Upon information and belief, numerous prisoners confined in the SHU for long periods of time have developed mental illness, and some have committed or attempted suicide while in the SHU. All prisoners confined in the SHU for prolonged periods have a significant risk of descending into mental illness due to prolonged exposure to the conditions in the SHU.

144. Most plaintiffs recently participated in two hunger strikes (described below), which provide additional evidence of the severe psychological distress, desperation, and hopelessness that they experience from languishing in the SHU for decades. Almost every plaintiff participant reported viewing the possibility of death by starvation as a worthwhile risk in light of their current situation.

145. Numerous plaintiffs also have serious physical ailments and illnesses caused or

exacerbated by their prolonged incarceration under the harsh conditions in the SHU, including eye and vision problems, headaches, diabetes, hypertension, and chronic back problems. These health concerns add to their psychological distress, as they fear that as they age and their health problems worsen, they will be left to die in the SHU without adequate medical care because they have refused to debrief.

D. International Standards Regarding Torture and Cruel, Inhuman or Degrading Treatment

146. In light of the well-documented harms described above, there is an international consensus that the type of prolonged solitary confinement practiced in California at Pelican Bay violates international human rights norms and civilized standards of humanity and human dignity. International human rights organizations and bodies, including the United Nations, have condemned indefinite or prolonged solitary confinement as a human rights abuse that can amount to torture.

147. As just one example, in August 2011, the United Nations Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concluded that the use of solitary confinement is acceptable in only exceptional circumstances, and that its duration must be as short as possible and for a definite term that is properly announced and communicated.

148. Plaintiffs' and class members' prolonged detention meets none of these criteria.

149. The Special Rapporteur concluded that prolonged solitary confinement is prohibited by the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), and that prolonged solitary confinement constitutes torture or cruel, inhuman or degrading treatment or punishment. The Special Rapporteur has concluded that even 15 days in solitary confinement constitutes a human rights violation.

150. Plaintiffs and class members have been held in solitary confinement for at least

250 times this duration.

151. The Special Rapporteur's view comports with standards laid out by the Istanbul Statement on the Use and Effects of Solitary Confinement, the ICCPR Human Rights Committee, and the United Nations Office of the High Commissioner for Human Rights.

152. The Convention Against Torture (CAT), ratified by the United States in 1994, provides the following definition of torture:

> For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

CAT, art. 1, para. 1. By being forced to either debrief or endure the crushing and inhumane policies and conditions at the Pelican Bay SHU described above, plaintiffs and class members are being subjected to treatment consistent with CAT's definition of torture.

E. Pelican Bay Hunger Strikes

153. Coinciding with this international consensus against solitary confinement, prisoners at Pelican Bay have repeatedly organized hunger strikes to draw public attention to the conditions described above.

154. A hunger strike occurred at Pelican Bay in 2002 and lasted approximately one week. The prisoners called off the strike after a California State Senator promised to look into the strikers' complaints, primarily centered on the debriefing policy. No reforms, however, were implemented.

155. In light of ongoing concerns, a 2007 report commissioned by CDCR examined national standards about the handling of security threat group members and recommended a step-down program through which prisoners in the SHU could be released to the general population

without having to debrief. *See* CDCR, SECURITY THREAT GROUP IDENTIFICATION AND MANAGEMENT (2007). Instead, they would spend a minimum of four years in a program in which their "acceptable custodial adjustment" resulted in stages of increased social contact and privileges. *Id*. at 6. CDCR also failed to implement these recommendations.

156. On February 5, 2010, plaintiffs Ashker and Troxell sent a formal Human Rights Complaint to then-Governor Arnold Schwarzenegger and Defendant Cate, titled "Complaint on Human Rights Violations and Request for Action to End 20+ Years of State Sanctioned Torture to Extract Information From (or Cause Mental Illness to) California Pelican Bay State Prison Security Housing Unit (SHU) Inmates." The complaint outlined the history of Pelican Bay State Prison and set forth the prisoners' factual and legal claims for relief.

157. In May 2011, the complaint was again sent to the Governor and Secretary. This time, it was accompanied by a "Final Notice" that an indefinite hunger strike would begin on July 1, 2011, and it provided five broad demands that CDCR: (1) end group punishment; (2) abandon the debriefing program and modify the active/inactive gang status criteria; (3) end long-term solitary confinement and alleviate conditions in segregation, including providing regular and meaningful social contact, adequate healthcare and access to sunlight; (4) provide adequate food; and (5) expand programming and privileges.

158. In June 2011, the complaint and final notice were sent again to the Governor, the Secretary, and the Warden.

159. On July 1, 2011, the hunger strike began. At its peak, over 6,600 prisoners at 13 California prisons participated. Ashker, Dewberry, Franco, Redd and Troxell were among the 11 principal representatives and negotiators for the prisoners at Pelican Bay State Prison. Most of the other plaintiffs also participated, as did prisoners from every major ethnic, racial, and geographic group. The hunger strike garnered national and international media attention and

support.

160. CDCR staff met with prisoner representatives, and on July 20, 2011, the hunger strike was temporarily suspended after CDCR officials agreed to provide a few basic amenities and to revise the regulations by which a prisoner is assigned to and kept in the SHU.

161. On August 23, 2011, an informational hearing on California's SHUs was held by the California State Assembly Public Safety Committee. Hundreds of family members and supporters attended, and many testified about the conditions their loved ones endure in the SHU and in Administrative Segregation Units. *See* http://solitarywatch.com/2011/08/24/historic-california-assembly-hearing-on-solitary-confinement.

162. On September 26, 2011, the hunger strike resumed because prisoners lost faith that CDCR would implement a revision of the regulations as it had promised. This time nearly 12,000 prisoners participated. The hunger strike ended on October 12, 2011, after CDCR assured the prisoner representatives that it was working on the new regulations and would continue conversations about other improvements sought by the prisoners.

163. On March 9, 2012, CDCR publicly issued a "concept paper" describing its proposed changes to gang validation regulations. That document has been condemned by prisoners and prisoner-rights advocates as making virtually no meaningful changes and, instead, expanding the net of who may be incarcerated in the SHU. No new regulations have been implemented to date.

164. Since the hunger strike, CDCR has issued disciplinary rule violations against participants in that peaceful protest, and particularly serious rule violations against those it alleged were its leaders. Ashker, Dewberry, Franco, Redd, and Troxell received disciplinary write-ups on this ground.

F. Class Allegations

165. Plaintiffs bring this action on their own behalf and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all prisoners serving indeterminate SHU sentences at the Pelican Bay SHU on the basis of gang validation, none of whom have been or will be afforded meaningful review of their confinement, in violation of the Due Process Clause of the Fourteenth Amendment.

166. Plaintiffs also bring this action on behalf of a subclass of Pelican Bay prisoners who are now, or will be in the future, imprisoned by defendants at the Pelican Bay SHU under the conditions and pursuant to the policies described herein for longer than 10 continuous years. Such imprisonment constitutes cruel and unusual punishment within the meaning of the Eighth Amendment.

167. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). As of April 1, 2012, there were more than 1,000 prisoners imprisoned at the Pelican Bay SHU. Upon information and belief, all of these prisoners have been denied meaningful notice and review, and thus fit the class definition. Of those prisoners, over 500, or approximately half, have been imprisoned for over 10 years in the Pelican Bay SHU, where they have been subjected to cruel and unusual punishment. These 500 comprise the Eighth Amendment subclass.

168. The class members are identifiable using records maintained in the ordinary course of business by CDCR.

169. All members of the Eighth Amendment subclass are suffering the deprivation of at least one basic human need due to their prolonged confinement in the SHU, including mental and physical health, physical exercise, sleep, nutrition, normal human contact, meaningful activity, and environmental stimulation. In addition, all class members are suffering significant mental and physical harm. While the exact nature of those harms may differ in some respects for each

prisoner, the source of the harm complained of here is the same – namely, defendants' policies and practices in placing the class of prisoners for a lengthy period of time in conditions of confinement shown to cause serious mental and physical harm.

170. In addition, all prisoners placed in the conditions at the Pelican Bay SHU face a common risk of suffering even more serious mental harm caused by their retention in the SHU for such a lengthy period of time.

171. There are questions of law and fact common to the members of the class. Those questions include, but are not limited to:

a) Whether prolonged confinement in the SHU for over 10 years under the conditions and policies maintained by the defendants objectively constitutes cruel and unusual punishment prohibited by the Eighth Amendment.

b) Whether defendants have been deliberately indifferent to the mental and physical suffering incurred by the plaintiff class.

c) Whether incarceration under the conditions and policies imposed by defendants results in constitutionally cognizable harm, or presents a constitutionally unacceptable risk of harm.

d) Whether a legitimate penological reason exists for defendants to incarcerate prisoners for decades in the conditions described herein simply because they are members or associates of a gang, without demonstrating that they are currently engaged or have been recently engaged in some illegal or wrongful gang-related misconduct.

e) Whether the conditions at the Pelican Bay SHU and the policies imposed by defendants on all prisoners housed in the SHU constitute an atypical and significant hardship compared to the ordinary incidents of prison life.

f) Whether SHU confinement extends the duration of incarceration because of a de facto policy of denying parole to SHU prisoners.

g) Whether defendants deny prisoners incarcerated in the SHU meaningful, periodic review of their confinement as required by the Due Process Clause of the Fourteenth Amendment by: (1) failing to provide them with notice of what they can do to get released from the SHU apart from risking their lives and safety and that of their families by debriefing; (2) providing misleading notice that they can become eligible to be released from the SHU by becoming an "inactive" gang member or associate and refraining from any gang activity, when in fact prisoners who are not involved in any current gang activity are still routinely retained in the SHU; and 3) making a predetermination that many prisoners will stay in the SHU until they either die or debrief, thus rendering the periodic reviews meaningless.

h) Whether defendants fail to provide timely meaningful review of prisoners' imprisonment in the SHU by engaging in 180-day reviews that do not substantively review whether the prisoners should be retained in the SHU and therefore are meaningless, and only affording the so-called "inactive" review every six years.

172. Defendants are expected to raise common defenses to these claims, including denying that their policies and practices violate the Constitution.

173. The claims of the plaintiffs are typical of those of the plaintiff class, as their claims arise from the same policies, practices, courses of conduct, and conditions of confinement, and their claims are based on the same legal theories as the class' claims. The cause of the named plaintiffs' injuries is the same as the cause of the injuries suffered by the rest of the class, namely

defendants' policies and practices.

174. Plaintiffs are capable of fairly and adequately protecting the interests of the plaintiff class because plaintiffs do not have any interests antagonistic to the class. Plaintiffs, as well as class members, seek to enjoin the unlawful acts, policies, and practices of the defendants. Indeed, some of the named plaintiffs have already served as de facto representatives of the class by presenting the demands of thousands of Pelican Bay and other California hunger strikers to defendants during the two hunger strikes in the summer and fall of 2011. Finally, plaintiffs are represented by counsel experienced in civil rights litigation, prisoners' rights litigation, and complex class litigation.

175. This action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(1) because the number of class members is numerous and prosecution of separate actions by individuals create a risk of inconsistent and varying adjudications, which in turn would establish incompatible standards of conduct for defendants. Moreover, the prosecution of separate actions by individual members is costly, inefficient, and could result in decisions with respect to individual members of the class that, as a practical matter, would substantially impair the ability of other members to protect their interests.

176. This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because defendants' policies and practices that form the basis of this Complaint are generally applicable to all the class members, thereby making class-wide declaratory and injunctive relief appropriate. Common questions of law and fact clearly predominate within the meaning of Rule 23(b)(2) as set forth above. Class treatment provides a fair and efficient method for the adjudication of the controversy herein described, affecting a large number of persons, joinder of whom is impracticable.

V. CLAIMS FOR RELIEF

First Cause of Action: Eighth & Fourteenth Amendments (Cruel and Unusual Punishment)

177. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

178. Plaintiffs advance this claim on their own behalf, and on behalf of the Eighth Amendment subclass, against all defendants.

179. By their policies and practices described herein, defendants have deprived and continue to deprive plaintiffs and the class of the minimal civilized measure of life's necessities, and have violated their basic human dignity and their right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution for each of the reasons set forth below.

A. Deprivation of Basic Human Need

180. First, the cumulative effect of extremely prolonged confinement, along with denial of the opportunity of parole, the deprivation of earned credits, the deprivation of good medical care, and other crushing conditions of confinement at the Pelican Bay SHU, constitute a serious deprivation of at least one basic human need, including but not limited to normal human contact, environmental and sensory stimulation, mental and physical health, physical exercise, sleep, nutrition, and meaningful activity.

B. Imposition of Serious Psychological and Physical Injury, Pain and Suffering

181. Second, extremely prolonged exposure to these deprivations of basic human needs is currently imposing serious psychological pain and suffering and permanent psychological and physical injury on Plaintiffs and the class they represent.

182. In addition to plaintiffs' current psychological and physical pain, the likelihood that plaintiffs and the class will remain in SHU for the foreseeable future subjects plaintiffs and

the class they represent to a significant risk of future debilitating and permanent mental illness and physical harm.

C. SHU Confinement Designed to Coerce Plaintiffs to Provide Information

183. Third, Defendants' harsh policies are not legitimately related to security or other penological needs of isolating alleged dangerous prisoners from others, but rather are designed to coerce plaintiffs to debrief and become informants for the State. This policy of holding plaintiffs and class members in prolonged solitary confinement for many years at the Pelican Bay SHU until they debrief or die is, as one Court put it, "tantamount to indefinite administrative segregation for silence – an intolerable practice in modern society." *Griffin,* No. C-98-21038 at 11. It is cruel and unusual punishment for defendants to coerce prisoners to provide information on other prisoners – if indeed they have any such information – by maintaining them in stifling and punitive conditions that constitute an atypical and significant hardship, unless they so inform.

184. Prisoners who debrief incur a substantial risk of serious harm and retaliation to themselves and to their families. The combination of the crushing conditions in the SHU, the policies designed to coerce prisoners to debrief, the lack of any effective means of obtaining release from the SHU without debriefing, and the substantial risk of serious harm if one does debrief, puts prisoners in an untenable position and constitutes an unconstitutional threat to the safety of prisoners confined in the SHU in violation of the Eighth and Fourteenth Amendments to the Constitution.

D. Disproportionate Punishment

185. Fourth, defendants' policy of indefinite and prolonged SHU placement imposes disproportionate punishment on plaintiffs and class members. Defendants have no legitimate penological interest in retaining prisoners indefinitely in the debilitating conditions of the SHU simply because they are gang members or associates, without recent, serious disciplinary or gang-

related infractions. Nor is this policy and practice rationally related to legitimate security needs. Defendants' decades-long infliction of significant psychological and physical harm and the risk of future debilitating harm on these prisoners simply for allegedly being gang members or associates offends civilized society's sense of decency, constitutes an intolerable practice in modern society, and is a disproportionate punishment which violates the Eighth and Fourteenth Amendments to the Constitution.

E. Deprivation of Human Dignity in Violation of Contemporary Standards of Human Decency

186. Finally, Defendants' continuation of Plaintiffs' solitary confinement for many years under the debilitating and extreme conditions existing at the Pelican Bay SHU strips human beings of their basic dignity and humanity in violation of contemporary standards of human decency and constitutes cruel and unusual treatment prohibited by the Eighth and Fourteenth Amendments to the United States Constitution.

187. That California's policies and practices violate contemporary standards of human dignity and decency is evidenced by the fact that those practices are unusual in comparison to other states' practices with respect to segregated prisoner housing. Virtually no other state uses mere gang association or membership to confine prisoners in the SHU. Other states do not warehouse hundreds of prisoners in the SHU for decades at a time. Plaintiffs and class members are subject to unusually harsh conditions of confinement even in comparison with other supermax prisons, such as windowless cells and a lack of telephone calls to family members and friends. And finally, California's SHU policies and practices are atypical in effectively prolonging incarceration, in that prisoners in the SHU are deprived of good time credit and are rendered functionally ineligible for parole.

188. That California's practices with respect to the plaintiff class violates contemporary standards of human decency and dignity is also evidenced by the international community's

condemnation of the practice of prolonged and indefinite solitary confinement under very harsh and stifling conditions such as exist at the Pelican Bay SHU. Such condemnation is reflected in international treaties such as the Convention Against Torture, the International Covenant on Civil and Political Rights, decisions and declarations of international bodies, customary international law, and decisions of regional and national courts such as the European Court of Human Rights and Canadian courts.

F. Defendants' Deliberate Indifference to the Deprivations Suffered by Plaintiffs

189. The policies and practices complained of herein have been and continue to be implemented by defendants and their agents, officials, employees, and all persons acting in concert with them under color of state law, in their official capacity.

190. Defendants have been and are aware of all of the deprivations complained of herein, and have condoned or been deliberately indifferent to such conduct.

191. It should be obvious to defendants and to any reasonable person that the conditions imposed on plaintiffs and class members for many years cause tremendous mental anguish, suffering, and pain to such prisoners. Moreover defendants have repeatedly been made aware, through administrative grievances, hunger strikes, and written complaints that plaintiffs and class members are currently experiencing significant and lasting injury. Defendants have been deliberately indifferent to the plaintiffs' pain and suffering.

192. Indeed, defendants have deliberately and knowingly caused such pain in an effort to force plaintiffs and the class to debrief.

Second Cause of Action: Fourteenth Amendment (Due Process)

193. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

194. Plaintiffs advance this claim on their own behalf, and on behalf of the class, against all defendants.

195. Defendants have deprived plaintiffs and class members of a liberty interest without due process of law by denying them meaningful and timely periodic review of their continued long-term and indefinite detention at the Pelican Bay SHU and meaningful notice of what they must do to earn release, in violation of the Fourteenth Amendment to the United States Constitution.

196. The conditions and the duration of defendants' confinement of plaintiffs and class members at the Pelican Bay SHU constitute an atypical and significant hardship as compared with the ordinary incidents of prison life for three basic reasons: (a) the exceedingly harsh and isolated conditions in the SHU; (b) the lengthy duration of confinement in the SHU; and (c) the effect on the possibility of parole being granted and the overall length of imprisonment that results from such confinement.

A. Conditions at the Pelican Bay SHU

197. The conditions in the SHU are unduly harsh, and do not generally mirror those conditions imposed upon prisoners in administrative segregation and protective custody in California. These harsh conditions include but are not limited to: isolation in cells that are sealed off from contact with other prisoners, the lack of windows in cells, a prohibition on all social phone calls except in emergencies, no contact visits and very limited visiting hours, no or minimal educational or general programming, exercise facilities that provide very little natural sunlight and have virtually no recreational equipment, food which is inferior to that served to

other California prisoners, and denial of standard medical care to prisoners unless they debrief.

B. Duration of Confinement at the Pelican Bay SHU

198. Plaintiffs have been held in the crushing conditions described above for 11 to 22 years. Indeed, about half of the prisoners detained at the Pelican Bay SHU have been there for over 10 years, more than 20 percent have been held there for more than 15 years, and almost 10 percent have been held there for over 20 years. Upon information and belief, this shockingly lengthy confinement is atypical in comparison to the ordinary disciplinary and administrative segregation imposed in California.

C. Effect of SHU Confinement on Overall Length of Imprisonment

199. An unwritten, but uniformly enforced policy imposed by CDCR precludes plaintiffs and class members from being released on parole while they are at the Pelican Bay SHU. In addition, under California law, prisoners housed in the SHU cannot earn good-time credits no matter how impeccable their behavior. The effect of these policies and practices has been that many prisoners, including some of the named plaintiffs, spend a longer time incarcerated in prison than had they not been housed in the SHU.

D. Lack of Meaningful Process

200. Because indefinite placement in the Pelican Bay SHU constitutes a significant and atypical hardship, plaintiffs and class members are entitled to meaningful notice of how they may alter their behavior to rejoin general population, as well as meaningful and timely periodic reviews to determine whether they still warrant detention in the SHU.

201. Defendants have denied and continue to deny any such notice or meaningful review by: (1) failing to provide prisoners with notice of what they can do to get released from the SHU apart from providing information that they do not have or risking their life and safety and that of their families by debriefing; (2) providing misleading notice that they can become

eligible to be released from the SHU by becoming an "inactive" gang member or associate and refraining from engaging in any gang activities, when in fact prisoners who are not involved in any current gang activity are still routinely retained in the SHU; (3) making a predetermination that many prisoners will stay in the SHU until they either die or debrief, thus rendering the periodic reviews substantively and procedurally meaningless; and (4) making the length of time between reviews far too long to comport with the constitutional due-process standard.

202. Defendants are also violating plaintiffs' due process rights by retaining plaintiffs and the class in conditions that amount to an atypical and significant hardship without legitimate penological interest, as this detention occurs without reliable evidence that plaintiffs and the class are committing any acts on behalf of a prison gang and are thus active gang members.

PRAYER FOR RELIEF

Plaintiffs and the class they represent have no adequate remedy at law to redress the wrongs suffered as set forth in this Complaint. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of defendants, as alleged herein, unless plaintiffs and the class they represent are granted the relief they request. The need for relief is critical because the rights at issue are paramount under the United States Constitution.

WHEREFORE, the named plaintiffs and the class they represent request that this Court grant them the following relief:

a. Declare that this suit is maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1) and (2);

b. Declare that defendants' policies and practices of confining prisoners in the Pelican Bay SHU violate the Eighth and Fourteenth Amendments to the United States Constitution;

c. Issue injunctive relief ordering defendants to present a plan to the Court within 30 days of the issuance of the Court's order providing for:

i. the release from the SHU of those prisoners who have spent more than 10 years in the SHU;

ii. alleviation of the conditions of confinement of prisoners in the SHU so that prisoners no longer are incarcerated under conditions of isolation, sensory deprivation, lack of social and physical human contact, and environmental deprivation;

iii. meaningful review of the continued need for confinement in a SHU of all prisoners currently housed in the SHU within six months of the date of the Court's order; and

iv. meaningful review of SHU confinement for prisoners housed in the SHU in the future;

d. Award plaintiffs the costs of this suit and reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1988, and other applicable law;

e. Retain jurisdiction of this case until defendants have fully complied with the orders of this Court; and

f. Award such other and further relief as the Court deems just and proper.

Dated: May 15, 2012

Respectfully submitted,

/s/ Jules Lobel

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TODD ASHKER, JEFFREY FRANKLIN, GEORGE FRANCO, GABRIEL REYES, RICHARD JOHNSON, DANNY TROXELL, PAUL REDD, GEORGE RUIZ, LUIS ESQUIVEL, and RONNIE DEWBERRY, on their own behalf, and on behalf of a class of similarly situated prisoners,

Plaintiffs,

v.

EDMUND G. BROWN, Jr., Governor of the State of California; MATTHEW CATE, Secretary, California Department of Corrections and Rehabilitation (CDCR); ANTHONY CHAUS, Chief, Office of Correctional Safety, CDCR; and G.D. LEWIS, Warden, Pelican Bay State Prison,

Defendants.

Case No.: 4:09-cv-05796-CW

PLAINTIFFS' SUPPLEMENTAL COMPLAINT

CLASS ACTION

I. INTRODUCTION

1. Plaintiffs George Ruiz, Jeffrey Franklin, Todd Ashker, George Franco, Gabriel Reyes, Richard Johnson, Danny Troxell, Paul Redd, Luis Esquivel, and Ronnie Dewberry sue on their own behalf and as representatives of a class of prisoners who have been incarcerated in California's Pelican Bay State Prison's Security Housing Unit ("SHU") for an unconscionably long period of time without meaningful review of their placement. Plaintiffs have been isolated at the Pelican Bay SHU for between 11 and 22 years. Many were sent to Pelican Bay directly from other SHUs, and thus have spent even longer – over 25 years – in solitary confinement.

2. California has subjected an extraordinary number of prisoners to more than a decade of solitary confinement at the Pelican Bay SHU. According to 2011 California Department of Corrections and Rehabilitation (CDCR) statistics, more than 500 prisoners (about half the population at the Pelican Bay SHU) have been there for more than 10 years. Of those people, 78 prisoners have been there for more than 20 years. As one federal judge in the Northern District of California noted, retention of prisoners in the Pelican Bay SHU for 20 years "is a shockingly long period of time." *See Griffin v. Gomez*, No. C-98-21038, slip op. at 10 (N.D. Cal. June 28, 2006).

3. California's uniquely harsh regime of prolonged solitary confinement at Pelican Bay is inhumane and debilitating. Plaintiffs and class members languish, typically alone, in a cramped, concrete, windowless cell, for 22 and one-half to 24 hours a day. They are denied telephone calls, contact visits, and vocational, recreational or educational programming. Defendants persistently deny these men the normal human contact necessary for a person's mental and physical well-being. These tormenting and prolonged conditions of confinement have produced harmful and predictable psychological deterioration among Plaintiffs and class members.

4. The solitary confinement regime at Pelican Bay, which renders California an outlier in this country and in the civilized world, violates the United States Constitution's requirement of due process and prohibition of cruel and unusual punishment, as well as the most basic human rights prohibitions against cruel, inhuman or degrading treatment. Indeed, the prolonged conditions of brutal confinement and isolation at Pelican Bay cross over from having any valid penological purpose into a system rightly condemned as torture by the international community.

5. The conditions at Pelican Bay have become so harsh and notorious that prisoners at the Pelican Bay SHU, as well as thousands of others incarcerated in facilities across the country, have engaged in two recent sustained hunger strikes.

6. California, alone among all 50 states and most other jurisdictions in the world, imposes this type of extremely prolonged solitary confinement based merely on a prisoner's alleged association with a prison gang. While defendants purport to release "inactive" gang members after six years in the SHU, in reality their so-called gang validation and retention decisions (and resulting indefinite SHU placement) are made without considering whether plaintiffs and class members have ever undertaken an illegal act on behalf of a gang, or whether they are – or ever were – actually involved in gang activity. As one example, defendants continue to detain plaintiff George Ruiz in the Pelican Bay SHU after 22 years, based on nothing more than his appearance on lists of alleged gang members discovered in some unnamed prisoners' cells and his possession of allegedly gang-related drawings.

7. Plaintiffs' and class members' only way out of isolation is to "debrief" to prison administrators (i.e., report on the gang activity of other prisoners); as such, defendants unreasonably condition release from inhumane conditions on cooperation with prison officials in a manner that places prisoners and their families in significant danger of retaliation. *See Griffin*,

No. C-98-21038 at 8. Accordingly, for those many prisoners who refuse or are unable to debrief, defendants' policies result in "effectively permanent" solitary confinement. *Id*.

8. The conditions at the Pelican Bay SHU are extremely harsh when compared to the experience of a typical California state prisoner, particularly given the extraordinary length of SHU confinement at Pelican Bay. Yet plaintiffs and the class they represent are incarcerated for years without any meaningful review of their SHU confinement or any notice of how they can earn their way back to the general population without becoming informants.

9. A few years after Pelican Bay opened its doors in December 1989, a class of Pelican Bay prisoners brought a constitutional challenge to the conditions, practices, and abuse at the facility. After an extensive trial, the court found that, for a subclass of prisoners at high risk for developing mental illness, the isolation and harsh conditions in the Pelican Bay SHU constituted cruel and unusual punishment. *See Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995). Although the court rejected Eighth Amendment claims brought by prisoners outside this high risk group, it emphasized that it had only considered isolation lasting up to three years. The court could "not even begin to speculate on the impact on inmates confined in the SHU for periods of 10 to 20 years or more[.]" *Id.* at 1267. This case presents the substantial question left unanswered by *Madrid*.

10. Plaintiffs and the class seek a declaration that the ongoing practices of the defendants – the Governor of California, the Secretary and the Chief of the Office of Correctional Safety of the CDCR, and the Warden of Pelican Bay State prison – violate their constitutional rights, and injunctive relief compelling defendants to provide prisoners at Pelican Bay with meaningful review of their indeterminate SHU assignment and to cease holding prisoners in the inhumane conditions of solitary confinement for extremely prolonged periods.

II. JURISDICTION AND VENUE

11. Plaintiffs and the class bring claims pursuant to 42 U.S.C. § 1983 and the Eighth and Fourteenth Amendments to the United States Constitution.

12. This Court has jurisdiction for claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 1331 and 1343 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

13. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims brought by plaintiffs and the class have occurred in this District.

III. PARTIES

A. Plaintiffs

14. Plaintiff GEORGE RUIZ (B82089) is a 69-year-old prisoner who has spent 22 years at the Pelican Bay SHU, and the last 28 years in solitary confinement, due to his validation as a member of the Mexican Mafia (EME). He has had no significant rule violations since his incarceration began in 1980. Indeed, he has only had one disciplinary violation of any kind since 1986. He is serving a seven year to life sentence and has been eligible for parole since 1993, but multiple parole boards have indicated that he will never be paroled while he is housed in the SHU.

15. Plaintiff JEFFREY FRANKLIN (C08545) is a 52-year-old prisoner who has spent the last 22 years at the Pelican Bay SHU. In 2006, he was denied inactive Black Guerilla Family (BGF) status based solely on evidence that he associates with other gang members, shares a common ideology, and attempts to educate the community and other prisoners to his philosophy.

16. Plaintiff TODD ASHKER (C58191) is a 48-year-old prisoner who has spent over 25 years in solitary confinement, and 22 years at the Pelican Bay SHU. He was validated as an

Aryan Brotherhood member in 1988, and has been denied inactive status based on confidential memoranda from informants and artwork found in his cell. Ashker has never been charged with or disciplined for a proven gang-related act. As the Warden stated in response to one of Ashker's administrative grievances, unless Ashker debriefs, by "formally renounc[ing] his membership" in the Aryan Brotherhood and "divulg[ing] all of their secrets to the authorities," he will remain incarcerated in the SHU for the rest of his life.

17. Plaintiff GEORGE FRANCO (D46556) is a 46-year-old prisoner who has spent 20 years in solitary confinement at the Pelican Bay SHU. In 2008, Franco was denied inactive Nuestra Familia status based on confidential statements by informants regarding his role within the gang, and the fact that his name appeared on gang rosters found in other prisoners' cells. None of the source items relied on to retain Franco in the SHU for another six years alleged any gang activity or criminal conduct.

18. Plaintiff GABRIEL REYES (C88996) is a 46-year-old prisoner who has spent almost 16 years continuously in isolation in California, and has been kept in the Pelican Bay SHU for 14 and one-half years. Reyes is serving a sentence of 25 years to life as a result of California's "three strikes" law. At his last inactive review in 2008, he was denied inactive EME associate status solely on possession of artwork allegedly containing gang symbols.

19. Plaintiff RICHARD JOHNSON (K53293) is a 61-year-old prisoner who has spent almost 15 years in solitary confinement at the Pelican Bay SHU due to his validation as a BGF member. Under California's "three strikes" law, Johnson is currently serving 33 years to life for drug-related offenses. Johnson has never incurred a major disciplinary offense, yet continues to languish in the Pelican Bay SHU.

20. Plaintiff DANNY TROXELL (B76578) is a 59-year-old prisoner who has spent over 26 years in solitary confinement, and 22 years at the Pelican Bay SHU due to his validation

as a member of the Aryan Brotherhood. Troxell's only act of violence in the last 30 years involved a fist fight in 1997 in which nobody was significantly injured. He has been eligible for parole since 1996, but pursuant to a practice of denying parole to all SHU prisoners, he has no hope of being released from prison.

21. Plaintiff PAUL REDD (B72683) is a 55-year-old prisoner who has spent almost 33 of the past 35 years in solitary confinement in California and has spent the last 11 and one-half years in Pelican Bay's SHU. Redd was first validated as a BGF gang member in 1980 based on six confidential memoranda stating that he had communicated with other BGF prisoners and that his name was on a coded roster found in a validated BGF member's possession. Over 30 years later, he continues to be labeled a gang member based merely on association.

22. Plaintiff LUIS ESQUIVEL (E35207) is a 43-year-old prisoner who has spent the last 13 years in solitary confinement in the Pelican Bay SHU. He has never incurred a serious disciplinary violation. In 2007, after more than six years in the SHU, Esquivel was determined to be an inactive gang associate, but was nonetheless retained in the SHU. He was revalidated as an active EME associate a year later because he possessed allegedly gang-related Aztec artwork.

23. Plaintiff RONNIE DEWBERRY (C35671) is a 53-year-old prisoner who has spent the last 27 years in solitary confinement. He has been repeatedly validated as a BGF member based merely on his associations and his political, cultural, and historical writings. He has had no major disciplinary infractions since 1995. Dewberry would be eligible for parole consideration but for his retention in the SHU.

24. As detailed below, plaintiffs are suffering serious mental and physical harm due to their prolonged confinement in isolation at the Pelican Bay SHU.

B. Defendants

25. Defendant EDMUND G. BROWN, Jr., is the Governor of the State of California.

As such, he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at Pelican Bay SHU, as described below. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Brown is sued in his official capacity only.

26. Defendant MATTHEW CATE is the Secretary of the CDCR. As such, he has caused, created, authorized, condoned, ratified, approved, or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at the Pelican Bay SHU, as described below. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Cate is sued in his official capacity only.

27. Defendant ANTHONY CHAUS is the Chief of the Office of Correctional Safety of the CDCR. The Office of Correctional Safety houses and supervises the Special Services Unit (SSU), which is CDCR's primary departmental gang-management unit responsible for investigating prisoners suspected of gang affiliation. As such, he has caused, created, authorized, condoned, ratified, approved, or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs and practices that prevail at the Pelican Bay SHU, including but not limited to issues of gang validation. He has, therefore, directly and proximately caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Chaus is sued in his official capacity only.

28. Defendant G.D. LEWIS is the Warden of Pelican Bay State Prison. As such, he has caused, created, authorized, condoned, ratified, approved or knowingly acquiesced in the illegal, unconstitutional, and inhumane conditions, actions, policies, customs, and practices that prevail at the Pelican Bay SHU, as described below. He has, therefore, directly and proximately

caused, and will continue to cause in the future, the injuries and violations of rights set forth below. Defendant Lewis is sued in his official capacity only.

IV. FACTUAL ALLEGATIONS

A. Conditions at the Pelican Bay SHU

29. California opened Pelican Bay State Prison on December 1, 1989. It is the most restrictive prison in California and one of the harshest super-maximum security facilities in the country.

30. The prison is split between general population units for maximum security prisoners and the Security Housing Unit (SHU). The SHU contains 1,056 cells explicitly designed to keep the alleged "worst of the worst" in the state prison system under conditions of extreme isolation, sensory deprivation, and restricted movement. Also characteristic of Pelican Bay's SHU are the extremely limited recreational and cultural opportunities afforded to prisoners, a near total lack of contact with family and loved ones, an absolute denial of work opportunities, limited access to personal property, and extraordinary levels of surveillance and control.

31. Pelican Bay was specifically designed to foster maximum isolation. Situated in rural Del Norte County, on California's northern border with Oregon, its lengthy distance from most prisoners' families was considered advantageous by the California correctional administrators who developed the facility. The prison is a 355-mile drive from San Francisco and a 728-mile drive from Los Angeles, where many of the prisoners' families live.

32. The original planners did not contemplate that prisoners would spend decades at Pelican Bay. Rather, they designed the prison under the assumption that prisoners would generally spend up to 18 months in the SHU – a term consistent with practices in the rest of the country.

33. According to CDCR, there were on average 1,106 people incarcerated in the

Pelican Bay SHU in 2011. About half (513) had been in the SHU for more than 10 years. Of those people, 222 had been incarcerated in the SHU for 15 or more years, and 78 had been there for more than 20 years. Of the remaining people, 544 had been in the SHU for five to 10 years, and the rest, 54, were there for five years or less.

34. Many plaintiffs and class members, including Ruiz, Ashker, Troxell, Franklin, and Dewberry, have been at Pelican Bay since the year it opened.

35. Some plaintiffs and class members have spent even longer in continuous isolation, as they were transferred directly from other solitary units to the Pelican Bay SHU. For example, Ruiz has been held in solitary confinement since 1984 – for approximately 28 years. Dewberry has been in isolation for 27 years. Troxell has spent over 26 years in isolation, and Ashker has spent over 25 years in isolation.

36. All plaintiffs have been held in the Pelican Bay SHU for over 10 years.

37. California's prolonged isolation of thousands of men is without equal in the United States. There is no other state in the country that consistently retains so many prisoners in solitary confinement for such lengthy periods of time.

38. The cost of housing a prisoner at the Pelican Bay SHU is considerably higher than the cost of incarcerating a prisoner in general population housing. CDCR reports that it cost the State $70,641 in 2010-2011 to house a single prisoner at the Pelican Bay SHU – tens of thousands of dollars more per prisoner than in the general population.

39. Plaintiffs and the hundreds of other long-term SHU residents at Pelican Bay are warehoused in cramped, windowless cells, are given almost no access to recreation or exercise, and have no access to programming or vocational activities. Prisoners never leave the Pelican Bay SHU except under rare circumstances for medical purposes or a court appearance.

40. Compounding the extremity of their situation, plaintiffs and class members must

face these conditions in a state of near total solitude. Pelican Bay prisoners have absolutely no access to group recreation, group education, group prayer, or group meals. Most are housed in a single-occupancy cell and cannot have a normal human conversation with another prisoner. Their only avenue of communication is by speaking loudly enough for the prisoner in the next cell, or a cell down the line, to hear. Guards, however, have discretion to issue warnings and punish any loud communication as a rule violation, and do so. Moreover, any communication with another validated gang member or associate, even just a greeting, may and has been be used by CDCR as evidence of gang affiliation justifying the prisoners' retention in the SHU.

41. For example, CDCR cited as evidence of Franklin's continued gang affiliation the fact that he was observed in 2006 "communicating by talking" between pods with another prisoner who is a validated member of a different gang.

42. Similarly, in March 2011, Franco received a disciplinary violation simply for speaking to a prisoner in the next pod as he passed by his cell on the way back from the shower. Redd, too, was disciplined in 2007 for talking to another prisoner in passing.

43. While some plaintiffs and class members have had cellmates at Pelican Bay, being locked up with a cellmate all day in an 80-square-foot cell does not compensate for the severe isolation of the Pelican Bay SHU, as the *Madrid* Court found. *See Madrid*, 889 F.Supp. at 1229-30. Instead, double-celling requires two strangers to live around-the-clock in intolerably cramped conditions, in a cell barely large enough for a single human being to stand or sit.

44. Plaintiffs' and class members' communication with loved ones outside the facility is also subject to severe restrictions.

45. Prisoners at the Pelican Bay SHU are prohibited from any access to social telephone calls absent an emergency. A single telephone call may be granted to a prisoner in the event of an emergency (such as a death in the family), but Pelican Bay staff retains complete

discretion to determine whether the circumstances allow for a call. Ashker, for example, was able to speak to his mother only twice in 22 years: once in 1998, and once in 2000. She has since died. Reyes was denied a telephone call home after his stepfather died, because he had been allowed a telephone call several months earlier when his biological father died.

46. Neither plaintiffs nor the experts they have consulted are aware of any other federal, local or state correctional system in the United States that forbids all non-emergency telephone communication.

47. The remote location of Pelican Bay means that most SHU prisoners receive no visits with family members or friends for years at a time. Many prisoners have thus been without face-to-face contact with people other than prison staff for decades.

48. When they do occur, family visits are limited to two two-hour visits on weekends. No physical contact whatsoever is allowed; visits occur behind plexiglass, over a telephone, in a cramped cubicle. This means that prisoners may not even hug or hold hands with visiting family members, children, or other loved ones. Despite the non-contact nature of the visits, prisoners are strip-searched before and after.

49. The visits are monitored and recorded, and the tapes are later reviewed by gang investigators seeking evidence of gang communication to use against the prisoner and his visitor.

50. When Ashker's disabled mother visited him, no accommodation was made for her wheelchair, causing a shortened and difficult visit. She never visited again. Dewberry, whose family lives in Oakland, has had less than one visit per year since his 1990 transfer to Pelican Bay. He had no visits between 2008 and February 2012. Franklin's last social visit was in 2005.

51. Troxell's family has given up trying to visit him because of the distance and cost of traveling to Pelican Bay and because non-contact visits are so upsetting. He has five grandchildren and one great-grandchild, but has never met them.

52. Esquivel sought a hardship transfer from Pelican Bay, due to his mother's difficulty in visiting him from San Diego. The transfer was denied, and he was told to debrief instead. As a result, Esquivel was unable to see or speak to his parents between 2000 and 2009, when his mother died. After her death, he was allowed one phone call with his father and sister – his only social call in nine years. As soon as he hung up the phone, Pelican Bay gang investigators told him to think about taking advantage of the debriefing program.

53. The lack of telephone calls and functional lack of visitation imposes considerable strain on family relationships; those relationships have frequently broken down entirely. Reyes has not hugged his daughters in almost two decades, since they were in pre-school. They are now adults. Reyes was only recently allowed to send his children a photograph of him – his first in 17 years. His aging mother is ill and cannot travel the considerable distance to Pelican Bay, and the rules forbid him to speak with her by phone.

54. Esquivel has not shaken another person's hand in 13 years and fears that he has forgotten the feel of human contact. He spends a lot of time wondering what it would feel like to shake the hand of another person.

55. Prisoners at the Pelican Bay SHU may receive non-legal mail, but they may only keep 10 pieces of social mail at a time; any other mail is confiscated. There are significant delays in the delivery of both social and legal mail to prisoners.

56. These extreme restrictions on human contact are imposed on plaintiffs and class members as a matter of official CDCR policy and have been approved or implemented by defendants.

57. In addition to the near total isolation that prisoners at Pelican Bay face, the physical conditions under which they live are stark.

58. The cells in the Pelican Bay SHU are completely concrete, measure approximately

80 square feet, and are eight feet high. They contain a bed made of concrete, a sink, and a toilet. Concrete slabs projecting from the walls and floor serve as a desk and stool. The cells have no window, so prisoners have no view of the outside world, nor any exposure to natural light. Until the summer 2011 hunger strike described below, prisoners were not allowed to put up any decorations, drawings, or photographs on their walls; now they are permitted one wall calendar. The doors to the cells consist of solid steel, rather than bars, and are perforated with small holes that allow for a partial view into a concrete hallway. The door has a food slot that an officer may unlock to insert food or mail, and that is also used to handcuff the prisoner before the door is opened. The cells do not contain an emergency call button, so prisoners must yell for help in the event of an emergency, or rely on a staff member noticing that they are in distress.

59. The unit is loud – guards' conversations echo down the tier all day. At night the guards stamp mail loudly, open and close doors, and walk the tier with rattling keys and chains for count. Prisoners who are not "showing skin" during these counts are awakened. As a result of these conditions, and the impact of their long-term isolation, many prisoners have developed sleep disorders, vision problems, and headaches.

60. Bedding consists of a hard, lumpy mattress, sheets, and two thin blankets.

61. The temperature in the cells can be excessively hot or cold. The ventilation consists of recycled air, which is cold in the winter and hot in the summer.

62. Property is tightly restricted. Plaintiffs and the class are allowed a total of only 10 books or magazines, and up to six cubic feet of property. They may purchase a television set or radio if they have the means, though available stations are limited. Prisoners at the Pelican Bay SHU are given one quarter of the regular monthly canteen allowance and may receive one annual package, not exceeding 30 pounds in weight, including packaging.

63. Plaintiffs and the class normally spend between 22 and one-half and 24 hours a

day in their cells. They are typically allowed to leave their cells only for "exercise" and to shower.

64. "Exercise" occurs in a barren, solid concrete exercise pen, known as a "dog run." It is supposed to last for one and one-half hours, seven times weekly. However, prisoners often do not receive even this minimal amount of exercise due to staff shortages and training days, disruptions, inclement weather, or arbitrary staff decisions.

65. The exercise pen is small and cramped, with high walls. Half of the roof is partially covered with painted plexiglass and a metal mesh grate that obstructs direct sunlight; the other half allows the only exposure Pelican Bay SHU prisoners ever have to the sky. Pelican Bay is situated in one of the wettest areas of California, with an average rainfall of 67 inches. Rain falls directly into the exercise pens, causing water to pool on the floor. The walls of the exercise pen have accumulated mildew or mold, aggravating respiratory problems among the prisoners.

66. Until the 2011 hunger strike, there was no equipment whatsoever in the exercise pen. Since then, prisoners have been provided one handball. Prisoners exercise alone, unless they share their cell, in which case they are permitted to exercise with their cellmate. If a prisoner with a cellmate wants to exercise alone to get a brief period of privacy, then his cellmate must forfeit his opportunity to exercise.

67. Plaintiffs and other Pelican Bay SHU prisoners have absolutely no access to recreational or vocational programming. While those prisoners who can afford them are allowed to take correspondence classes, there has been no consistent access to proctors for exams that would allow prisoners to get credit for their coursework. Until the 2011 hunger strike, prisoners at the facility were banned from purchasing art supplies or hobby or crafting materials. Prisoners who are discipline free for one year are now permitted to purchase and retain a limited amount of art supplies.

68. Prisoners at the Pelican Bay SHU are allowed one 15-minute shower in a single shower cell three times weekly.

69. Prisoners are allowed access to the law library for two hours, once a month, unless they have a court deadline within 30 days.

70. Whenever a prisoner is moved outside of the "pod" in which he is housed and in which the shower and exercise pen is located, he is handcuffed, his hands are shackled to his waist or behind his back, and he is escorted by two guards. The prisoner is also strip searched in public, near the door to the pod.

71. While prisoners in the SHU are supposed to be served the same meals as other prisoners in California, in practice it is common that the meals prisoners receive in the SHU are substandard in that they contain smaller portions, fewer calories, and often are served cold, rotten, or barely edible.

72. Conditions at Pelican Bay are so harsh, even compared to other California SHUs, that in 2011 Franklin requested to be transferred out of the Pelican Bay SHU to any of the other three SHUs in California so that he could have "minimal human contact" and not suffer the "extreme sensory deprivation" at Pelican Bay. In his request, he explained that other SHUs have windows in the cells, allow some time for prisoners to "see and talk with each other," and permit prisoners to "see grass, dirt, birds, people and other things."

73. Defendants are directly responsible for these stark conditions at Pelican Bay, and for the degree to which the conditions are compounded by other punitive measures, including a pattern and practice of coercive denial of standard medical care.

74. Plaintiffs have serious medical conditions, some of which, upon information and belief, have been caused or exacerbated by their confinement at the Pelican Bay SHU. Franklin, for example, has chronic back and eye problems, and Dewberry suffers from melanin deficiency

leading to severe pigmentation loss, vitamin D deficiency, chronic lower back problems and pain, stomach problems, and swollen thyroid glands. Redd suffers from hypertension, diabetes, vision problems, and a thyroid disorder for which he receives no medication.

75. Johnson has osteoporosis, arthritis, and cysts in both kidneys, and he has suffered renal failure. He also had a heart attack in 2009 while in the SHU, and takes heart medication. He was scheduled to be transferred to Folsom Prison because of his heart condition, but was later refused transfer after his participation in the Pelican Bay hunger strike.

76. Reyes suffers from several chronic medical ailments, including Sjogren's Disease, for which he was prescribed effective medications; those medications have been discontinued at the Pelican Bay SHU, and other medical treatment has also been withdrawn without explanation.

77. Ruiz has glaucoma and had a corneal transplant on his left eye. He may need one for his right. He has diabetes, which became aggravated after a change in his medication. He recently developed pneumonia, kidney failure, and difficulty breathing, and experienced a delay in being seen by a medical practitioner.

78. Despite these serious conditions, prisoners with medical concerns are routinely told by prison officials that if they want better medical care for their conditions or illnesses, or improved pain management, the way to obtain adequate care is to debrief.

79. Ashker, for example, who suffers from almost constant pain due in part to an old gunshot wound, was told by Pelican Bay medical staff in 2006 that he "holds the keys" to getting better medical care, presumably by debriefing and moving to the general population.

80. Ruiz and Johnson have also been told that the only path to better health care is debriefing.

81. The denial of adequate medical care at Pelican Bay is not isolated to a few doctors or correctional officials, but is rather a longstanding pattern and practice which, on information

and belief, has been officially sanctioned by defendants for the purpose of coercing plaintiffs and class members to debrief.

82. The serious mental-health impact of even a few years in solitary confinement is well documented, yet mental health care at the Pelican Bay SHU is grossly inadequate. Every two weeks, a psychologist walks past the prisoners' cells, calling out "good morning," or "you okay?" The psychologist walks past eight cells in approximately 30 seconds during these "rounds." It is incumbent on a prisoner to get the psychologist's attention to indicate that he wants to talk. As a result, prisoners in neighboring cells are aware when someone calls out to the psychologist for help. There is no opportunity during this brief encounter for a private consultation with a mental-health practitioner.

83. Indeed, beyond a brief intake screening upon their arrival to the SHU, the only mental health assessment that many SHU prisoners receive occurs at Institutional Classification Committee meetings, at which a mental health staff member is present. Each prisoner is asked two standard questions: (1) whether he has a history of mental illness; and (2) whether he wants to hurt himself or others. These questions are asked in front of the Warden, Correctional Captain, and numerous other correctional staff. No further mental health evaluation occurs.

84. For these reasons, plaintiffs and class members have received inadequate mental health care or none at all. Though prisoners may request mental-health services by filling out a form, some plaintiffs have declined to seek any mental health care while incarcerated because of concerns over lack of confidentiality. Others do not talk to mental health staff because those staff members seem uncaring, and because officers can overhear sessions or are told of prisoners' personal problems.

85. When one plaintiff actually requested mental health care, he was referred to a "self-help" library book.

86. SHU assignment also prolongs plaintiffs' and class members' time in prison. Since legislative changes in 2010, prisoners cannot earn "good time" or "conduct" credit while in the SHU for gang affiliation. Therefore, a prisoner with a determinate (fixed) sentence such as Esquivel, who was convicted in 1997 of robbery and burglary and is serving a flat 34-year sentence, will be released between four and five years later than he otherwise would have simply because he is incarcerated in the SHU.

87. In addition, an unwritten policy prevents any prisoner held in the SHU from being granted parole. Ruiz, Ashker, Troxell, Franklin, and Dewberry are all eligible for parole, but have been informed by parole boards that they will never attain parole so long as they are housed in the SHU.

88. Ruiz, for example, has been incarcerated in California since 1981, after he was convicted of robbery and kidnapping and sentenced to seven years to life in prison. He was told by the judge that he would likely serve 13 and one-half years, and has been eligible for parole since 1993. However, multiple parole boards have indicated that he will never get parole as long as he is housed in the SHU.

89. Franklin has been eligible for parole since 2000, and although the parole board has characterized his disciplinary history at Pelican Bay as "minimal," it has repeatedly denied him parole, citing, among other things, his refusal to disassociate with the gang through debriefing. In 2001, he was explicitly told that he needed to get out of the SHU to gain parole.

90. So too, Dewberry and Ashker have been eligible for parole since 1996 and 2004 respectively, but have been informed that they will not receive parole unless they first get out of the SHU.

B. Assignment to and Retention in the Pelican Bay SHU

i. Initial Assignment to the SHU

91. CDCR places prisoners who have been validated as gang affiliates into the above conditions in SHU for an indefinite term, served in repeatedly renewed six-year increments. *See* CAL. CODE REGS. tit. 15, § 3341.5(c)(2)(A)(2) (2012).

92. Ignoring prisoners' actual behavior, CDCR identifies prison gang affiliates through a process called prison gang validation. *See* CDCR, OPERATIONS MANUAL § 52070.21 (2009). Validation does not require CDCR to show that the prisoner has violated a prison rule, broken the law, or even acted on behalf of the gang. Indeed, many prisoners who have not engaged in any gang-related misconduct or rule violations before validation are placed in the SHU based merely on allegations that they have associated with a gang.

93. For example, Ruiz, Johnson, Redd, Esquivel and Dewberry were all validated as gang members or associates without allegations of actual gang activity or gang-related rule violations. Rather, the prison relied on confidential informants who claimed these plaintiffs were gang members or associates, on possession of allegedly gang-related art, tattoos, or written material, and/or on inclusion of their names on alleged lists of gang members and associates.

94. When validated, prisoners are classified as either gang members or gang associates. A "member" is a prisoner who has been accepted into membership by a gang. CAL. CODE REGS. tit. 15, § 3378(c)(3). An "associate" is a prisoner or any person who is involved periodically or regularly with members or associates of a gang. *Id*. at § 3378(c)(4). Both members and associates (referred to globally as "gang affiliates") are subject to indefinite SHU confinement.

95. California's practice of placing people in long-term SHU confinement simply because of gang association is unusual and does not comport with the general practice of other

states that maintain super-maximum security prisons.

ii. Periodic Review

96. Once a prisoner is validated as a gang affiliate and sent to the SHU for an indefinite term, he is entitled to periodic "reviews" of his validation. Pursuant to California regulations, a classification committee must review the prisoner's status every 180 days, allegedly so they can consider releasing the prisoner to the general population. *Id*. at § 3341.5(c)(2)(A)(1). In reality, classification reviews do not substantively review the prisoner's SHU assignment, but rather involve three steps. First, the prisoner is urged to debrief from the gang. Second, a mental health staff member asks two questions: (1) do you have a history of mental illness; and (2) do you want to hurt yourself or others? This mental health evaluation occurs in front of all members of the classification committee, including the Warden, Facility Captain, Correctional Captain, the Assignment Lieutenant, and other correctional staff. *See id*. at § 3376(c)(2). Third, the classification committee "reviews" the paperwork in the prisoners' file, to make sure that all required paperwork is accounted for.

97. Unless a prisoner is willing to debrief, the 180-day review allows absolutely no possibility of release from the SHU.

98. No examination of continued gang activity or association occurs at the 180-day review, nor is there any assessment of whether the prisoner's behavior requires continued SHU placement. For this reason, such reviews are meaningless, and few Pelican Bay SHU prisoners attend them.

99. The only review at which the classification committee team even purports to determine whether the prisoner should be released from the SHU occurs once every six years. *See id*. at § 3378(e). Therefore, all gang validated prisoners in the SHU must remain in solitary confinement for six years without even the possibility of any review to obtain their release. This

six-year interval is far longer than any equivalent classification review at other supermax or high-security systems in other states, the federal system, or other nations, and is far longer than the 120-day period that the Ninth Circuit deemed constitutionally permissible for prisoners housed in solitary confinement in *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1990).

100. Yet even this six-year inactive review is meaningless for most prisoners housed in the SHU.

101. In some cases, like that of plaintiffs Ashker and Troxell, defendants have made a predetermined decision to deny inactive status and thus retain the prisoner in the SHU until he either debriefs or dies. For example, in 2004, Pelican Bay Warden Joe McGrath wrote in response to one of Ashker's grievances that Ashker had been identified as an active member of the Aryan Brotherhood and that "such an inmate must formally renounce his membership in this group and divulge all of their secrets to the authorities. The alternative is remaining where extremely dangerous inmates belong: the SHU."

102. For many, the six-year review results in SHU retention even though the prison can produce no evidence (or even allegations) of gang activity. The review is supposed to determine whether the prisoner is "active" with the prison gang or has assumed "inactive" status. Under California regulations, "when the inmate has not been identified as being involved in gang activity for a minimum of six (6) years," he can achieve "inactive status" and may be released from the SHU. CAL. CODE REGS. tit. 15, § 3378(e).

103. Logically, one who achieves "inactive" status is still a gang member or associate, but not an "active" one, in that he does not engage in any gang activities. Yet CDCR routinely and regularly denies inactive status to prisoners even where there is no evidence whatsoever of any gang activity. This longstanding pattern and practice is not the result of failings by individual gang investigators, but is instead CDCR policy which, upon information and belief, has been

approved and implemented by defendants. Plaintiffs' experiences demonstrate this pattern.

104. Ruiz, for example, was denied inactive gang status in 2007 based on: (a) two 2006 searches of unnamed prisoners' cells that uncovered Ruiz's name on a laundry list of purported EME members and associates in "good standing"; and (b) possession of photocopied drawings in his cell. Ruiz openly possessed this artwork, drawn by other prisoners, for at least eight years without any complaint or objection from prison officials. Three days before his 2007 inactive review, CDCR asserted that the drawings contained symbols associated with the EME. Neither of these source items provides any evidence of active gang involvement.

105. Reyes too has been repeatedly denied inactive status based on association, without evidence of any gang activity. At his first inactive review, for example, Reyes was denied inactive status based on one source item: exercising with other validated prisoners in a group yard while in administrative segregation. At his last inactive review, in 2008, Reyes was denied inactive status based only on drawings found in his cell, including a drawing for a tattoo of his name with alleged Mactlactlomei symbols and a drawing of a woman, man and Aztec warrior, with a geometric pattern known as the G-shield. The G-shield also appears in a tattoo on Reyes' left pectoral and was rejected as a gang-related source item in 1996, 2003 and 2005.

106. Franklin has had similar experiences. In 2006, he was denied inactive status because he was listed as a board member of George Jackson University, claimed by CDCR to be a gang front, and because his name appeared on gang rosters confiscated from other prisoners. Shortly thereafter he was seen "communicat[ing] by talking" with a validated member of a different gang. CDCR officials instructed that this should be considered during Franklin's next inactive review.

107. Johnson's inactive reviews have also largely focused on association and shared ideology. In 1997, for example, he was denied inactive status based on a Black Power tattoo,

possession of a book about George Jackson (Paul Liberatore's *The Road to Hell: the True Story of George Jackson, Stephen Bingham, and the San Quentin Massacre*), and a photograph collage of him and George Jackson. Staff confidential informants also alleged, without any supporting facts attached, that Johnson was a high-ranking member of the BGF and that he communicated with BGF members through third parties. Johnson was denied inactive status in 2006 based on old source items and possession of a copy of "N-GOMA Pelican Bay Support Project, Black August 2005," a newsletter which includes dedications to alleged BGF members who have died. None of these source items provide any evidence of Johnson's active involvement in a prison gang in the prior six years.

108. Redd was denied inactive status in 2011 based purely on association and not on any gang-related actions. His SHU retention was based on possession of drawings, collages, and booklets related to George Jackson and the Black Panthers, as well as a card from a former Black Panther Party member and his appearance on a roster of purported gang affiliates found amid the property of another prisoner. In addition, according to confidential informants, Redd is a "captain" of BGF who has communicated with other BGF members. None of these source items provide any evidence of Redd's actions on behalf of a prison gang in the prior six years.

109. Dewberry was recently denied inactive status in November 2011 based on his name appearing on a coded roster in another prisoner's possession, as well as such materials as his political and historical writings, his possession of a pamphlet in Swahili, which defendants' inactive review materials state is "a banned language at PBSP," confidential memoranda stating that he is an "enforcer," and his participation in George Jackson University, which according to defendants' inactive review materials "is not a university at all," but rather a "concept," "to teach the philosophies and ideologies of all 'Political Prisoners'" and "to enlist individuals who are not in prison to help spread the ideologies of the BGF (Black Guerilla Family)." None of the

materials used to deny Dewberry inactive status and consign him to the SHU for at least six more years contained any evidence whatsoever that Dewberry was involved in any violent or gang-related activity.

110. The most recent review of Franco's validation was in 2008, when he was found inactive in the Northern Structure but was revalidated as an active Nuestra Familia member. His SHU retention was based on several confidential memoranda from informants regarding his status within the Nuestra Familia along with inclusion of his name on several gang rosters found in the cells of other validated gang members. None of the source items relied on to consign Franco to another six years in the SHU alleged any actual gang activity or criminal conduct.

111. At the same time that they were repeatedly denied inactive status, many plaintiffs have demonstrated their ability to follow prison rules by avoiding any significant prison misconduct. Ruiz, for example, has been disciplined only once for violating a prison rule in over 25 years. Indeed, his only rule violations in the past 30 years have been for missing count in 1981, possession of wine in 1983, possession of unlabeled stimulants and sedatives in 1986, and a 2007 rule violation entitled "Mail Violation With No Security Threat." Despite this innocuous prison record, he has spent over 25 years in harsh isolation, without access to normal human contact.

112. Similarly, Reyes' only disciplinary offenses in the last 12 years involved the recent hunger strike and unauthorized donation of artwork to a non-profit organization. Johnson has had only one rule violation in close to 15 years in the Pelican Bay SHU: in 2000, he was disciplined for a mail violation.

113. With the exception of violations in 2011 related to his involvement in the hunger strikes and his possession of a Black History scrapbook including information on the BGF's history, Dewberry has not been charged with violating any prison rule since 1995.

114. Redd's disciplinary offenses since 2000 consist mainly of simply speaking with other prisoners in passing, along with one mail violation.

115. When, in the rarest of cases, a long-term prisoner does achieve inactive status, even this is no guarantee of escape from solitary confinement. In 2007, after more than six years in the SHU with only minor disciplinary write-ups, including, for example, refusing handcuffs, refusing to leave the yard, and yelling, Esquivel was determined to be an inactive EME associate. Nevertheless, he was retained in the SHU for a 12-month observation period. In 2008, after one year of SHU observation, Esquivel was revalidated as an active gang associate based on one source item: a report that officers found three items of artwork with Aztec symbols in his cell.

116. CDCR informs prisoners that they can gain release from the SHU as an "inactive" gang member if CDCR has no evidence that they have been involved in "gang activity" for at least six years, but in practice it denies prisoners inactive status even where there is no evidence of any "gang activity" as that word is understood by the ordinary person. This denies meaningful review.

117. At the same time, plaintiffs and class members are not given information about an actual path out of the SHU, besides debriefing.

118. The disconnect between CDCR's stated policy and actual practice has been compounded by the settlement in the case of *Castillo v. Almeida*, C-94-2847 (N.D. Cal. 1994), agreed to on September 23, 2004. In that settlement, CDCR officials agreed that "laundry lists" – that is, lists by confidential sources, including debriefers, of alleged associates or members without reference to gang-related acts performed by the prisoner – would not be used as a source item to either validate a prisoner as a gang affiliate or deny him inactive status. CDCR officials also agreed that "the confidential source must identify specific gang activity or conduct performed by the alleged associate or member before such information can be considered as a

source item." *Id.* at ¶ 21.

119. The *Castillo* settlement was memorialized in a public document filed with the court and widely publicized to the prisoners at Pelican Bay prison. Despite the *Castillo* settlement, defendants continue to rely on "laundry lists" and on informants who identify no specific gang activity or conduct by the prisoner to retain plaintiffs and class members at the Pelican Bay SHU at the six-year inactive review. Such review violates due process a) by denying Plaintiffs and class members' fair notice of the evidence that can be used against them to deny inactive status, and b) by providing confusing and misleading notification of what they need to do to get out of the SHU.

120. Thus, CDCR's practice of denying prisoners release despite their record of inactivity operates as a cruel hoax. This bait-and-switch furthers the hopelessness and despair that plaintiffs and other prisoners experience in the SHU and leads them to reasonably believe that there is no way out of the SHU except to debrief or die.

121. Defendants' policy of retaining prisoners in the SHU who are not active gang affiliates, or against whom no reliable evidence exists that they present any threat of gang-related violence or misconduct, is unmoored from any legitimate penological purpose or security need.

122. These are not isolated aberrations limited to plaintiffs. Rather, defendants engage in an unwritten but consistent pattern and practice of equating gang association or shared ideology with "current gang activity." All prisoners in the Pelican Bay SHU are subject to this practice.

C. Psychological Harms

123. In addition to being deprived of the minimal civilized measure of life's necessities as described above, plaintiffs and class members are also experiencing unrelenting and crushing mental anguish, pain, and suffering as a result of the many years they have spent without normal

human interaction, in stark and restrictive conditions, without any hope of release or relief. Prisoners describe this confinement as "a living nightmare that does not end and will not end."

124. The devastating psychological and physical effects of prolonged solitary confinement are well documented by social scientists: prolonged solitary confinement causes prisoners significant mental harm and places them at grave risk of even more devastating future psychological harm.

125. Researchers have demonstrated that prolonged solitary confinement causes a persistent and heightened state of anxiety and nervousness, headaches, insomnia, lethargy or chronic fatigue (including lack of energy and lack of initiative to accomplish tasks), nightmares, heart palpitations, and fear of impending nervous breakdowns. Other documented effects include obsessive ruminations, confused thought processes, an oversensitivity to stimuli, irrational anger, social withdrawal, hallucinations, violent fantasies, emotional flatness, mood swings, chronic depression, feelings of overall deterioration, as well as suicidal ideation. Individuals in prolonged solitary confinement frequently fear that they will lose control of their anger, and thereby be punished further.

126. Plaintiffs suffer from and exhibit these symptoms.

127. While these symptoms are reported by people who have suffered from being placed in solitary confinement for days, months or a few years, they become more pronounced and cause greater pain and suffering when, as with plaintiffs and the class, one is incarcerated in these conditions for many years without any meaningful hope of release. As plaintiff 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.

128. As a result of their prolonged SHU placement, most plaintiffs suffer from extreme and chronic insomnia. For Johnson, "I am so busy suppressing feelings and isolating myself all day, and so much anger builds up in me from the conditions, that I can't sleep at night because the sound of a door opening or closing wakes me and I get anxious about someone coming in on me and I can't fall back to sleep."

129. Similarly, Ashker only gets approximately one to three hours of sleep a night both because his mattress is too short for him, causing him to sleep on bare concrete from his knees down, and because noise from the doors constantly slamming open and shut in the SHU at night wakes him and causes anger and anxiety. The startling loud noises cause flashbacks of the incident in which he was set up and shot unlawfully by a guard which began with the opening and slamming of his cell door.

130. Many of the plaintiffs also suffer from severe concentration and memory problems. For example, reading newspapers and books used to be a large part of Ruiz's daily routine, but the severe concentration and memory problems that he developed in the SHU now prohibit him from reading more than a few sentences at a time, and he forgets the paragraph he just read. Therefore he has essentially given up reading. Similarly, Franklin and Franco have trouble concentrating, and their attention span and memory are deteriorating because of the effects of long-term isolation in the SHU.

131. Plaintiffs experience life in the SHU as a struggle to avoid becoming mentally ill. They have done so thus far by developing responses that deaden feelings and emotions, suppress anger, and develop a psychological and physical state which removes much of what makes normal human beings human – namely, feelings, emotions, daily physical contact, regular social communication, and being able to see another person or living thing.

132. Plaintiffs experience growing and persistent rage at the conditions under which

they are incarcerated in the SHU. They attempt to suppress that rage in order to avoid self-destruction, irresponsible acts of violence, or a mental breakdown. Plaintiffs' attempts at suppression, in combination with their isolation, have led them to increasingly withdraw into themselves and become emotionally numb to the point of feeling "non-human."

133. Troxell, for example, does not initiate conversations, is not motivated to do anything, and feels as if in a stupor much of the time. He often becomes "blank" or out of touch with his feelings.

134. Ashker experiences great feelings of anger, which he tries to control and suppress, but this just deadens his feelings. He feels that he is "silently screaming" 24 hours a day.

135. Reyes copes with his years of SHU confinement by suppressing his anger, but to do so he has had to suppress all feelings to the point where he no longer knows what he is feeling.

136. Esquivel experiences a near-total loss of the capacity to feel. He states that he does not feel anything and this makes him "feel dead." He reports that days go by without him feeling anything, "as if I am walking dead." He watches some television but has no emotional reaction to the dramas he watches.

137. So too, when Redd suppresses his anger, he starts to not feel anything at all and becomes numb. He often "feels like a caged animal."

138. This mounting anger, and attempts to suppress it, is a recurring and predicable human reaction to the extreme situation that is isolated confinement. It is not a propensity unique to plaintiffs.

139. Plaintiffs also experience a range of other psychological symptoms stemming from their confinement in the SHU, including hallucinations, anxiety disorder, hypersensitivity, severe mood swings, violent nightmares and fantasies, and panic attacks. At least one plaintiff hears voices when no one is talking to him. Redd experiences frequent nightmares about

violence, something that he never experienced before being in the SHU.

140. The harm to plaintiffs is compounded by their prolonged and indefinite lack of contact with their families and others. For example, Ashker speaks of never having any face-to-face communication with others; he just hears disembodied voices. Other plaintiffs describe the pain of not being able to hug, share photos with, have phone calls with, or in some cases even see, family members for what they expect will be the rest of their lives.

141. Plaintiffs are convinced that they will be kept in the SHU for the rest of their sentences, or the rest of their lives. This causes them acute despair.

142. These psychological symptoms are precisely those reported in the literature about individuals placed in prolonged solitary confinement. But the extreme duration of plaintiffs' and class members' confinement has meant that the isolative and emotionally numbing effects of solitary confinement have become even more pronounced. Plaintiffs' symptoms are almost identical to those described in psychological literature about the long-term effects of severe trauma and torture.

143. Upon information and belief, numerous prisoners confined in the SHU for long periods of time have developed mental illness, and some have committed or attempted suicide while in the SHU. All prisoners confined in the SHU for prolonged periods have a significant risk of descending into mental illness due to prolonged exposure to the conditions in the SHU.

144. Most plaintiffs recently participated in two hunger strikes (described below), which provide additional evidence of the severe psychological distress, desperation, and hopelessness that they experience from languishing in the SHU for decades. Almost every plaintiff participant reported viewing the possibility of death by starvation as a worthwhile risk in light of their current situation.

145. Numerous plaintiffs also have serious physical ailments and illnesses caused or

exacerbated by their prolonged incarceration under the harsh conditions in the SHU, including eye and vision problems, headaches, diabetes, hypertension, and chronic back problems. These health concerns add to their psychological distress, as they fear that as they age and their health problems worsen, they will be left to die in the SHU without adequate medical care because they have refused to debrief.

D. International Standards Regarding Torture and Cruel, Inhuman or Degrading Treatment

146. In light of the well-documented harms described above, there is an international consensus that the type of prolonged solitary confinement practiced in California at Pelican Bay violates international human rights norms and civilized standards of humanity and human dignity. International human rights organizations and bodies, including the United Nations, have condemned indefinite or prolonged solitary confinement as a human rights abuse that can amount to torture.

147. As just one example, in August 2011, the United Nations Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concluded that the use of solitary confinement is acceptable in only exceptional circumstances, and that its duration must be as short as possible and for a definite term that is properly announced and communicated.

148. Plaintiffs' and class members' prolonged detention meets none of these criteria.

149. The Special Rapporteur concluded that prolonged solitary confinement is prohibited by the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT), and that prolonged solitary confinement constitutes torture or cruel, inhuman or degrading treatment or punishment. The Special Rapporteur has concluded that even 15 days in solitary confinement constitutes a human rights violation.

150. Plaintiffs and class members have been held in solitary confinement for at least

250 times this duration.

151. The Special Rapporteur's view comports with standards laid out by the Istanbul Statement on the Use and Effects of Solitary Confinement, the ICCPR Human Rights Committee, and the United Nations Office of the High Commissioner for Human Rights.

152. The Convention Against Torture (CAT), ratified by the United States in 1994, provides the following definition of torture:

> For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

CAT, art. 1, para. 1. By being forced to either debrief or endure the crushing and inhumane policies and conditions at the Pelican Bay SHU described above, plaintiffs and class members are being subjected to treatment consistent with CAT's definition of torture.

E. Pelican Bay Hunger Strikes

153. Coinciding with this international consensus against solitary confinement, prisoners at Pelican Bay have repeatedly organized hunger strikes to draw public attention to the conditions described above.

154. A hunger strike occurred at Pelican Bay in 2002 and lasted approximately one week. The prisoners called off the strike after a California State Senator promised to look into the strikers' complaints, primarily centered on the debriefing policy. No reforms, however, were implemented.

155. In light of ongoing concerns, a 2007 report commissioned by CDCR examined national standards about the handling of security threat group members and recommended a step-down program through which prisoners in the SHU could be released to the general population

without having to debrief. *See* CDCR, SECURITY THREAT GROUP IDENTIFICATION AND MANAGEMENT (2007). Instead, they would spend a minimum of four years in a program in which their "acceptable custodial adjustment" resulted in stages of increased social contact and privileges. *Id*. at 6. CDCR also failed to implement these recommendations.

156. On February 5, 2010, plaintiffs Ashker and Troxell sent a formal Human Rights Complaint to then-Governor Arnold Schwarzenegger and Defendant Cate, titled "Complaint on Human Rights Violations and Request for Action to End 20+ Years of State Sanctioned Torture to Extract Information From (or Cause Mental Illness to) California Pelican Bay State Prison Security Housing Unit (SHU) Inmates." The complaint outlined the history of Pelican Bay State Prison and set forth the prisoners' factual and legal claims for relief.

157. In May 2011, the complaint was again sent to the Governor and Secretary. This time, it was accompanied by a "Final Notice" that an indefinite hunger strike would begin on July 1, 2011, and it provided five broad demands that CDCR: (1) end group punishment; (2) abandon the debriefing program and modify the active/inactive gang status criteria; (3) end long-term solitary confinement and alleviate conditions in segregation, including providing regular and meaningful social contact, adequate healthcare and access to sunlight; (4) provide adequate food; and (5) expand programming and privileges.

158. In June 2011, the complaint and final notice were sent again to the Governor, the Secretary, and the Warden.

159. On July 1, 2011, the hunger strike began. At its peak, over 6,600 prisoners at 13 California prisons participated. Ashker, Dewberry, Franco, Redd and Troxell were among the 11 principal representatives and negotiators for the prisoners at Pelican Bay State Prison. Most of the other plaintiffs also participated, as did prisoners from every major ethnic, racial, and geographic group. The hunger strike garnered national and international media attention and

support.

160. CDCR staff met with prisoner representatives, and on July 20, 2011, the hunger strike was temporarily suspended after CDCR officials agreed to provide a few basic amenities and to revise the regulations by which a prisoner is assigned to and kept in the SHU.

161. On August 23, 2011, an informational hearing on California's SHUs was held by the California State Assembly Public Safety Committee. Hundreds of family members and supporters attended, and many testified about the conditions their loved ones endure in the SHU and in Administrative Segregation Units. *See* http://solitarywatch.com/2011/08/24/historic-california-assembly-hearing-on-solitary-confinement.

162. On September 26, 2011, the hunger strike resumed because prisoners lost faith that CDCR would implement a revision of the regulations as it had promised. This time nearly 12,000 prisoners participated. The hunger strike ended on October 12, 2011, after CDCR assured the prisoner representatives that it was working on the new regulations and would continue conversations about other improvements sought by the prisoners.

163. On March 9, 2012, CDCR publicly issued a "concept paper" describing its proposed changes to gang validation regulations. That document has been condemned by prisoners and prisoner-rights advocates as making virtually no meaningful changes and, instead, expanding the net of who may be incarcerated in the SHU. No new regulations have been implemented to date.

164. Since the hunger strike, CDCR has issued disciplinary rule violations against participants in that peaceful protest, and particularly serious rule violations against those it alleged were its leaders. Ashker, Dewberry, Franco, Redd, and Troxell received disciplinary write-ups on this ground.

F. Class Allegations

165. Plaintiffs bring this action on their own behalf and, pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all prisoners serving indeterminate SHU sentences at the Pelican Bay SHU on the basis of gang validation, none of whom have been or will be afforded meaningful review of their confinement, in violation of the Due Process Clause of the Fourteenth Amendment.

166. Plaintiffs also bring this action on behalf of a subclass of Pelican Bay prisoners who are now, or will be in the future, imprisoned by defendants at the Pelican Bay SHU under the conditions and pursuant to the policies described herein for longer than 10 continuous years. Such imprisonment constitutes cruel and unusual punishment within the meaning of the Eighth Amendment.

167. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). As of April 1, 2012, there were more than 1,000 prisoners imprisoned at the Pelican Bay SHU. Upon information and belief, all of these prisoners have been denied meaningful notice and review, and thus fit the class definition. Of those prisoners, over 500, or approximately half, have been imprisoned for over 10 years in the Pelican Bay SHU, where they have been subjected to cruel and unusual punishment. These 500 comprise the Eighth Amendment subclass.

168. The class members are identifiable using records maintained in the ordinary course of business by CDCR.

169. All members of the Eighth Amendment subclass are suffering the deprivation of at least one basic human need due to their prolonged confinement in the SHU, including mental and physical health, physical exercise, sleep, nutrition, normal human contact, meaningful activity, and environmental stimulation. In addition, all class members are suffering significant mental and physical harm. While the exact nature of those harms may differ in some respects for each

prisoner, the source of the harm complained of here is the same – namely, defendants' policies and practices in placing the class of prisoners for a lengthy period of time in conditions of confinement shown to cause serious mental and physical harm.

170. In addition, all prisoners placed in the conditions at the Pelican Bay SHU face a common risk of suffering even more serious mental harm caused by their retention in the SHU for such a lengthy period of time.

171. There are questions of law and fact common to the members of the class. Those questions include, but are not limited to:

a) Whether prolonged confinement in the SHU for over 10 years under the conditions and policies maintained by the defendants objectively constitutes cruel and unusual punishment prohibited by the Eighth Amendment.

b) Whether defendants have been deliberately indifferent to the mental and physical suffering incurred by the plaintiff class.

c) Whether incarceration under the conditions and policies imposed by defendants results in constitutionally cognizable harm, or presents a constitutionally unacceptable risk of harm.

d) Whether a legitimate penological reason exists for defendants to incarcerate prisoners for decades in the conditions described herein simply because they are members or associates of a gang, without demonstrating that they are currently engaged or have been recently engaged in some illegal or wrongful gang-related misconduct.

e) Whether the conditions at the Pelican Bay SHU and the policies imposed by defendants on all prisoners housed in the SHU constitute an atypical and significant hardship compared to the ordinary incidents of prison life.

f) Whether SHU confinement extends the duration of incarceration because of a de facto policy of denying parole to SHU prisoners.

g) Whether defendants deny prisoners incarcerated in the SHU meaningful, periodic review of their confinement as required by the Due Process Clause of the Fourteenth Amendment by: (1) failing to provide them with notice of what they can do to get released from the SHU apart from risking their lives and safety and that of their families by debriefing; (2) providing misleading notice that they can become eligible to be released from the SHU by becoming an "inactive" gang member or associate and refraining from any gang activity, when in fact prisoners who are not involved in any current gang activity are still routinely retained in the SHU; and 3) making a predetermination that many prisoners will stay in the SHU until they either die or debrief, thus rendering the periodic reviews meaningless.

h) Whether defendants fail to provide timely meaningful review of prisoners' imprisonment in the SHU by engaging in 180-day reviews that do not substantively review whether the prisoners should be retained in the SHU and therefore are meaningless, and only affording the so-called "inactive" review every six years.

172. Defendants are expected to raise common defenses to these claims, including denying that their policies and practices violate the Constitution.

173. The claims of the plaintiffs are typical of those of the plaintiff class, as their claims arise from the same policies, practices, courses of conduct, and conditions of confinement, and their claims are based on the same legal theories as the class' claims. The cause of the named plaintiffs' injuries is the same as the cause of the injuries suffered by the rest of the class, namely

defendants' policies and practices.

174. Plaintiffs are capable of fairly and adequately protecting the interests of the plaintiff class because plaintiffs do not have any interests antagonistic to the class. Plaintiffs, as well as class members, seek to enjoin the unlawful acts, policies, and practices of the defendants. Indeed, some of the named plaintiffs have already served as de facto representatives of the class by presenting the demands of thousands of Pelican Bay and other California hunger strikers to defendants during the two hunger strikes in the summer and fall of 2011. Finally, plaintiffs are represented by counsel experienced in civil rights litigation, prisoners' rights litigation, and complex class litigation.

175. This action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(1) because the number of class members is numerous and prosecution of separate actions by individuals create a risk of inconsistent and varying adjudications, which in turn would establish incompatible standards of conduct for defendants. Moreover, the prosecution of separate actions by individual members is costly, inefficient, and could result in decisions with respect to individual members of the class that, as a practical matter, would substantially impair the ability of other members to protect their interests.

176. This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because defendants' policies and practices that form the basis of this Complaint are generally applicable to all the class members, thereby making class-wide declaratory and injunctive relief appropriate. Common questions of law and fact clearly predominate within the meaning of Rule 23(b)(2) as set forth above. Class treatment provides a fair and efficient method for the adjudication of the controversy herein described, affecting a large number of persons, joinder of whom is impractical.

G. Supplemental Allegations

177. In October 2012, Defendants established a pilot "Step Down Program" to replace the inactive reviews described in paragraphs 99-110 herein. Two sets of proposed amendments to the program were published in 2014. After more alterations, a revised version of the program was made permanent on October 17, 2014, when Defendants published final regulations amending Title 15.

178. The new regulations are available at http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/NCDR/2014NCR/14-02/Final_Text_of_Adopted_Regulations_STG.pdf, and are incorporated by reference herein.

179. The new regulations alter the process and criteria for validating California prisoners as "Security Threat Group" affiliates, and placing such individuals in the Pelican Bay SHU. *Id.* They also codify a five step program through which a validated prisoner may eventually earn release from solitary confinement. *See* CAL. CODE REGS. tit. 15, § 3000 (2014) (defining "Step Down Program").

180. The Step Down Program continues California's attachment to prolonged solitary confinement. Indeed, Steps One through Four all require SHU confinement. *Id.* (defining "Step Down Program, Step 1 and 2" and "Step Down Program, Step 3 and 4."

181. Each step is designed to be completed in 12 months, although it may be possible to complete Steps One and Two in six months each. *Id* at § 3378.3(b)(1) – (b)(3).

182. Upon successfully completing each step, the prisoner proceeds to Step Five, which involves a minimum of 12-months observation in a general population unit. *Id.* at § 3378.3(b)(5). The "general population" units used for Step Five prisoners are also highly restrictive.

183. Class members placed in Steps One and Two receive few privileges differentiating their situation from that which existed prior to implementation of the new program. They remain at Pelican Bay SHU, under all the punishing conditions described above, with no normal social

interaction, no access to contact visitation, and no regular telephone communication. *Id.* at § 3044(i)(2)(A)-(D).

184. However, prisoners do become eligible for *one* telephone call after six months in Step One if they have met "program expectations" and stayed discipline free. Prisoners receive one additional telephone call if they progress to Step Two. *Id.*

185. As has been the case for Pelican Bay SHU prisoners since the 2011 hunger strike, Prisoners in Step One and Two receive one photograph of themselves to send to their families after one year free of serious disciplinary behavior. *Id.*

186. Step Three involves only incremental differences in conditions. Rather than one telephone call a year (as is allowed in Steps One and Two), a prisoner in Step Three may receive two telephone calls over the year, six months apart. *Id*. Rather than one inmate package (as is available at Steps One and Two), a prisoner in Step Three may receive two inmate packages. *Id.* Rather than one photograph (as is available at Steps One and Two), a prisoner at Step Three may receive two photographs, six months apart. *Id.*

187. Like prisoners in Pelican Bay SHU, prisoners in Step Three SHUs are isolated in their cells an average of 22 to 23 hours a day, without any access to recreation or programming outside a cage, or congregate meals.

188. Step Four, as well, involves only incremental differences in conditions. Rather than two telephone calls a year, dependent on program progress, prisoners at Step Four may receive four fifteen minute calls a year – one every 90 days. *Id.*

189. Like prisoners in the Pelican Bay SHU, prisoners in Step Four SHUs are isolated in their cells for an average of 22 to 23 hours a day. *Id.* For the first six months at Step Four, they have no access to congregate recreation or meals. *Id.* After six months of programming, Step Four prisoners may be allowed yard access that "include[s] interaction with inmates of diverse

affiliations." *Id.* Neither the regulations nor CDCR practices guarantees prisoners in Step Four any minimum amount of time out of their cell, or in group activities.

190. According to CDCR regulations, progression from step to step requires "participation in program activities" including "completion of all required components / curriculum." *Id.* at § 3378.3(a)(1)-(5), 3378.3 (b)(1)-(3).

191. The various programs, components and curriculums required for successful completion of the Step Down Program are not enumerated in the regulations nor listed in any public CDCR policy statements, and many do not yet exist.

192. Prisoners who are found guilty of an STG related Rules Violation Report, (including such disciplinary offenses as possessing photographs or contact information of other STG affiliates), fail to successfully participate in and complete the as-of-yet un-enumerated Step Down Program requirements, or who "fail to maintain acceptable behavior" may be returned to a previous step. *Id.*

193. Starting in 2012, defendants began convening Departmental Review Board (DRB) hearings to individually review every gang-validated prisoner housed in the Pelican Bay SHU and determine where to place them in the Step Down Program.

194. Thus far, approximately one third of gang-validated Pelican Bay SHU prisoners have received a DRB hearing. Around 850 to 900 Pelican Bay SHU prisoners have yet to receive a hearing. Of the 281 DRB hearings convened for Pelican Bay prisoners between 2012 and October 2014, (a) 219 prisoners were placed in Step Five of CDCR's Step Down Program; (b) 13 prisoners were placed in Step Four; (c) 11 prisoners were placed in Step Three; (d) 19 prisoners were placed in Step Two; and (e) 18 prisoners were placed in Step One.

195. Every plaintiff, with the exception of Luis Esquivel, received DRBs between March 2014 and October 2014.

196. As a result of their DRBs, plaintiffs Franco and Ashker have been retained in the Pelican Bay SHU in Steps One and Two, respectively. There they continue to languish in extreme isolation, with no hope of earning release into a general population unit in fewer than three or four years, respectively.

197. Three plaintiffs – Dewberry, Ruiz, and Troxell – have been placed in Step Three and transferred to the SHU at the California Correctional Institute at Tehachapi ("Tehachapi").

198. One plaintiff, Franklin, was placed in Step Four and also transferred to the Tehachapi SHU.

199. Three plaintiffs – Johnson, Redd, and Reyes – were placed in Step Five. Johnson and Reyes have been moved to CSP Sacramento, and Redd has been transferred to SATF-CSP Corcoran.

200. Among other methods of prioritization, defendants are currently prioritizing DRBs for prisoners held in Pelican Bay SHU continuously for over ten years.

201. Given this prioritization, and the DRB results set forth in paragraph 194, upon information and belief, it is likely that there are 20 to 25 former Pelican Bay SHU prisoners who had been incarcerated for ten or more years at the Pelican Bay SHU who have, like Dewberry, Ruiz, Troxell and Franklin, been transferred to Step Three or Four at a CDCR SHU. Many more will be so transferred in the coming months.

202. At Step Three and Step Four, plaintiffs and the supplemental class of prisoners they seek to represent ("Supplemental Class") face isolation that is substantially similar to what they endured at the Pelican Bay SHU for a decade or more.

203. There are a few differences between Pelican Bay SHU and Tehachapi SHU. For example, Tehachapi SHU cells have windows and a solid steel door, as compared to no windows but a perforated metal mesh door at the Pelican Bay SHU. But there is no change in the crushing

continuation of prolonged isolation. Indeed, prisoners at Tehachapi SHU have considerably less access to family visits than at Pelican Bay. Prisoners in Step Three and Four continue to languish alone in their cell, with virtually no normal human contact, and extremely limited opportunity for social interaction.

204. The limited out-of-cell programming and social interaction these plaintiffs and class members receive on Steps Three and Four is wholly inadequate to repair the extreme injuries caused by their prolonged solitary confinement at the Pelican Bay SHU.

205. As at Pelican Bay SHU, Troxell, Dewberry and Ruiz and other similarly situated Step Three prisoners are confined to their cells for an average of 22 to 23 hours a day, without any normal human interaction. Unlike at Pelican Bay, most days of the week Step Three prisoners are confined to their cell for the entire 24 hours.

206. As at Pelican Bay SHU, Troxell, Dewberry and Ruiz and other Step Three prisoners are prohibited from any physical contact with their families or friends and regular telephone access.

207. As at Pelican Bay, they are denied all congregate recreation and meals. While Troxell, Dewberry, and Ruiz are currently receiving one to two hours a week of a 13 week group therapy program in adjoining cages, this limited interaction in not enough to dispel the injuries they have suffered and continue to suffer from their prolonged solitary confinement.

208. Plaintiffs and other Step Three prisoners have not received programming adequate to aid in their eventual transition to general population.

209. The same harsh solitary confinement they endured at Pelican Bay SHU continues in a different prison.

210. Plaintiff Franklin is at Step Four at Tehachapi SHU, where he continues to be held in solitary confinement for an average of 22 to 23 hours a day.

211. In the second half of Step Four Franklin and some other Step Four prisoners have some, albeit limited, access to congregate programming and recreation. According to CDCR regulations, Step Four prisoners may have some access to congregate meals in the future. However, this interaction is so minimal as to fail to overcome the crushing isolation Franklin and other Step Four prisoners experienced at Pelican Bay SHU for over a decade, and continue to experience in a Step Four SHU.

212. Franklin and other Step Four prisoners have received only very limited transitional programming or assistance. This programming has not eased their transition after so many years in near total isolation.

213. Plaintiffs and the Supplemental Class, who languished ten or more years in solitary confinement in the Pelican Bay SHU, and were then transferred to solitary confinement at a Step Three or Step Four SHU, continue to experience the psychological harm alleged in paragraphs 123 – 145, and continue to be deprived of one or more fundamental human needs. The Eighth Amendment violations they alleged in the Second Amended Complaint have not been remedied; they continue unabated in a new location.

214. Plaintiffs Dewberry, Ruiz, Troxell and Franklin therefore continue this action on their own behalf, and pursuant to Rules 23(a), 23(b)(1), and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of a supplemental class of all prisoners who have now, or will have in the future, been imprisoned by defendants at the Pelican Bay SHU for longer than ten continuous years and subsequently transferred from Pelican Bay SHU to another SHU in California to be held in solitary confinement pursuant to Step Three or Step Four of the Step Down Program.

215. Plaintiffs Johnson and Reyes are in Step Five at CSP Sacramento. Redd is in Step Five at SATF-CSP Corcoran. All three plaintiffs are in a "general population" unit, yet Johnson and Reyes are locked down in their cells 22 to 24 hours per day. Some days they have up to two

hours of congregate recreation, other days they have none. They have no congregate meals. Redd has more out of cell time. None of the three has received adequate transitional programming.

216. Despite increased privileges in Step Five, Johnson, Reyes, and Redd continue to suffer the effects of their prolonged solitary confinement in the PB SHU, and face the very real possibility of return to Pelican Bay SHU under the Step Down Program regulations, if they are found to have engaged in any STG behavior (like having a photograph of a friend who is an STG affiliate), or if they fail to complete any of the un-written and ill-defined Step Down requirements.

217. Plaintiffs' prolonged isolation has not yet been remedied. The effects of their prolonged solitary confinement have not been fully eradicated and they face a realistic threat of return to the PB SHU. Thus, plaintiffs Johnson, Reyes, and Redd continue this action on their own behalf, as individual plaintiffs.

H. Supplemental Class Allegations

218. Plaintiffs Dewberry, Ruiz, Troxell and Franklin seek to represent a supplemental Eighth Amendment class of all prisoners who have now, or will have in the future, been imprisoned by defendants at the Pelican Bay SHU for longer than 10 continuous years and then transferred from Pelican Bay SHU to another SHU in California to be held in solitary confinement pursuant to Step Three or Step Four of the Step Down Program.

219. The Supplemental Class is so numerous that joinder of all members is impracticable.

220. All members of the Supplemental Class are suffering the deprivation of at least one basic human need due to their prolonged confinement in the Pelican Bay SHU and another SHU and face a common risk of suffering even more serious mental harm caused by their retention in a CDCR SHU for such a lengthy period of time.

221. There are questions of law and fact common to the members of the Supplemental Class. Those questions include, but are not limited to

a) Whether the prolonged confinement at the Pelican Bay SHU for over ten years and continued isolation at another SHU constitutes cruel and unusual punishment prohibited by the Eighth Amendment.

b) Whether defendants have been deliberately indifferent to the mental and physical suffering of the supplemental class members due to their confinement at the Pelican Bay SHU and the continuation of that confinement at another CDCR SHU.

c) Whether the conditions and restrictions imposed upon supplemental class members at Step Three and Step Four of the Step Down Program reflect legitimate penological concerns.

222. Defendants are expected to raise common defenses to these claims, including denying that their policies and practices violate the Constitution

223. The claims of plaintiffs Dewberry, Ruiz, Troxell and Franklin are typical of those of the Supplemental Class, as their claims arise from the same policies, practices, courses of conduct, and conditions of confinement, and their claims are based on the same legal theories as the class' claims. The cause of the named plaintiffs' injuries is the same as the cause of the injuries suffered by the rest of the class, namely defendants' policies and practices.

224. Plaintiffs Dewberry, Ruiz, Troxell and Franklin are capable of fairly and adequately protecting the interests of the Supplemental Class because plaintiffs do not have any interests antagonistic to the class. Plaintiffs, as well as class members, seek to enjoin the unlawful acts, policies, and practices of the defendants. Finally, plaintiffs are represented by counsel experienced in civil rights litigation, prisoners' rights litigation, and complex class litigation.

225. This action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(1) because the class is numerous and prosecution of separate actions by individuals create a risk of inconsistent and varying adjudications, which in turn would establish incompatible standards of conduct for defendants. Moreover, the prosecution of separate actions by individual members is costly, inefficient, and could result in decisions with respect to individual members of the class that, as a practical matter, would substantially impair the ability of other members to protect their interests.

226. This action is also maintainable as a class action pursuant to Fed. R. Civ. P. 23(b)(2) because defendants' policies and practices that form the basis of this Complaint are generally applicable to all the class members, thereby making class-wide declaratory and injunctive relief appropriate. Common questions of law and fact clearly predominate within the meaning of Rule 23(b)(2) as set forth above. Class treatment provides a fair and efficient method for the adjudication of the controversy herein described, affecting a large number of persons, joinder of whom is impractical.

V. CLAIMS FOR RELIEF

First Cause of Action: Eighth & Fourteenth Amendments (Cruel and Unusual Punishment)

227. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

228. Plaintiffs advance this claim on their own behalf, and on behalf of the Eighth Amendment subclass, against all defendants.

229. By their policies and practices described herein, defendants have deprived and continue to deprive plaintiffs and the class of the minimal civilized measure of life's necessities, and have violated their basic human dignity and their right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution for

each of the reasons set forth below.

A. Deprivation of Basic Human Need

230. First, the cumulative effect of extremely prolonged confinement, along with denial of the opportunity of parole, the deprivation of earned credits, the deprivation of good medical care, and other crushing conditions of confinement at the Pelican Bay SHU, constitute a serious deprivation of at least one basic human need, including but not limited to normal human contact, environmental and sensory stimulation, mental and physical health, physical exercise, sleep, nutrition, and meaningful activity.

B. Imposition of Serious Psychological and Physical Injury, Pain and Suffering

231. Second, extremely prolonged exposure to these deprivations of basic human needs is currently imposing serious psychological pain and suffering and permanent psychological and physical injury on Plaintiffs and the class they represent.

232. In addition to plaintiffs' current psychological and physical pain, the likelihood that plaintiffs and the class will remain in SHU for the foreseeable future subjects plaintiffs and the class they represent to a significant risk of future debilitating and permanent mental illness and physical harm.

C. SHU Confinement Designed to Coerce Plaintiffs to Provide Information

233. Third, Defendants' harsh policies are not legitimately related to security or other penological needs of isolating alleged dangerous prisoners from others, but rather are designed to coerce plaintiffs to debrief and become informants for the State. This policy of holding plaintiffs and class members in prolonged solitary confinement for many years at the Pelican Bay SHU until they debrief or die is, as one Court put it, "tantamount to indefinite administrative segregation for silence – an intolerable practice in modern society." *Griffin*, No. C-98-21038 at 11. It is cruel and unusual punishment for defendants to coerce prisoners to provide information

on other prisoners – if indeed they have any such information – by maintaining them in stifling and punitive conditions that constitute an atypical and significant hardship, unless they so inform.

234. Prisoners who debrief incur a substantial risk of serious harm and retaliation to themselves and to their families. The combination of the crushing conditions in the SHU, the policies designed to coerce prisoners to debrief, the lack of any effective means of obtaining release from the SHU without debriefing, and the substantial risk of serious harm if one does debrief, puts prisoners in an untenable position and constitutes an unconstitutional threat to the safety of prisoners confined in the SHU in violation of the Eighth and Fourteenth Amendments to the Constitution.

D. Disproportionate Punishment

235. Fourth, defendants' policy of indefinite and prolonged SHU placement imposes disproportionate punishment on plaintiffs and class members. Defendants have no legitimate penological interest in retaining prisoners indefinitely in the debilitating conditions of the SHU simply because they are gang members or associates, without recent, serious disciplinary or gang-related infractions. Nor is this policy and practice rationally related to legitimate security needs. Defendants' decades-long infliction of significant psychological and physical harm and the risk of future debilitating harm on these prisoners simply for allegedly being gang members or associates offends civilized society's sense of decency, constitutes an intolerable practice in modern society, and is a disproportionate punishment which violates the Eighth and Fourteenth Amendments to the Constitution.

E. Deprivation of Human Dignity in Violation of Contemporary Standards of Human Decency

236. Finally, Defendants' continuation of Plaintiffs' solitary confinement for many years under the debilitating and extreme conditions existing at the Pelican Bay SHU strips human beings of their basic dignity and humanity in violation of contemporary standards of human

decency and constitutes cruel and unusual treatment prohibited by the Eighth and Fourteenth Amendments to the United States Constitution.

237. That California's policies and practices violate contemporary standards of human dignity and decency is evidenced by the fact that those practices are unusual in comparison to other states' practices with respect to segregated prisoner housing. Virtually no other state uses mere gang association or membership to confine prisoners in the SHU. Other states do not warehouse hundreds of prisoners in the SHU for decades at a time. Plaintiffs and class members are subject to unusually harsh conditions of confinement even in comparison with other supermax prisons, such as windowless cells and a lack of telephone calls to family members and friends. And finally, California's SHU policies and practices are atypical in effectively prolonging incarceration, in that prisoners in the SHU are deprived of good time credit and are rendered functionally ineligible for parole.

238. That California's practices with respect to the plaintiff class violates contemporary standards of human decency and dignity is also evidenced by the international community's condemnation of the practice of prolonged and indefinite solitary confinement under very harsh and stifling conditions such as exist at the Pelican Bay SHU. Such condemnation is reflected in international treaties such as the Convention Against Torture, the International Covenant on Civil and Political Rights, decisions and declarations of international bodies, customary international law, and decisions of regional and national courts such as the European Court of Human Rights and Canadian courts.

F. Defendants' Deliberate Indifference to the Deprivations Suffered by Plaintiffs

239. The policies and practices complained of herein have been and continue to be implemented by defendants and their agents, officials, employees, and all persons acting in concert with them under color of state law, in their official capacity.

240. Defendants have been and are aware of all of the deprivations complained of herein, and have condoned or been deliberately indifferent to such conduct.

241. It should be obvious to defendants and to any reasonable person that the conditions imposed on plaintiffs and class members for many years cause tremendous mental anguish, suffering, and pain to such prisoners. Moreover defendants have repeatedly been made aware, through administrative grievances, hunger strikes, and written complaints that plaintiffs and class members are currently experiencing significant and lasting injury. Defendants have been deliberately indifferent to the plaintiffs' pain and suffering.

242. Indeed, defendants have deliberately and knowingly caused such pain in an effort to force plaintiffs and the class to debrief.

Second Cause of Action: Fourteenth Amendment (Due Process)

243. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

244. Plaintiffs advance this claim on their own behalf, and on behalf of the class, against all defendants.

245. Defendants have deprived plaintiffs and class members of a liberty interest without due process of law by denying them meaningful and timely periodic review of their continued long-term and indefinite detention at the Pelican Bay SHU and meaningful notice of what they must do to earn release, in violation of the Fourteenth Amendment to the United States Constitution.

246. The conditions and the duration of defendants' confinement of plaintiffs and class members at the Pelican Bay SHU constitute an atypical and significant hardship as compared with the ordinary incidents of prison life for three basic reasons: (a) the exceedingly harsh and

isolated conditions in the SHU; (b) the lengthy duration of confinement in the SHU; and (c) the effect on the possibility of parole being granted and the overall length of imprisonment that results from such confinement.

A. Conditions at the Pelican Bay SHU

247. The conditions in the SHU are unduly harsh, and do not generally mirror those conditions imposed upon prisoners in administrative segregation and protective custody in California. These harsh conditions include but are not limited to: isolation in cells that are sealed off from contact with other prisoners, the lack of windows in cells, a prohibition on all social phone calls except in emergencies, no contact visits and very limited visiting hours, no or minimal educational or general programming, exercise facilities that provide very little natural sunlight and have virtually no recreational equipment, food which is inferior to that served to other California prisoners, and denial of standard medical care to prisoners unless they debrief.

B. Duration of Confinement at the Pelican Bay SHU

248. Plaintiffs have been held in the crushing conditions described above for 11 to 22 years. Indeed, about half of the prisoners detained at the Pelican Bay SHU have been there for over 10 years, more than 20 percent have been held there for more than 15 years, and almost 10 percent have been held there for over 20 years. Upon information and belief, this shockingly lengthy confinement is atypical in comparison to the ordinary disciplinary and administrative segregation imposed in California.

C. Effect of SHU Confinement on Overall Length of Imprisonment

249. An unwritten, but uniformly enforced policy imposed by CDCR precludes plaintiffs and class members from being released on parole while they are at the Pelican Bay SHU. In addition, under California law, prisoners housed in the SHU cannot earn good-time credits no matter how impeccable their behavior. The effect of these policies and practices has

been that many prisoners, including some of the named plaintiffs, spend a longer time incarcerated in prison than had they not been housed in the SHU.

D. Lack of Meaningful Process

250. Because indefinite placement in the Pelican Bay SHU constitutes a significant and atypical hardship, plaintiffs and class members are entitled to meaningful notice of how they may alter their behavior to rejoin general population, as well as meaningful and timely periodic reviews to determine whether they still warrant detention in the SHU.

251. Defendants have denied and continue to deny any such notice or meaningful review by: (1) failing to provide prisoners with notice of what they can do to get released from the SHU apart from providing information that they do not have or risking their life and safety and that of their families by debriefing; (2) providing misleading notice that they can become eligible to be released from the SHU by becoming an "inactive" gang member or associate and refraining from engaging in any gang activities, when in fact prisoners who are not involved in any current gang activity are still routinely retained in the SHU; (3) making a predetermination that many prisoners will stay in the SHU until they either die or debrief, thus rendering the periodic reviews substantively and procedurally meaningless; and (4) making the length of time between reviews far too long to comport with the constitutional due-process standard.

252. Defendants are also violating plaintiffs' due process rights by retaining plaintiffs and the class in conditions that amount to an atypical and significant hardship without legitimate penological interest, as this detention occurs without reliable evidence that plaintiffs and the class are committing any acts on behalf of a prison gang and are thus active gang members.

Third (Supplemental) Cause of Action: Eighth & Fourteenth Amendments (Cruel and Unusual Punishment)

253. Plaintiffs Dewberry, Ruiz, Troxell, and Franklin incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

254. Plaintiffs Dewberry, Ruiz, Troxell, and Franklin advance this claim on their own behalf, and on behalf of the Supplemental Class, against all defendants.

255. By their policies and practices described herein, defendants have deprived and continue to deprive plaintiffs and the Supplemental Class of the minimal civilized measure of life's necessities, and have violated their basic human dignity and their right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution for each of the reasons set forth below.

G. Deprivation of Basic Human Need

256. First, the cumulative effect of extremely prolonged confinement, along with denial of the opportunity of parole, the deprivation of earned credits, the deprivation of good medical care, and other crushing conditions of confinement at the Pelican Bay SHU, continued at another CDCR SHU, constitute a serious deprivation of at least one basic human need, including but not limited to normal human contact, environmental and sensory stimulation, mental and physical health, physical exercise, sleep, nutrition, and meaningful activity.

H. Imposition of Serious Psychological and Physical Injury, Pain and Suffering

257. Second, extremely prolonged exposure to these deprivations of basic human needs is currently imposing serious psychological pain and suffering and permanent psychological and physical injury on plaintiffs and the class they represent.

258. In addition to plaintiffs' current psychological and physical pain, the likelihood that plaintiffs and the class will remain in SHU for the foreseeable future subjects plaintiffs and the class they represent to a significant risk of future debilitating and permanent mental illness

and physical harm.

I. Disproportionate Punishment

259. Third, defendants' policy of indefinite and prolonged SHU placement imposes disproportionate punishment on plaintiffs and class members. Defendants have no legitimate penological interest in retaining prisoners indefinitely in the debilitating conditions of the SHU without serious disciplinary infractions. Nor is this policy and practice rationally related to legitimate security needs. Defendants' decades-long infliction of significant psychological and physical harm and the risk of future debilitating harm on these prisoners simply for allegedly being gang members or associates and/or for minor, non-violent disciplinary infractions, offends civilized society's sense of decency, constitutes an intolerable practice in modern society, and is a disproportionate punishment which violates the Eighth and Fourteenth Amendments to the Constitution.

J. Deprivation of Human Dignity in Violation of Contemporary Standards of Human Decency

260. Finally, defendants' continuation of plaintiffs' solitary confinement for many years under the debilitating and extreme conditions existing at the Pelican Bay SHU and other CDCR SHUs strips human beings of their basic dignity and humanity in violation of contemporary standards of human decency and constitutes cruel and unusual treatment prohibited by the Eighth and Fourteenth Amendments to the United States Constitution.

261. That California's policies and practices violate contemporary standards of human dignity and decency is evidenced by the fact that those practices are unusual in comparison to other states' practices with respect to segregated prisoner housing. Virtually no other state uses mere gang association or membership or minor disciplinary infractions to confine prisoners in the SHU. Other states do not warehouse hundreds of prisoners in the SHU for decades at a time. And finally, California's SHU policies and practices are atypical in effectively prolonging

incarceration, in that prisoners in the SHU are deprived of good time credit and are rendered functionally ineligible for parole.

262. That California's practices with respect to the plaintiff class violates contemporary standards of human decency and dignity is also evidenced by the international community's condemnation of the practice of prolonged and indefinite solitary confinement under very harsh and stifling conditions such as exist at the Pelican Bay SHU and other CDCR SHUs. Such condemnation is reflected in international treaties such as the Convention Against Torture, the International Covenant on Civil and Political Rights, decisions and declarations of international bodies, customary international law, and decisions of regional and national courts such as the European Court of Human Rights and Canadian courts.

K. Defendants' Deliberate Indifference to the Deprivations Suffered by Plaintiffs

263. The policies and practices complained of herein have been and continue to be implemented by defendants and their agents, officials, employees, and all persons acting in concert with them under color of state law, in their official capacity.

264. Defendants have been and are aware of all of the deprivations complained of herein, and have condoned or been deliberately indifferent to such conduct.

265. It should be obvious to defendants and to any reasonable person that the conditions imposed on plaintiffs and class members for many years cause tremendous mental anguish, suffering, and pain to such prisoners. Moreover defendants have repeatedly been made aware, through administrative grievances, hunger strikes, and written complaints that plaintiffs and class members are currently experiencing significant and lasting injury. Defendants have been deliberately indifferent to the plaintiffs' pain and suffering.

266. Indeed, defendants have deliberately and knowingly caused such pain in an effort to force plaintiffs and the class to debrief.

PRAYER FOR RELIEF

Plaintiffs and the classes they represent have no adequate remedy at law to redress the wrongs suffered as set forth in this Complaint. Plaintiffs have suffered and will continue to suffer irreparable injury as a result of the unlawful acts, omissions, policies, and practices of defendants, as alleged herein, unless plaintiffs and the classes they represent are granted the relief they request. The need for relief is critical because the rights at issue are paramount under the United States Constitution.

WHEREFORE, the named plaintiffs and the classes they represent request that this Court grant them the following relief:

a. Declare that this suit is maintainable as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1) and (2);

b. Declare that defendants' policies and practices of confining prisoners in the Pelican Bay SHU violate the Eighth and Fourteenth Amendments to the United States Constitution;

c. Issue injunctive relief ordering defendants to present a plan to the Court within 30 days of the issuance of the Court's order providing for:

    i. the release from the SHU of those prisoners who have spent more than 10 years in the SHU, and placement of these prisoners in either a) a general population unit, or b) in a modified general population unit, in which the prisoners are segregated from the general prison population in a high security setting but have similar privileges as do prisoners in general population such as access to small group congregate recreation, contact visits, phone calls, programming, and significant out of cell time, until such time as prisoners can safely transition into a non-segregated general population unit.

ii. alleviation of the conditions of confinement of prisoners in the SHU so that prisoners no longer are incarcerated under conditions of isolation, sensory deprivation, lack of social and physical human contact, and environmental deprivation;

iii. meaningful review of the continued need for confinement in a SHU of all prisoners currently housed in the SHU within six months of the date of the Court's order; and

iv. meaningful review of SHU confinement for prisoners housed in the SHU in the future;

d. Award plaintiffs the costs of this suit and reasonable attorneys' fees and litigation expenses pursuant to 42 U.S.C. § 1988, and other applicable law;

e. Retain jurisdiction of this case until defendants have fully complied with the orders of this Court; and

f. Award such other and further relief as the Court deems just and proper.

Dated: March 11, 2015

Respectfully submitted,

/s/ Jules Lobel

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App #4

IMPORTANT NOTICE

PROPOSED SETTLEMENT OF CLASS ACTION REGARDING GANG MANAGEMENT AND SEGREGATED HOUSING

Ashker, et al. v. Governor, et al., No. 09-5796 (N.D. Cal.)

A proposed settlement has been reached in a federal civil-rights class-action lawsuit regarding the California Department of Corrections and Rehabilitation's (CDCR) policies and practices related to gang management and its use of segregated housing, including the Security Housing Unit (SHU) at Pelican Bay State Prison. *Ashker, et al. v. Governor, et al.* is a class-action lawsuit claiming that CDCR's gang validation policies did not provide sufficient due process, and that confinement in Pelican Bay's SHU for ten or more years violated the United States Constitution.

The Court has preliminarily approved a settlement. This notice explains the proposed settlement, how you can read a copy of it, and how you can object to the settlement if you believe that it is unfair and should not be approved by the Court. You can read the full settlement in a document entitled "Settlement Agreement," which is in the law library. Key settlement terms include:

1. CDCR shall no longer place prisoners into any SHU, Administrative Segregation, or the Step Down Program solely because of gang validation status. Instead, all SHU or Step Down Program placements of validated CDCR prisoners shall be based solely on a conviction of a SHU-eligible offense following a disciplinary due process hearing.

2. CDCR will no longer impose indeterminate SHU sentences, with a limited exception called Administrative SHU, imposed after a prisoner has served a determinate SHU term when the Departmental Review Board decides that overwhelming evidence shows that a prisoner presents an immediate threat and cannot be assigned to less-restrictive housing. CDCR will provide enhanced out-of-cell recreation and programming for these prisoners of 20 hours per week, and its placement decision is subject to review by Magistrate Judge Nandor J. Vadas. CDCR expects that a small number of prisoners will be retained in Administrative SHU.

3. CDCR will not house any inmate involuntarily in Pelican Bay's SHU for more than five continuous years.

4. Within one year of preliminary approval, CDCR will review the cases of all currently validated prisoners serving indeterminate SHU terms under the old validation regulations, or who are currently assigned to Steps 1 through 4 of the Step Down Program, or administratively retained in SHU. If an inmate has not been found guilty of a SHU-eligible rule violation with a proven Security Threat Group (STG) nexus within the last 24 months, he shall be released from the SHU and transferred to a General Population facility consistent with his case factors. Those who have been incarcerated in

a SHU for more than ten years will generally be released from the SHU, even if they have committed a recent SHU-eligible offense and allowed to serve the remainder of the SHU term and their Step Down Program time in the new Restrictive Custody General Population unit.

5. The Step Down Program will be shortened from four to two years, and prisoners will be transferred from SHU after two years in the Step Down Program unless they commit a new SHU-eligible offense.

6. CDCR will create a new unit called the Restrictive Custody General Population unit (RCGP). The RCGP is a Level IV 180-design facility commensurate with similarly designed high security general population facilities. The RCGP will provide prisoners with increased opportunities for programming and social interaction such as contact visits, small group programming, and yard/out-of-cell time commensurate with Level IV general population in small group yards. Prisoners subject to transfer to the RCGP are those who: (i) refuse to complete required Step Down Program components; (ii) are found guilty of repeated STG violations while in the Step Down Program; (iii) face a substantial threat to their personal safety if released to the general population; or (iv) have been housed in a SHU for 10 or more continuous years and have committed a SHU-eligible offense with a proven STG nexus within the preceding 24 months.

7. CDCR will train staff about the Agreement's requirements, including training to ensure that confidential information used against prisoners is accurate.

8. Plaintiffs' representatives and their counsel, with the assistance of Magistrate Judge Vadas, will have an active, ongoing role in overseeing implementation and enforcement of the Settlement Agreement, including the opportunity to raise before Magistrate Judge Vadas alleged violations of the Agreement or the Constitution.

9. The Court will retain jurisdiction over this case for two years. Plaintiffs may extend the Court's jurisdiction by showing that current and ongoing systemic violations of the Eighth Amendment or the Due Process Clause of the Fourteenth Amendment exist; otherwise, the Court's jurisdiction and the parties' Agreement automatically ends.

10. Plaintiffs will file a motion for attorneys' fees following entry of a final order approving the Agreement.

The prisoners are represented by the Center for Constitutional Rights and several other attorneys. If you have any questions about the settlement, you can contact Plaintiffs' counsel: Anne Cappella, Esq., Pelican Bay Class Action Correspondence, Weil, Gotshal & Manges, 201 Redwood Shores Pkwy, Redwood Shores, CA 94065. Prison officials are represented by the California Attorney General's Office, Deputy Attorney General Adriano Hrvatin, 455 Golden Gate Ave., Suite 11000, San Francisco, CA 94102.

~~The Court will hold a hearing on the settlement's fairness on _____, 2015 at _____ p.m., at the United States Courthouse in Oakland, California, Courtroom 2. Please note~~

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

TODD ASHKER, et al., Plaintiffs, **v.** **GOVERNOR OF THE STATE OF CALIFORNIA, et al.,** Defendants.	C 09-05796 CW **SETTLEMENT AGREEMENT**

The parties enter into this Settlement Agreement (the Agreement) to address and settle Plaintiffs' claims for declaratory and injunctive relief regarding the policies and practices of the California Department of Corrections and Rehabilitation (CDCR) for placing, housing, managing, and retaining inmates validated as prison gang members and associates, as well as the conditions of confinement in the Security Housing Unit (SHU) at Pelican Bay State Prison and other CDCR SHU facilities.

I. BACKGROUND AND PROCEDURAL POSTURE

1. Plaintiffs in this matter are inmates Todd Ashker, Ronnie Dewberry, Luis Esquivel, George Franco, Jeffrey Franklin, Richard Johnson, Paul Redd, Gabriel Reyes, George Ruiz, and Danny Troxell (Plaintiffs).

2. Defendants are the Governor of the State of California, CDCR's Secretary, Pelican Bay's Warden, and the Chief of CDCR's Office of Correctional Safety, each of whom is sued in his official capacity (Defendants).

3. This action was originally filed on December 9, 2009, as an individual pro se civil-rights suit by Plaintiffs Todd Ashker and Danny Troxell. A First Amended Complaint was filed on May 21, 2010. On September 10, 2012, Plaintiffs, having retained counsel, filed a Second Amended Complaint, which added class allegations and eight additional Plaintiffs. The Second Amended Complaint alleges that CDCR's gang management regulations and practices violate the Due Process Clause of the Fourteenth Amendment and that the conditions of confinement in Pelican Bay's SHU constitute cruel and unusual punishment in violation of the Eighth Amendment. The Second Amended Complaint seeks declaratory and injunctive relief to address the alleged constitutional violations.

4. Defendants filed a motion to dismiss the Second Amended Complaint, which the Court denied on April 9, 2013. (ECF No. 191.) On April 30, 2013, Defendants answered the Second Amended Complaint. (ECF No. 194.)

5. Plaintiffs filed a motion for class certification, which the Court granted in part and denied in part on June 2, 2014. (ECF No. 317.) Some Plaintiffs were appointed to represent two classes of inmates certified under Rules 23(b)(1) and (b)(2) of the Federal Rules to include: (i) all inmates assigned to an indeterminate term at Pelican Bay's SHU on the basis of gang validation, under CDCR's policies and procedures, as of September 10, 2012; and (ii) all inmates who are now, or will be in the future, assigned to Pelican Bay's SHU for ten or more continuous years. (*See*, *e.g.*, ECF No. 317 at 11, 14, 21; ECF No. 387 at 13-17.)

6. On October 18, 2012, CDCR implemented its Security Threat Group (STG) program as a pilot program which modified the criteria for placement into the SHU and initiated a Step Down Program designed to afford validated inmates a way to transfer from the SHU to a general population setting within three or four years. On October 17, 2014, and upon expiration of the pilot, CDCR's STG regulations were approved and adopted in Title 15.

7. Plaintiffs filed a motion for leave to file a Supplemental Complaint, which the Court granted on March 9, 2015. (ECF No. 387.) On March 11, 2015, Plaintiffs filed their Supplemental Complaint. (ECF No. 388.) The Supplemental Complaint alleges an additional Eighth Amendment claim on behalf of a putative class of gang-validated inmates transferred to another CDCR SHU facility under CDCR's Step Down Program, after having been housed in Pelican Bay's SHU for ten or more years. Plaintiffs Dewberry, Franklin, Ruiz, and Troxell are the putative class representatives of this supplemental Eighth Amendment claim. Plaintiffs transferred from Pelican Bay's SHU also pursue relief on an individual basis. Plaintiffs contend that the alleged constitutional violation that inmates suffered because of their confinement in Pelican Bay's SHU for ten or more continuous years does not end notwithstanding their transfer from Pelican Bay to another facility under the Step Down Program. The Court stayed the litigation of this additional Eighth Amendment claim until resolution of the Eighth Amendment claim alleged in Plaintiffs' Second Amended Complaint. (ECF Nos. 387, 393.)

8. Apart from a 45-day litigation stay in early 2014 to discuss settlement, the parties engaged in extensive discovery for over three years. Fact discovery closed on November 28, 2014. The parties responded to hundreds of written discovery requests, produced hundreds of thousands of pages of documents, and completed approximately thirty depositions of current and former prison officials and inmates. Expert discovery closed on May 29, 2015. Plaintiffs disclosed ten experts, Defendants disclosed seven, and the parties collectively completed a dozen expert depositions. The parties produced over 45,000 pages of documents in response to subpoenas directed to their respective experts.

9. The parties have conducted extensive negotiations over several months to resolve Plaintiffs' demands that CDCR revise its gang management and SHU policies and practices. Those negotiations have been undertaken at arm's length and in good faith between Plaintiffs' counsel and high-ranking state officials and their counsel. The parties have reached agreement on statewide policies and practices to settle Plaintiffs' claims for declaratory and injunctive relief, and, for settlement purposes only, agree that this Agreement meets the requirements of 18 U.S.C. § 3626(a)(1).

10. The parties agree that the putative supplemental class asserted in Plaintiffs' Supplemental Complaint—namely, all prisoners who have now, or will have in the future, been imprisoned in Pelican Bay's SHU for longer than 10 continuous years and then transferred from Pelican Bay's SHU to another SHU in California in connection with CDCR's Step Down Program—may be certified as a class for settlement purposes under Rule 23(b)(2) of the Federal Rules of Civil Procedure. The parties agree that, after notice and an opportunity to object is provided to members of the two classes previously certified by the Court as well as members of the supplemental settlement class, the Court may enter an order finding this Agreement to be fair and reasonable to all class members.

11. All parties and their counsel recognize that, in the absence of an approved settlement, they face lengthy and substantial litigation, including trial and potential appellate proceedings, all of which will consume time and resources and present the parties with ongoing litigation risks and uncertainties. The parties wish to avoid these risks, uncertainties, and consumption of time and resources through a settlement under the terms and conditions of this Agreement.

ACCORDINGLY, without any admission or concession by Defendants of any current and ongoing violations of a federal right, all claims for declaratory and injunctive relief asserted in the Second Amended Complaint and Supplemental Complaint shall be finally and fully settled and released, subject to the terms and conditions of this Agreement, which the parties enter into freely, voluntarily, knowingly, and with the advice of counsel.

II. JURISDICTION AND VENUE

12. The Court has jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1343. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiffs' claims occurred in the Northern District of California.

III. TERMS AND CONDITIONS

A. NEW CRITERIA FOR PLACEMENT IN SHU, ADMINISTRATIVE SEGREGATION, OR THE STEP DOWN PROGRAM.

13. CDCR shall not place inmates into a SHU, Administrative Segregation, or Step Down Program solely on the basis of their validation status.

14. CDCR shall amend the SHU Assessment Chart located in Title 15 of the California Code of Regulations, section 3341.5, subsection (c)(9). The SHU Assessment Chart shall be amended as set forth in Attachment B.

15. Under the revised Step Down Program policy, STG-I inmates, as defined in Title 15 of the California Code of Regulations, section 3000, will be transferred into the Step Down Program if they have been found guilty in a disciplinary hearing of committing, with a proven nexus to an STG, a SHU-eligible offense, as listed in the SHU Assessment Chart.

16. STG-II inmates, as defined in Title 15 of the California Code of Regulations, section 3000, will be transferred into the Step Down Program if they have been found guilty in a disciplinary hearing of committing, with a proven nexus to a STG, two SHU-eligible offenses within a four year period, as listed in the SHU Assessment Chart.

17. Any STG-I or STG-II inmate shall be transferred into the Step Down Program as described in Paragraphs 15 and 16, upon the completion of the determinate, disciplinary SHU term imposed by the Institution Classification Committee for that offense. All time spent in the SHU following completion of the determinate SHU term prior to actual transfer into the Step Down Program shall be credited as part of the inmate's Step Down Program time. The Institution Classification Committee shall continue to have the authority to impose, commute, or suspend any part of the determinate SHU term, as provided in regulations.

B. MODIFICATIONS TO THE STEP DOWN PROGRAM.

18. CDCR shall modify its Step Down Program so that it is based on the individual accountability of each inmate for proven STG behavior, and not solely on the inmate's validation status or level of STG affiliation.

19. The revised Step Down Program shall be 24 months in duration and consist of 4 program steps that take place within a SHU. Except as provided in Paragraphs 22 and 23, each step will be 6 months in duration. Step 5 of the existing Step Down Program shall be eliminated. Upon successful completion of the Step Down Program, the inmate shall be transferred to a General Population prison commensurate with his specific case factors and in accordance with existing regulations.

20. Each Step within the Step Down Program shall provide incremental increases in privileges and freedom of movement commensurate with program placement as set forth in Attachment A.

21. The Step Down Program incorporates rehabilitative programming consisting of both required and elective components. Within 90 days of the Court's preliminary approval of this Agreement, CDCR will afford Plaintiffs' counsel and four inmate representatives identified by Plaintiffs an opportunity to meet with CDCR officials to discuss the nature, content and substance of the mandatory and elective programming. It is CDCR's intent to provide programming with clear requirements and outcomes to provide an alternative path away from STG behavior and promote critical life skills. CDCR shall convene a panel of experts, of CDCR's choosing, to evaluate the Step Down Program curriculum and to make recommendations in keeping with this intent. CDCR will provide Plaintiffs' counsel with a copy of the panel of experts' recommendations. Plaintiffs' counsel and the four inmate representatives will have the opportunity to meet with Defendants regarding recommended components; however, CDCR retains its discretion to implement the mandatory programming of its choosing for this population.

22. Participation in the Step Down Program is mandatory for any inmate placed into the program. An inmate's refusal to participate in or complete the required programming in the Step Down Program shall not result in regression or retention in the program, but shall be addressed as follows: At the 180-day review performed by the Institution Classification Committee at the end of Step 3, if the Committee determines that the inmate refused to participate in or has not completed all components of the Step Down Program, the Committee shall retain the non-participating inmate in Step 3 for an additional 6 months. If, at the end of that additional 6-month period, the inmate continues to refuse or does not complete all Step Down Program components, the Institution Classification Committee shall remove the inmate from the program and transfer him to a Restricted Custody General Population (RCGP) facility. That inmate shall be assigned to the Step 3 privilege group, however the Institution Classification Committee may later reassign the inmate to the Step 4 privilege group based on his progression through the commensurate Step Down Program components remaining to be completed. If the inmate elects to complete the Step

Down Program requirements, he shall do so within the RCGP and shall not be returned to the SHU to complete the program, unless he is found guilty in a disciplinary hearing of a new SHU-eligible offense. If the inmate completes the Step Down Program components and, while in the RCGP, is not found guilty of either one serious STG-related or two administrative STG-related rules violations as listed in the STG Disciplinary Matrix, during the 180-day review period, he will then be released to the General Population. (*See* Attachment C.) The Institution Classification Committee shall conduct reviews no less than every 180-days to determine whether the inmate has completed the Step Down Program and is eligible for release to the General Population. Non-participation or lack of completion that is due to the unavailability or inaccessibility of programming components necessary for Step Down Program compliance shall not impede an inmate's progress to the next step and shall not be considered as a factor in an inmate's regression or retention in any step. CDCR shall provide an opportunity for each inmate to complete Step Down Program programming for each step within 6 months. All time spent awaiting transfer to another step shall be credited to the completion of the next step.

23. The Step Down Program is intended to be a rehabilitative, gang behavior diversion program for STG affiliated inmates. As such, inmates within the program are expected to remain disciplinary-free. Misconduct shall be addressed in accordance with existing disciplinary rules and regulations. The commission of repeated STG violations while in the Step Down Program shall not result in regression or retention in the program, but shall be addressed as follows: If an inmate has committed either 3 serious STG rules violations or 5 administrative STG rules violations as listed in the STG Disciplinary Matrix while in the Step Down Program, he shall be transferred to the RCGP facility. The Institution Classification Committee shall review the inmate's disciplinary history and make this determination during the 180-day reviews performed at the end of Steps 3 and 4. If, during the Step 3 review, the inmate is guilty of committing 3 serious STG rules violations or 5 administrative STG rules violations while in the Step Down Program, the Committee shall retain the inmate in Step 3 for an additional 6 months. At the end of that additional 6-month period, the Committee shall remove the inmate from the program and transfer him to the RCGP. An inmate transferred to the RCGP pursuant to this Paragraph shall be

assigned to the Step 3 privilege group. The inmate can appeal the decision to transfer him to the RCGP to the Departmental Review Board, which would review the inmate's disciplinary history and determine whether removal from the program and transfer to the RCGP is appropriate; a hearing before the Board is not required for a determination of such an appeal. Consistent with Paragraph 22, if the inmate completes the Step Down Program components and, while housed in the RCGP, is not found guilty of either one serious STG-related or two administrative STG-related rules violations as listed in the STG Disciplinary Matrix during the RCGP 180-day review period, he will then be released to the General Population. The Institution Classification Committee shall conduct reviews no less than every 180-days to determine whether the inmate has completed the Step Down Program and is eligible for release to the General Population.

24. If an inmate is found guilty of committing a SHU-eligible offense while assigned to the Step Down Program or RCGP, he shall complete the intervening determinate, disciplinary SHU term as imposed by the Institution Classification Committee for that offense before returning to the Step Down Program or RCGP. If such SHU-eligible offense has a proven nexus to an STG as described in Paragraphs 15 and 16, upon completion of the determinate term imposed by the Committee, the inmate shall be returned to the Step Down Program at Step 1 or another step as determined by the Committee.

C. REVIEW OF STG-VALIDATED INMATES CURRENTLY IN SHU.

25. Within twelve months of the Court's preliminary approval of this Agreement, CDCR shall review the cases of all validated inmates who are currently in the SHU as a result of either an indeterminate term that was previously assessed under prior regulations or who are currently assigned to Steps 1 through 4, or who were assigned to Step 5 but are retained within the SHU. These reviews shall be conducted by Institution Classification Committees and prioritized by the inmates' length of continuous housing within a SHU so that those of the longest duration are reviewed first. If an inmate has not been found guilty of a SHU-eligible rule violation with a proven STG nexus within the last 24 months, he shall be released from the SHU and transferred to a General Population level IV 180-design facility, or other general population institution consistent with his case factors. An inmate who has committed a SHU-eligible rule violation

with an STG nexus within the last 24 months shall be placed into the Step Down Program based on the date of the most recent STG-related rule violation, as follows: Step 1: violation occurred within the last 6 months; Step 2: violation occurred within the last 6-12 months; Step 3: violation occurred within the last 12-18 months; Step 4: violation occurred within the last 18-24 months. Inmates currently assigned to Step 5 in the General Population shall remain in the General Population and shall no longer be considered current Step Down Program participants.

26. During the review described in Paragraph 25, any inmate housed in a SHU program for 10 or more continuous years who has committed a SHU-eligible offense with a nexus to an STG within the preceding 2 years, will be transferred into the RCGP for completion of Step Down Program requirements. Inmates subject to this provision who are currently serving a disciplinary SHU term will be allowed to complete the SHU term in the RCGP prior to beginning the Step Down Program, unless the Institution Classification Committee determines by a preponderance of the evidence that to do so would pose an unreasonable risk to individual or institutional safety and security. This function of the RCGP shall be implemented as a pilot program. If the inmate completes the Step Down program requirements, he will be transferred to a General Population prison setting in accordance with his case factors. One hundred twenty days after completion of the reviews described in Paragraph 25, CDCR will produce a report on the functioning of this pilot program and shall inform plaintiffs' counsel whether it intends to make permanent, modify, or terminate this RCGP function. Within 30 days of receiving the notice from CDCR, the parties shall meet and confer regarding any proposed changes to the RCGP pilot program. If CDCR decides to terminate the RCGP pilot program, inmates housed in the RCGP pursuant to this Paragraph will, in the absence of pending disciplinary charges of a new SHU-eligible offense requiring segregation, either remain in the RCGP until they transition into General Population or will be transferred to non-segregated housing.

27. For those STG inmates considered for release to the General Population either following Step Down Program completion or pursuant to the review described in Paragraph 25, and against whom there is a substantial threat to their personal safety should they be released to the General Population as determined by a preponderance of the evidence, the Departmental

Review Board retains the discretion, in accordance with existing authority, to house that inmate in alternate appropriate non SHU, non-Administrative segregation housing commensurate with his case factors, such as a Sensitive Needs Yard or RCGP, until such time that the inmate can safely be housed in a general population environment. The Departmental Review Board shall articulate the substantial justification for the need for alternative placement. If the Institution Classification Committee refers a case to the Departmental Review Board pursuant to this Paragraph, the Departmental Review Board shall prioritize these case reviews and expeditiously conduct the hearing and render its placement decision. Thereafter, during their regular 180-day reviews, the Institution Classification Committee shall verify whether there continues to be a demonstrated threat to the inmate's personal safety; and if such threat no longer exists the case shall be referred to the Departmental Review Board for review of housing placement as soon as practicable. For Departmental Review Board hearings held pursuant to this Paragraph, a staff assistant shall be provided to help inmates prepare and present their case due to the fact that the complexity of these types of cases makes assistance necessary. If Plaintiffs' counsel contends that CDCR has abused its discretion in making housing decisions under this Paragraph, that concern may be raised with Magistrate Judge Nandor J. Vadas in accordance with the dispute resolution and enforcement procedures set forth in Paragraphs 52 and 53 below to determine whether CDCR has articulated substantial justification by a preponderance of the evidence for alternative placement.

D. THE RESTRICTIVE CUSTODY GENERAL POPULATION HOUSING UNIT.

28. The RCGP is a Level IV 180-design facility commensurate with similarly designed high security general population facilities. Inmates shall be transferred to the RCGP if they have refused to complete Step Down Program components as described in Paragraph 22; if they have been found guilty of repeated STG violations while in the Step Down Program as described in Paragraph 23; if identified safety concerns prevent their release to General Population and the RCGP is deemed to be appropriate as described in Paragraph 27; or if they meet the eligibility for placement in the RCGP under the pilot program described in Paragraph 26. Programming for those inmates transferred to or retained in the RCGP will be designed to provide increased opportunities for positive social interaction with other prisoners and staff, including but not

limited to: Alternative Education Program and/or small group education opportunities; yard/out of cell time commensurate with Level IV GP in small group yards, in groups as determined by the Institution Classification Committee; access to religious services; support services job assignments for eligible inmates as they become available; and leisure time activity groups. Contact visiting shall be limited to immediate family and visitors who have been pre-approved in accordance with existing Title 15 visiting regulations, and shall occur on the schedule set forth in Attachment A. Other privileges provided in the RCGP are also set forth in Attachment A. CDCR policy is that inmate movement, programming, and contact visits within the RCGP shall not require the application of mechanical restraints; any application of restraints shall be in accordance with existing Title 15, section 3268.2. CDCR will provide Plaintiffs' counsel with the opportunity to tour the proposed RCGP facility and to meet and confer with Defendants regarding the functioning and conditions of the RCGP, prior to its implementation.

E. ADMINISTRATIVE SHU STATUS.

29. An inmate may be retained in the SHU and placed on Administrative SHU status after serving a determinate SHU sentence if it has been determined by the Departmental Review Board that the inmate's case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others, and substantial justification has been articulated of the need for SHU placement. Inmates may also be placed on Administrative SHU status if they have a substantial disciplinary history consisting of no less than three SHU terms within the past five years and the Departmental Review Board articulates a substantial justification for the need for continued SHU placement due to the inmate's ongoing threat to safety and security of the institution and/or others, and that the inmate cannot be housed in a less restrictive environment. Inmates currently serving an Administrative SHU term may continue to be retained in the SHU based on the criteria set forth in this Paragraph. The Institution Classification Committee shall conduct classification reviews every 180 days in accordance with Title 15, section 3341.5. The Departmental Review Board shall annually assess the inmate's case factors and disciplinary behavior and shall articulate the basis for the need to continue to retain the inmate on Administrative SHU status. The inmate's privilege group shall

be set in a range similar to S-1 to S-5, which can be modified by the Institution Classification Committee during the inmate's classification review, if deemed appropriate. CDCR shall provide inmates placed on Administrative SHU status with enhanced out of cell recreation and programming of a combined total of 20 hours per week. It is CDCR's expectation that a small number of inmates will be retained in the SHU pursuant to this Paragraph. If Plaintiffs' counsel contends that CDCR has abused its discretion in making a housing decision under this Paragraph, that concern may be raised with Magistrate Judge Vadas in accordance with the dispute resolution and enforcement procedures set forth in Paragraphs 52 and 53 below to determine whether the Defendants' decision meets the evidentiary standards and criteria set forth in this Paragraph.

30. The initial decision to place an inmate on Administrative SHU status, as described in Paragraph 29, can only be made by the Departmental Review Board.

31. At each 180-day review, institutional staff shall identify all efforts made to work with each inmate on Administrative SHU status to move the inmate to a less restrictive environment as soon as case factors would allow.

F. HOUSING ASSIGNMENT TO PELICAN BAY'S SHU.

32. Notwithstanding Paragraph 29 above, CDCR shall not house any inmate within the SHU at Pelican Bay State Prison for more than 5 continuous years. Inmates housed in the Pelican Bay SHU requiring continued SHU placement beyond this limitation will be transferred from the Pelican Bay SHU to another SHU facility within CDCR, or to a 180-design facility at Pelican Bay. Inmates who have previously been housed in the Pelican Bay SHU for 5 continuous years can only be returned to the Pelican Bay SHU if that return has been specifically approved by the Departmental Review Board and at least 5 years have passed since the inmate was last transferred out of the Pelican Bay SHU.

33. Notwithstanding Paragraph 32 above, inmates may request in writing that they be housed in the Pelican Bay SHU in lieu of another SHU location, but such a request must be reviewed and approved by the Departmental Review Board. An inmate's request to remain housed in the Pelican Bay SHU shall be reviewed and documented by the Institution Classification Committee at each scheduled Committee hearing.

G. CONFIDENTIAL INFORMATION.

34. CDCR shall adhere to the standards for the consideration of and reliance on confidential information set forth in Title 15 of the California Code of Regulations, section 3321. To ensure that the confidential information used against inmates is accurate, CDCR shall develop and implement appropriate training for impacted staff members who make administrative determinations based on confidential information as part of their assigned duties, consistent with the general training provisions set forth in Paragraph 35. The training shall include procedures and requirements regarding the disclosure of information to inmates.

H. TRAINING.

35. CDCR shall adequately train all staff responsible for implementing and managing the policies and procedures set forth in this Agreement. Plaintiffs' counsel shall be provided an advanced copy of all such training materials with sufficient time to meet and confer with Defendants, prior to the implementation of the trainings. Plaintiffs are entitled to have an attorney attend training sessions on these modifications, no greater than 6 times per year.

I. NEW REGULATIONS.

36. CDCR shall promulgate regulations, policies and procedures governing the STG management and Step Down Program as set forth in this agreement. The pilot program described in Paragraph 26 will not be required to be promulgated in regulations, unless the pilot program is made permanent.

J. DATA AND DOCUMENTS.

37. For a period of twenty-four months following the Court's preliminary approval of this Agreement, CDCR will provide Plaintiffs' counsel data and documentation to be agreed upon, under the protective order in place in this matter, to monitor Defendants' compliance with the terms of this Agreement. No later than thirty days after the Court's preliminary approval of this Agreement, and again twelve months after the Court's preliminary approval, the parties shall meet and confer to determine the details of the data and documentation to be produced. That agreement and any disputes regarding data and document production, including modification of the agreement, shall be submitted to Magistrate Judge Vadas in accordance with the dispute

resolution and enforcement procedures set forth in Paragraphs 52 and 53 below. In addition, Magistrate Judge Vadas can request and order the production of any documentation or data he deems material to compliance with this Agreement or the resolution of any dispute contemplated by the terms of the Agreement. The parties agree, nevertheless, that data and documentation will include, but not be limited to, the following:

a. The number of validated STG I and STG II inmates as of the first of the month following preliminary approval. Subsequently, the number of all new STG I and STG II validations shall be provided on a quarterly basis for a period of nine months following the Court's preliminary approval of this Agreement, and shall be provided on a monthly basis thereafter until the termination of this case;

b. A list of the names of all inmates serving a SHU term for a SHU-eligible offense with a nexus to an STG as of the first of the month following preliminary approval. Subsequently, the names of all new inmates serving a SHU term for a SHU-eligible offense with a nexus to an STG shall be provided on a monthly basis;

c. A list of the names of all inmates reviewed pursuant to Paragraph 25 and the outcome of those placement reviews on a quarterly basis;

d. A list of the names of all inmates in each of the following programs: Step Down Program, RCGP, and placed on Administrative SHU status. This document shall be provided on a quarterly basis;

e. The total number of Rules Violation Reports issued to inmates in each of the following programs: RCGP, Step Down Program, and Administrative SHU status. This data shall be provided on a semi-annual basis;

f. The total number of Rules Violation Reports issued for assaults and batteries on staff and other inmates, riots, weapon possession, attempted murder, and murder committed by inmates in each of the following programs: RCGP, Step Down Program, and Administrative SHU status. This data shall be provided on a semi-annual basis;

g. A list of the names of inmates who have not been progressed to the next successive step in the Step Down Program during their 180-day Institution Classification

Committee review, and a list of the names of inmates who have been retained in the RCGP during their 180-day Institution Classification Committee review; these lists shall be provided on a semi-annual basis;

h. The following documents shall be produced on a quarterly basis regarding all inmates found guilty of a SHU-eligible offense with a nexus to an STG: (i) STG Unit Classification Committee validation determinations; and (ii) the decision of the hearing officer to find the inmate guilty of a SHU-eligible offense. Defendants also shall produce on a quarterly basis a randomly chosen representative sample of the documents relied upon for the validation determinations and RVR decisions for these inmates, including redacted confidential information. The number of representative samples shall be sufficient to demonstrate CDCR's practice and procedure, but shall be reasonable in amount such that compliance with this request is not overly burdensome;

i. Institution Classification Committee chronos documenting the decision to place an inmate into the RCGP, on a quarterly basis;

j. All Departmental Review Board classification chronos in which the decision is made to house an inmate in alternate placement, pursuant to Paragraph 27, due to a substantial threat to their personal safety. Should Plaintiffs' counsel dispute the determination made, or require more information to determine whether a dispute may exist, Plaintiffs may request and will receive a redacted copy of the documents relied upon by the Departmental Review Board;

k. All Departmental Review Board classification chronos in which an inmate is placed on Administrative SHU status, pursuant to Paragraph 29; all non-confidential documents relied upon for that placement determination; and, on a quarterly basis, a random representative sample of redacted confidential documents relied upon;

l. All Institution Classification Committee chronos reflecting the committee's decision to not progress an inmate to the next successive step in the Step Down Program, or to retain an inmate in the RCGP; this document shall be provided on a quarterly basis;

m. For all inmates placed on Administrative SHU status, all 180-day Institution Classification Committee review chronos, and all annual Departmental Review Board review classification chronos;

n. A random, representative sample of Rules Violation Reports relied upon to deny an inmate progression through the Step Down Program, including redacted confidential sections, on a quarterly basis.

38. Any and all confidential information provided shall be produced in redacted form where necessary, be designated as "Attorneys' Eyes Only" as defined in the protective order in this case, and shall be subject to the protective order. CDCR shall provide Magistrate Judge Vadas, upon request, unredacted copies for *in camera* review in order to resolve any disputes in accordance with Paragraphs 52 and 53, below.

39. Representative samples, as discussed in this Paragraph, shall be of sufficient size to allow a determination regarding CDCR's pattern and practice, but shall be reasonable in amount such that compliance with the request is not overly burdensome. Any disputes regarding data and document production shall be submitted to Magistrate Judge Vadas in accordance with the dispute resolution and enforcement procedures set forth in Paragraphs 52 and 53 below.

K. ATTORNEY-CLIENT COMMUNICATIONS.

40. Plaintiffs' counsel shall be entitled to meet and speak with all inmates covered by this agreement. Institutional staff shall facilitate Plaintiffs' counsel's requests for reasonable access to these individuals without undue delay, whether by telephone, mail, or personal visit. Defendants shall facilitate Plaintiffs' counsel having telephone conference calls with Plaintiff class representatives as a group annually.

IV. TERMINATION

41. Plaintiffs shall have thirty days after the end of the twenty-four-month period to seek an extension, not to exceed twelve months, of this Agreement and the Court's jurisdiction over this matter by presenting evidence that demonstrates by a preponderance of the evidence that current and ongoing systemic violations of the Eighth Amendment or the Due Process Clause of the Fourteenth Amendment of the United States Constitution exist as alleged in Plaintiffs' Second

Amended Complaint or Supplemental Complaint or as a result of CDCR's reforms to its Step Down Program or the SHU policies contemplated by this Agreement. Defendants shall have an opportunity to respond to any such evidence presented to the Court and to present their own evidence. If Plaintiffs do not file a motion to extend court jurisdiction within the period noted above, or if the evidence presented fails to satisfy their burden of proof, this Agreement and the Court's jurisdiction over this matter shall automatically terminate, and the case shall be dismissed.

42. Brief or isolated constitutional violations shall not constitute an ongoing, systemic policy and practice that violate the Constitution, and shall not constitute grounds for continuing this Agreement or the Court's jurisdiction over this matter.

43. If the Court's jurisdiction and this Agreement are extended by Plaintiffs' motion, they shall both automatically terminate at the end of the extension period not to exceed 12 months and the case shall be dismissed unless Plaintiffs make the same showing described in Paragraph 41. Any successive extensions under this Paragraph shall not exceed twelve months in duration, and any extension shall automatically terminate if plaintiffs fail to make the requisite showing described in Paragraph 41.

44. To the extent that this Agreement and the Court's jurisdiction over this matter are extended beyond the initial twenty four-month period, CDCR's obligations and production of any agreed upon data and documentation to Plaintiffs' counsel will be extended for the same period. The role and duties of Magistrate Judge Vadas, as described in Paragraphs 48-50 and 52-53, shall be coextensive with that of the Agreement, and in no event shall those roles and duties extend beyond the termination of the Court's jurisdiction.

45. At any time after the initial twenty-four month period, Defendants and CDCR may seek termination of this case and the Court's jurisdiction under the Prison Litigation Reform Act, 18 U.S.C. § 3626(b)(1)(A).

46. If there is a motion contesting Defendants' compliance with the terms of this Agreement pending at the time the case is otherwise to be terminated, the Court will retain limited jurisdiction to resolve the motion.

V. RELEASE

47. It is the intention of the parties in signing this Agreement that upon completion of its terms it shall be effective as a full and final release from all claims for relief asserted in the Second Amended Complaint and the Supplemental Complaint. Nothing in this Agreement will affect the rights of Plaintiffs regarding legal claims that arise after the dismissal of this case.

VI. DISPUTE RESOLUTION AND ENFORCEMENT

A. MAGISTRATE JUDGE NANDOR J. VADAS.

48. To assist the parties in ensuring compliance with this Agreement, the parties agree that Magistrate Judge Vadas will assume the role and duties as set forth in Paragraphs 48-50 and 52-53. These duties shall commence upon the Court's preliminary approval of this Agreement and shall continue in accordance with Paragraph 43.

49. Following the Court's preliminary approval of this Agreement, Plaintiffs' counsel, CDCR officials, Defendants' counsel, and Magistrate Judge Vadas shall meet on a monthly basis or at other mutually agreed-upon dates to discuss questions and concerns regarding CDCR's compliance with the Agreement. The parties and Magistrate Judge Vadas may determine that such meetings can occur on a less frequent basis, but no less than every three months. No later than one week prior to the meetings contemplated by this Paragraph, Plaintiffs' counsel shall circulate an agenda to Defendants and Magistrate Judge Vadas setting forth the items to be discussed. The meetings described in this Paragraph may be accomplished telephonically or by other means. Defendants shall meet with Plaintiffs' counsel and the four inmate representatives semiannually to discuss progress with implementation of this Agreement. No later than one week prior to these meetings, Defendants shall submit to Magistrate Judge Vadas and Plaintiffs' counsel a compliance report setting forth progress toward implementation.

50. Magistrate Judge Vadas may conduct institutional visits and meet with any inmate subject to or affected by the terms of this Agreement. Magistrate Judge Vadas may submit to the parties and the Court a written compliance and progress review assessing the matters under his purview according to this Agreement after 18 months, irrespective of any other motions or matters under Magistrate Judge Vadas's review. Among the matters addressed shall be a review

of the conditions and programming in the RCGP and whether they comport with the design and purpose of that unit as provided in this Agreement.

B. COMPLIANCE.

51. The parties shall agree on a mechanism by which CDCR shall promptly respond to concerns raised by Plaintiffs' counsel regarding individual class members.

52. If Plaintiffs contend that current and ongoing violations of the Eighth Amendment or the Due Process Clause of the Fourteenth Amendment of the United States Constitution exist on a systemic basis as alleged in the Second Amended Complaint or Supplemental Complaint or as a result of CDCR's reforms to its Step Down Program and SHU policies contemplated by this Agreement, Plaintiffs shall provide Defendants with a brief written description of the basis for that contention and may request that the parties meet and confer to resolve the issue. Defendants shall respond to Plaintiffs' contentions no later than 30 days after receipt of Plaintiffs' written description of the issue. If the parties are unable to resolve the issue informally, Plaintiffs may seek enforcement of the Agreement by seeking an order upon noticed motion before Magistrate Judge Vadas. Plaintiffs must demonstrate by a preponderance of the evidence that CDCR is in material breach of its obligations under this Agreement. Defendants shall have an opportunity to respond to any such evidence presented to Magistrate Judge Vadas and to present their own evidence in opposition to any enforcement motion. If Plaintiffs have demonstrated by a preponderance of the evidence a material noncompliance with these terms, then for the purposes of Plaintiffs' enforcement motion only, the parties agree that Plaintiffs will have also demonstrated a violation of a federal right and that Magistrate Judge Vadas may order enforcement consistent with the requirements of 18 U.S.C. § 3626(a)(1)(A). An order issued by Magistrate Judge Vadas under this Paragraph is subject to review under 28 U.S.C. § 636 (b)(1)(B).

53. If Plaintiffs contend that CDCR has not substantially complied with any other terms of this Agreement that do not amount to current, ongoing, systemic violations as alleged in the Second Amended Complaint or Supplemental Complaint of the Eighth Amendment or the Due Process Clause of the Fourteenth Amendment of the United States Constitution, they may seek enforcement by order of this Court. Plaintiffs shall provide Defendants with a brief written

description of the basis for that contention and may request that the parties meet and confer to resolve the issue. Defendants shall respond to Plaintiffs' contentions no later than 30 days after they receive Plaintiffs' written description of the issue. If the parties are unable to resolve the issue informally, Plaintiffs may seek enforcement of the Agreement by seeking an order upon noticed motion before Magistrate Judge Vadas. It shall be Plaintiffs' burden in making such a motion to demonstrate by a preponderance of the evidence that Defendants have not substantially complied with the terms of the Agreement. Defendants shall have an opportunity to respond to any such evidence presented to the Court and to present their own evidence in opposition to Plaintiffs' motion. If Plaintiffs satisfy their burden of proof by demonstrating substantial noncompliance with the Agreement's terms by a preponderance of the evidence, then Magistrate Judge Vadas may issue an order to achieve substantial compliance with the Agreement's terms. An order issued by Magistrate Judge Vadas under this Paragraph is subject to review under 28 U.S.C. § 636(b)(1)(B).

C. RETALIATION.

54. Defendants shall not retaliate against any class representative, class member, or other prisoner due to their participation in any aspect of this litigation or the Agreement. Allegations of retaliation may be made to Magistrate Judge Vadas in accordance with the procedures set forth in Paragraph 53.

VII. ATTORNEYS' FEES AND COSTS

55. Defendants agree to pay Plaintiffs' counsel attorneys' fees and costs for work reasonably performed on this case, including monitoring CDCR's compliance with this Agreement and enforcing this Agreement, and for work to recover fees and costs, at the hourly rate set forth under the Prison Litigation Reform Act, 42 U.S.C. § 1997e(d). Plaintiffs preserve all arguments for attorneys' fees and costs without limitation. The Prison Litigation Reform Act applies to all applications for attorneys' fees in this case. Plaintiffs shall have sixty days from the entry of a final order approving this Agreement to file their motion for attorneys' fees and costs for work reasonably performed before that date. Subject to the provisions under 42 U.S.C. §§ 1988 and 1997e, Plaintiffs' motion may request an award that includes their expert fees. On a

quarterly basis, Plaintiffs may file motions for reasonable attorneys' fees accrued in monitoring and enforcing CDCR's compliance with this Agreement.

56. The notice to the class members shall explain that Plaintiffs will file a motion for attorneys' fees following entry of a final order approving the Agreement.

VIII. JOINT MOTION AND STAY OF PROCEEDINGS

57. The parties will jointly request that the Court preliminarily approve this Agreement, conditionally certify a settlement class, require that notice of the proposed settlement be sent to the classes, provide for an objection period, and schedule a fairness hearing. Prior to or concurrent with the joint motion for preliminary approval, the parties will jointly request that the Court stay all other proceedings in this case pending resolution of the fairness hearing. Following the close of the objection period, the parties will jointly request that the Court enter a final order approving this Agreement, retaining jurisdiction to enforce it, and continuing the stay of the case pending the completion of the Agreement's terms.

58. If this Agreement is not approved by the Court, the parties shall be restored to their respective positions in the action as of the date on which this Agreement was executed by the parties, the terms and provisions of this Agreement shall have no force and effect, and shall not be used in this action or in any proceeding for any purpose, and the litigation of this action would resume as if there had been no settlement.

IX. CONSTRUCTION OF AGREEMENT

59. This Agreement reflects the entire agreement of the parties and supersedes any prior written or oral agreements between them. Any modification to the terms of this Agreement must be in writing and signed by a CDCR representative and attorneys for Plaintiffs and Defendants to be effective or enforceable.

60. This Agreement shall be governed and construed according to California law.

61. The parties waive any common-law or statutory rule of construction that ambiguity should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning.

62. This Agreement shall be valid and binding on, and faithfully kept, observed, performed, and be enforceable by and against the parties, their successors and assigns.

63. The obligations governed by this Agreement are severable. If for any reason a part of this Agreement is determined to be invalid or unenforceable, the presumption will be that such a determination shall not affect the remainder, subject to a party's right to raise the severability issue in accordance with Paragraph 53.

64. The waiver by one party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

PLAINTIFFS TODD ASHKER, RONNIE DEWBERRY, LUIS ESQUIVEL, GEORGE FRANCO, RICHARD JOHNSON, PAUL REDD, GABRIEL REYES, GEORGE RUIZ, AND DANNY TROXELL

Dated: August 31, 2015

JULES LOBEL
CENTER FOR CONSTITUTIONAL RIGHTS
Attorneys for Plaintiffs

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Dated: August 31, 2015

JEFFREY BEARD, SECRETARY

APPROVED AS TO FORM:

Dated: August 31, 2015

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ATTACHMENT A

Inmate Privilege Groups

Step 1

- S-1 Privileges:
  - No family visit
  - Non-contact visiting
  - 25% maximum monthly canteen draw
  - Emergency telephone calls
  - One (1) phone call every 90 days if programming and no serious RVRs in that time period
  - Yard access in accordance with Title 15, section 3343(h), which shall be a minimum of 10 hours per week
  - One (1) personal package not to exceed 30 pounds, exclusive of special purchases
  - One (1) photograph
  - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU

Step 2

- S-2 Privileges:
  - No family visit
  - Non-contact visiting
  - 35% maximum monthly canteen draw
  - Emergency telephone calls
  - One (1) phone call every 60 days if programming and no serious RVRs in that time period
  - Yard access in accordance with Title 15, section 3343(h), which shall be a minimum of 10 hours per week
  - Receipt of (1) personal package not to exceed 30 pounds, exclusive of special purchases
  - Two (2) photographs if programming and no RVRs upon completion of Step 2
  - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU

Step 3

- S-3 Privileges:
  - No family visit
  - Non-contact visiting
  - 45% maximum monthly canteen draw
  - Emergency telephone calls
  - One (1) phone call every 45 days if programming and no serious RVRs in that time period
  - Yard access in accordance with Title 15, section 3343(h), which shall be a minimum of 10 hours per week
  - Receipt of (1) personal package not to exceed 30 pounds, exclusive of special purchases
  - Three (3) photographs if programming and no RVRs upon completion of Step 3
  - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU
  - Small Group Programs at least two hours per week
  - All inmates shall have access to GED, high school, and college level educational programs, with adequate academic support.

Step 4

- S-4 Privileges:
  - No family visit
  - Non-contact visiting
  - 50% maximum monthly canteen draw
  - Emergency telephone calls
  - One (1) phone call every 30 days if programming and no serious RVRs in that time period
  - Small group yard in groups as determined by ICC, which shall be a minimum of 10 hours per week
  - Receipt of (1) personal package not to exceed 30 pounds and one additional 15 pound food package, exclusive of special purchases
  - Four (4) photographs every 90 days if programming and no RVRs
  - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU
  - Small Group Programs at least four hours per week
  - All inmates shall have access to GED, high school, and college level educational programs, with adequate academic support.

- S-5 Privileges: (Inmates assigned Administrative SHU status)
  - No family visit
  - Visiting during non-working/training hours, limited by available space within facility non-contact visiting rooms
  - 75% maximum monthly canteen draw
  - Emergency telephone calls
  - One (1) phone call per month
  - Yard access in accordance with Title 15, section 3343(h)
  - Four (4) personal packages per year not to exceed 30 pounds each. May also receive special purchases, as provided in subsections 3190(j) and (k).
  - One (1) photograph upon completion of each 180 day ICC review
  - Electrical appliances in accordance with Authorized Personal Property Schedule for SHU/PSU
  - The local Inter---Disciplinary Treatment Team may further restrict or allow additional authorized personal property, in accordance with the institution's Psychiatric Services Unit operation procedure, on a case by case basis above that allowed by the inmate's assigned privilege group.

Restricted Custody General Population (RCGP)

The RCGP is a Level IV 180-design facility commensurate with similarly designed high security general population facilities. Inmates may be transferred to the RCGP if:

- they have refused to participate in or refused to complete SDP Program components
- they have been found guilty of repeated STG violations while in the SDP
- identified safety concerns prevent their release to General Population and the RCGP is deemed to be appropriate
- they have been housed in a SHU for 10 or more continuous years and must complete the SDP because they have committed a SHU-eligible, STG-related violation within the preceding two years

- Available to all RCGP inmates:
  - Education – Alternative Education Program and/or small group education
  - Yard – commensurate with Level 4 GP, but with a minimum of 10 hours per week.
  - Access to religious services
  - Support services job assignments
  - Access to GED, high school, and college level educational programs, with adequate academic support.
  - Leisure Time Activity Groups
  - Small group yards as determined by ICC
  - Electrical appliances commensurate with the Authorized Personal Property Schedule for Level IV GP
  - Privileges:
    - Inmates transferred to RCGP due to refusal to participate in SDP and/or repeated STG RVRs: S-3 privilege group, unless modified by ICC based on program participation or continued STG RVRs
    - Inmates transferred into to the RCGP pilot program after 10+ continuous years in a SHU: commensurate with Level IV GP
    - Inmates transferred into to the RCGP for safety needs: commensurate with Level IV GP

- RCGP Visiting:
  - No Family Visits
  - Non-contact visits that are no less than those afforded to inmates in the Pelican Bay SHU
  - Contact visiting for all inmates in the RCGP shall be limited to immediate family and visitors pre-approved in accordance with existing Title 15 visiting regulations. Contact visits shall be of the same duration as allowed for General Population Level IV inmates, and occur on the following schedule:

    - Inmates transferred to RCGP due to refusal to participate in SDP and/or repeated STG RVRs
      - 1 contact visit every 120 days if programming and no repeated RVRs. ICC shall have the discretion to increase this schedule to 1 contact visit every 90 days, on a case by case basis.

    - Inmates transferred into to the RCGP pilot program after 10+ continuous years in a SHU:
      - 1 contact visit every 60 days unless the inmate incurs a disciplinary violation for which the loss of privileges imposed restricts visiting.

  - All other RCGP Inmates:
    - 1 contact visit every 60 days unless the inmate incurs a disciplinary violation for which the loss of privileges imposed restricts visiting

Small Group programming available in Steps 3, 4, and in the RCGP may include: anger management, parenting skills, understanding criminal thinking, drug & alcohol abuse counseling. These programs shall be provided based on the needs of the inmate.

ATTACHMENT B

SHU Term Assessment Chart

	TYPICAL TERM (Mos)		
OFFENSE	*Low*	*Expected*	*High*
(1) Homicide:			
(A) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-inmate.	36	48	60
B)Murder, attempted murder, solicitation of murder, or voluntary manslaughter of an inmate.	24	36	48
(2) Violence Against Persons:			
A)Battery on a non-inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury; or physical force causing serious injury.	18	30	42
(B) Assault on a non-inmate with a weapon, capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.	09	15	21
(C) Rape, sodomy, or oral copulation on a non-inmate, or any attempt.	18	30	42
(D) Battery on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury or physical force causing serious injury.	12	18	24
(E)Assault on an inmate with a weapon capable of causing serious or mortal injury; caustic substance or other fluids capable of causing serious or mortal injury.	6	9	12
(F) Rape, sodomy, or oral copulation on an inmate accomplished against the inmate's will, or any Attempt.	12	18	24
(G) Battery on a non-inmate without serious injury.	6	12	18
(H) Assault on a non-inmate	3	6	9
(I) Battery on an inmate without serious injury. (2 or more offenses within a 12 month period or 1 with direct STG nexus).	2	4	6
(3) Threat to Kill or Assault Persons:			
(A) To take or use a non-inmate as a hostage.	18	30	42
(B) Threat of violence to non-inmate.	2	5	8
(4) Possession of a Weapon:			
(A) Possession of a firearm or possession or	18	30	42
manufacturing of an explosive device.			

(B) Possession or manufacture/manufacturing of a Weapon including materials altered from their original manufactured state or purpose and which can be made into a weapon–other than a firearm or explosive device and which has been manufactured or modified so as to have the obvious intent or capability of inflicting serious injury, and which is under the immediate or identifiable control of the inmate.	4	8	12
(5) Distribution of Controlled Substances as defined in section 3000.	6	12	18
(6) Escape:			
(A)With force or Attempted Escape with force against a person.	12	24	36
(B) Or attempted Escape from any departmental prison or institution other than a camp, MSF or reentry facility.	6	12	18
(7) Disturbance, Riot, or Strike:			
(A) Leading a disturbance, riot or strike.	6	12	18
(B) Active participation in a disturbance, riot or Strike (2 or more offenses within a 12 month period or1 with direct STG nexus).	3	6	9
(C) Inciting conditions likely to threaten institution security	3	6	9
(8) Harassment: a willful course of conduct that terrorizes a specific person, group, or entity either directly or indirectly .	6	12	18
(9) STG Disruptive Behavior:			
(A) Acting in a leadership role by directing or controlling STG behavior that is a behavior listed in this SHU Assessment Chart.	6	12	18
(B) Recruiting inmates to become an STG affiliate, or to take part in STG activities that is a behavior listed in this SHU Assessment Chart.	3	6	9
(C) Acting in a leadership role to generate, move, orfacilitate assets or proceeds as a result of, or in support of, prohibited STG business dealings.	3	6	9
(10) Theft or destruction of State property by any means where the loss or potential loss exceeds $10,000 or threatens the safety of others.	2	8	12
(11) Extortion or Bribery:			
(A) Extortion or bribery of a non-inmate.	4	8	12

(B) Extortion or bribery of an inmate.	2	3	4
(12) Sexual Misconduct:			
(A) Indecent Exposure.	3	6	9
(B)Sexual Disorderly Conduct (two or more offenses within a twelve month period).	3	6	9
(13) Except as otherwise specified in this section or identified as an assault, proven attempts to commit any of the above listed offenses shall receive one-half (1/2) of the term specified for that offense.			
(14) Any inmate who conspires to commit or solicits another person to commit any of the offenses above shall receive the term specified for that offense.			

ATTACHMENT C

STG DISCIPLINARY MATRIX

STG DISCIPLINARY MATRIX		
Behavior/Activity With Nexus to STG	Administrative or Serious	SDP Placement Options (Section 3378.4(b)
Section 1: a) Murder, attempted murder, solicitation of murder, or voluntary manslaughter of a non-offender or offender; b) Assault or Battery capable of causing serious injury; Assault or battery with a deadly weapon or caustic substance capable of causing serious injury, solicitation for offense; c) Taking a hostage; d) Possession of a firearm, explosive device, or weapon which has been manufactured or modified so as to have the obvious intent or capability of inflicting traumatic injury, and which is under the immediate or identifiable control of the offender; e) Escape or attempted escape with force or violence f) Rape, sodomy, or oral copulation against the victim's will.	Serious	3378.4(b)(2) 3378.4(b)(3) 3378.4(b)(6) 3378.4(b)(7)
Section 2: a) Introduction, Trafficking, or Distribution of any Controlled Substance (as defined in Section 3000); b) Arson involving damage to a structure or causing serious bodily injury. c) Possession of flammable, explosive, or combustible material with intent to burn any structure or property; d) Extortion or Threat by Means of Force or Violence, including requiring payment for protection/insurance or intimidating any person on behalf of the STG; e) Threatening to kill or cause serious bodily injury to a public official, their immediate family, their staff, or their staffs' immediate family; f) Any other felony involving violence or injury to a victim and not specifically identified on this chart.	Serious	3378.4(b)(2) 3378.4(b)(3) 3378.4(b)(5) 3378.4(b)(6) 3378.4(b)(7)
Section 3: a) Battery on a Peace Officer or non-offender not involving use of a weapon; b) Assault on a Peace Officer or non-offender by any means likely or not likely to cause great bodily injury; c) Assault or battery on a prisoner with no serious injury; d) Destruction of state property valued in excess of $400 dollars during a riot or disturbance;	Serious	3378.4(b)(2) 3378.4(b)(3) 3378.4(b)(5) 3378.4(b)(6) 3378.4(b)(7)

e) Theft, embezzlement, arson, destruction, or damage to another's personal property, state funds, or state property valued in excess of $400; f) Any felony not involving violence or the use of a weapon not listed in this schedule with a direct nexus to STG Behavior.		
Section 4: a) Bribery of a non-offender; b) Leading/Inciting a disturbance, riot, or strike; c) Active participation in, or attempting to cause conditions likely to threaten institution security; d) Willfully resisting, delaying, or obstructing any peace officer in the performance of duties; e) Possession of Cell Phone or Components; f) Acting in a Leadership Role displaying behavior to organize and control other offenders within the STG;	Serious	3378.4(b)(2) 3378.4(b)(3) 3378.4(b)(4) 3378.4(b)(5) 3378.4(b)(7)
Section 5: a) Gambling; b) Tagging, or otherwise defacing state property valued at less than $950, with symbols or slogans intended to promote affiliation with a STG.	Serious	3378.4(b)(2) 3378.4(b)(4) 3378.4(b)(7)
Section 6: a) STG Related Tattoos and/or Body Markings (new since most recent arrival in CDCR and not previously documented); b) Recording/documentation of conversations, the content of which evidences active STG behavior; c) Harassment of another person, group or entity either directly or indirectly through the use of the mail, telephone, or other means; d) Communications between offenders/others, the content of which evidences active STG behavior; e) Leading STG Roll Call; f) Directing Cadence for STG Group Exercise; g) In Personal Possession of STG related Written Material including Membership or Enemy List, Roll Call Lists, Constitution, Organizational Structures, Codes, Training Material, etc.; h) In Personal Possession of mail, notes, greeting cards or other communication (electronic or non-electronic) which include coded or explicit messages evidencing active STG behavior;	Serious	3378.4(b)(2) 3378.4(b)(4) 3378.4(b)(7)
Section 7: Except as otherwise specified in this section, proven attempts to commit or an offender who conspires to commit any of the above listed offenses shall receive the term range specified for that offense.	Serious	Identified in Section 3378.4(b)
Section 8: a) Active Participation in STG Roll Call; b) Participating in STG Group Exercise;	Administrative	3378.4(b)(1) 3378.4(b)(4) 3378.4(b)(7)

c) Using hand signs, gestures, handshakes, slogans, distinctive clothing, graffiti which specifically relate to an STG; d) Wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblems, badges, certified symbols, signs, or other STG items which promote affiliation in a STG; e) In Possession of artwork, mail, notes, greeting cards, letters or other STG items clearly depicting certified STG symbols; f) In Possession of photographs that depict STG association. Must include STG connotations such as insignia, certified symbols, or other validated STG affiliates. g) In possession of contact information (i.e., addresses, telephone numbers, etc.) for validated STG affiliates or individuals who have been confirmed to have assisted the STG in illicit behavior.		

San Francisco BayView National Black Newspaper

California prisoner representatives: All people have the right to humane treatment with dignity

October 2, 2014

Main reps mark the first anniversary of suspension of the 2013 Hunger Strike and the second anniversary of the Agreement to End Hostilities

by Todd Ashker, Arturo Castellanos and George Franco

We expect to hear soon from Sitawa Nantambu Jamaa, the fourth of the main reps in the Pelican Bay SHU Short Corridor Collective Human Rights Movement. His remarks will be posted online as soon as they arrive and will be printed next month. He has been transferred to Tehachapi: C-35671, 4B-7C-209, P.O. Box 1906, Tehachapi CA 93581.

Greetings of solidarity and respect to all oppressed people and those committed to fighting for the fundamental right of all people to humane treatment – to dignity, respect and equality.

We are the prisoner class representatives of what's become known as the Pelican Bay State Prison SHU Short Corridor Collective Human Rights Movement. Last month we marked the first anniversary of the end of our historic 60-day Hunger Strike. Oct. 10 we mark the two-year anniversary of the Agreement to End Hostilities. This is an update on where things stand with our struggle to achieve major reforms beneficial to prisoners, outside loved ones and society in general.

Our Agreement to End Hostilities would enhance prison safety more

Families of prisoners came from Southern California to join families and supporters in Northern California at the Mosswood Park Amphitheater in Oakland on Sept. 6 to celebrate the first anniversary of the suspension of the largest hunger strike in prison history. Here at the Bay View, we recall our relief not to have to report deaths from starvation or the torture of force feeding on top of the daily grind of the torture that is solitary confinement. We are also mindful that our work is not over until all are free! – Photo: Lucas Guilkey

than any long-term isolation policies and yet it still has not been circulated and posted throughout the prison system. We urge that everyone read this document again and that you pass it around, study it, live it. (It is reprinted below.) The California Department of Corrections has yet to post this historic document. It needs to.

In 2010 -2011, many long-term SHU prisoners housed in the PBSP SHU Short Corridor initiated our "collective human rights movement" based on our recognition that, regardless of color, we have all been condemned for decades, entombed in what are psycho-social extermination cells, based on prisoncrats' fascist mentality. That mentality is centered upon the growing oppressive agenda of the suppressive control of the working class poor and related prison industrial complex's expansion of supermax solitary confinement units.

The pretext for that expansion is baseless claims that solitary confinement is necessary for the subhuman "worst of the worst" deemed deserving of a long slow death in hellish conditions. Supermax units were originally designed and perfected for the purpose of destroying political prisoners and now extend to a policy of mass incarceration.

Beginning July 1, 2011, we have utilized our collective movement to resist and expose our decades of subjection to this systematic state torture, via a campaign of peaceful activism efforts inside and outside these dungeon walls. We have achieved some success; we are not finished.

Last month we marked the first anniversary of the end of our historic 60-day Hunger Strike. Oct. 10 we mark the two-year anniversary of the Agreement to End Hostilities.

We will not stop until there is no more widespread torturous isolation in California for ourselves and for those who will come after us. We remind all concerned that our third peaceful protest action was "suspended" after 60 days, on Sept. 6, 2013, in response to Assemblyman Ammiano and Sen. Hancock's courageous public acknowledgement of the legitimacy of our cause and related promises to hold joint hearings for the purpose of creating responsive legislation.

Hearings were held in October 2013 and February 2014 which were very positive for our cause in so far as continuing the public's exposure to CDCR's unjustifiable torture program. Assemblyman Ammiano's bill was responsive to our issues and it was thus no surprise that the CDCR and CCPOA (the guards' union) and others opposed it – and it was DOA on the Assembly floor. Sen. Hancock worked to get a bill passed with some changes, but, according to a statement she released, even that failed when the Governor's Office and CDCR gutted months of work by Sen. Hancock, her staff and the staff of the Senate Public Safety Committee.

California Department of Corrections has calculated that their alleged "new" policy known as Security Threat Group-Step Down Program (STG-SDP) will give the appearance of addressing the horrific inhuman treatment we experience daily. They argue the Step Down Program is a major positive reform of the "old" policy and thereby responsive to our core demands.

They hope to undermine the statewide, national and international growing support for our cause – the end of long-term indefinite solitary confinement, the torture we experience year in and year out.

We will not stop until there is no more widespread torturous isolation in California for ourselves and for those who will come after us.

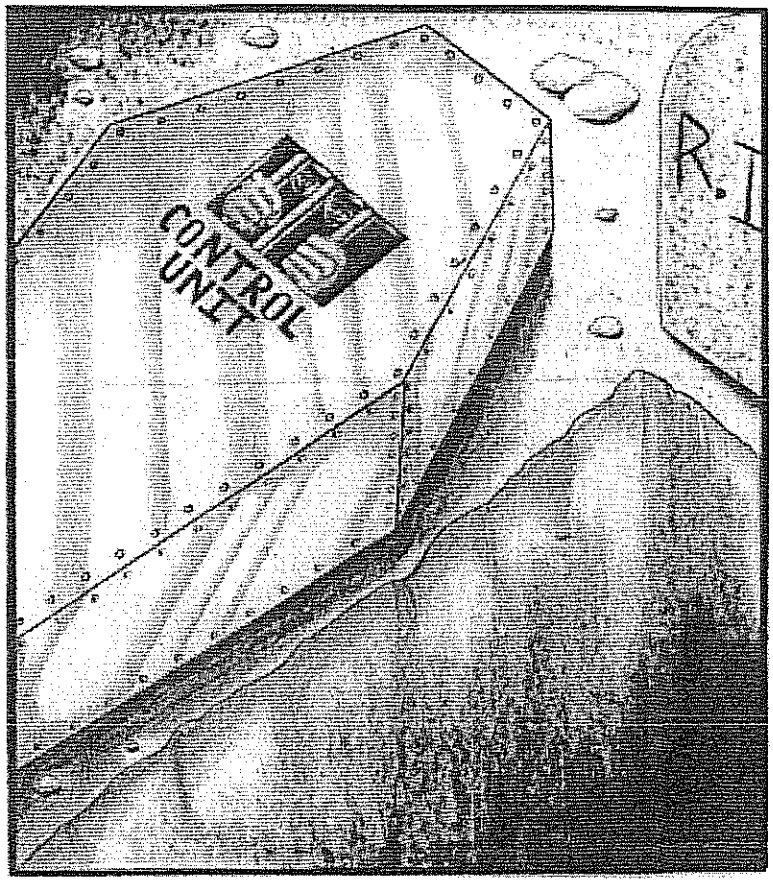
The STG-SDP is a smokescreen intended to enable prisoncrats to greatly expand upon the numbers held in solitary confinement – indefinitely. Their STG-SDP policy and program is a handbook to be used with limitless discretion to put whoever they want in isolation even without dangerous or violent behavior.

Their Security Threat Group policy and language are based on a prison punishment international homeland security worldview. By militarizing everything, just as they did in Ferguson, Missouri, poor working class communities, especially those of color, become communities that feed the police-prison industrial complex as a source of fuel.

The daily existence of poor people is criminalized from youth on. We become a source of revenue – a source of jobs – as our lives are sucked, tracked into the hell of endless incarceration, our living death. The STG-SDP is part of the worldview and language of death, not life. It is not positive reform. Security Threat Group takes social policy in the wrong direction.

CDCR is explicit in that thousands of us are in indefinite solitary because of who we are seen to be by them, not because we have done anything wrong. They still decide this by our art, our photographs, birthdays and confidential informants who get out of solitary by accusing the rest of us.

The only "program" in the Step Down Program is a mandatory requirement to fill out meaningless journals that have nothing to do with rehabilitation – rather, they are about petty hoops for longterm SHU prisoners to jump through. The step incentives are so small as to carry very little real value or meaning for a majority of prisoners. They don't meet our Supplemental Demands.



An unknown prisoner in solitary confinement drew how it feels to be entombed indefinitely.

In fact the SHU at Tehachapi, where they send Pelican Bay SHU prisoners who have "progressed" to "better steps" in the SDP, have less visiting, more filthy cells, horrible toxic water, no pillows, nasty mattresses, rags for cloths, used mattresses, loud noises and some officers who are brutal racists.

Some of the privilege opportunities we won for SHU prisoners as a result of our struggles exist only at Pelican Bay. Some mean a lot to us but, in the long view, are trivial.

We need to get rid of the "mandatory" aspect of the ridiculous journals. We need to touch our loved ones and they need to be touched by us. We need to hug our mothers, fathers,

wives, children, brothers, sisters.

We need more packages and phone calls and photographs. We need the same canteen that general population gets. We need overnight family visits. Up until mid-1986, all SHU prisoners were allowed to receive contact visits.

Ultimately, we call for California to end the shame of their policy of solitary confinement for innocuous social interaction.

Prisoncrats propagate the 800-plus case-by-case reviews to date as evidence that their STG-SDP is a new program. The last statistics showed that almost 70 percent of prisoners reviewed were released to general population – including some of us who have been kept in these concrete boxes buried alive for decades.

These statistics prove something entirely different. They are factual data showing, proving that for decades 70-plus percent of us have been inappropriately confined, isolated and tortured.

It is CDCR's senior people who are ruling that we have been inappropriately confined. These high release statistics prove without a doubt that the force of public condemnation, of united peaceful activity by those of us inside and our human rights supporters outside are required to keep CDCR from continuing their intolerable abuse.

We call for California to end the shame of their policy of solitary confinement for innocuous social interaction.

CDC argues that the transfer of Pelican Bay SHU prisoners to other SHUs at Corcoran, New Folsom or Tehachapi SHU cells or to various general population prisons proves they have taken measures to address the horrors and inappropriate use of SHU. In fact, even with the large numbers of prisoners being transferred out of SHU cells, there are no empty SHU cells.

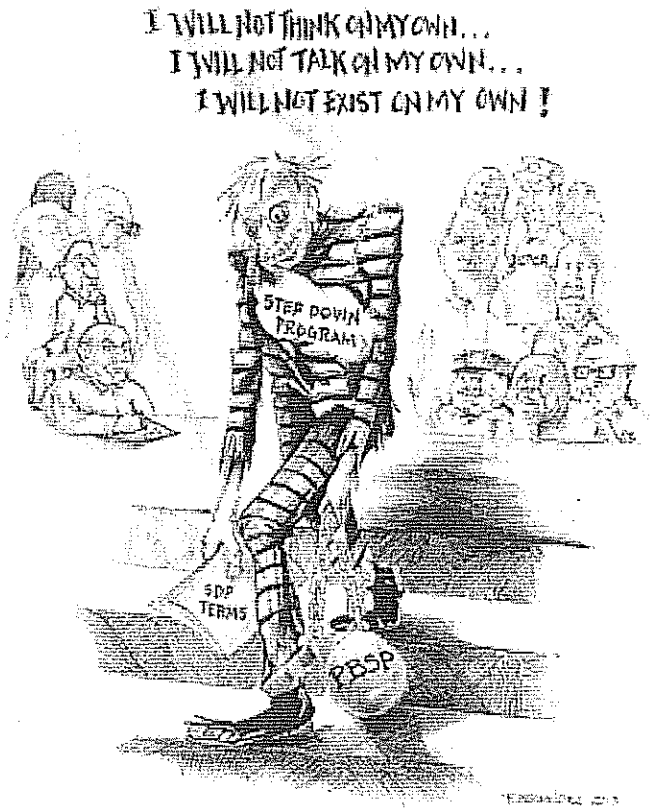
Across the system prisoners are being validated for art, innocuous social interaction and for lies and misrepresentations about our mail by confidential informants who escape the SHU themselves by accusing others of behavior that cannot be defended against because we are sent to the SHU for accusations that we do not know the specifics about!

We are isolated for confidential, uncorroborated "ghost" accusations with no due process review – because solitary isolation is categorized as an "administrative housing assignment" and not punishment. CDCR is filling up the SHU cells as fast as they are emptied.

CDCR administrators admitted in August 2011 that the programs and privileges sought in our demands were reasonable and should have been provided 20-plus years ago. Up until mid-1986, all SHU prisoners were allowed to receive contact visits, but no longer today. Why not?

CDCR hopes to destroy our sense of collective structure and our collective unity. We hope to expand our sense of collectivity as we spread out. We work to keep all opinions open, to think through new ideas and options for peaceful activity to shut down the reckless use of isolation and other abuses.

California uses solitary isolation more than any other state in the United States, both in absolute numbers of prisoners isolated – 12,000 in some form of isolation on any given day – and in terms of percentage of the prison population. The United States uses solitary confinement more than any other country in the world – 80,000 prisoners in some form of isolation as part of the practice of mass incarceration and criminalization of life in poor communities.



"Step Down Program" – Art: F. Bermudez

CDCr cannot deny these facts. Our decades of indefinite SHU confinement and related conditions therein are what led us to peacefully rise up and make our stand as a united collective of human beings – and we have been clear about our opposition to the Security Threat Group-Step Down Program. The prisoner class human rights movement is growing and we've succeeded in exposing this nation's penal system torture program – nationally and internationally.

This mainstream level of attention and global support for the prisoners' cause is unprecedented and it will continue to grow – so long as we all remain united and committed to doing our part.

Our peaceful actions have demonstrated that we are not powerless and the concrete fact is that the operation of these prisons requires the cooperation of the prisoners – thus, the prisoners do have the power to make beneficial reforms happen when we are united in utilizing non-violent, peaceful methods such as hunger strike-work stoppage protests and forms of non-cooperation.

We are thinking about how to extend this power peacefully across the prison system to make these institutions more focused on rehabilitation, learning and growing so that our return to our communities helps us all. Following and living by the principles in the Agreement to End Hostilities can help make this happen.

With the above in mind, we remind all interested parties that this ongoing struggle for reform is a "human rights movement," comprised of united prisoners, outside loved ones and supporters. The PBSP SHU Short Corridor Collective Human Rights Movement's 20 volunteer representatives remain united, committed and determined about achieving the Five Core and Forty Supplemental Demands and the principle goals of the August 2012 "Agreement to End Hostilities," with the support of all like-minded members of the prisoner class, outside loved ones and supporters.

Our primary goal remains that of ending long-term solitary confinement (in SHU and ad seg). This goal is at the heart of our struggle.

California uses solitary isolation more than any other state in the United States. The United States uses solitary confinement more than any other country in the world.

Along the way we are also committed to improving conditions in SHU, ad seg and general prison population. We make clear that any policy that maintains the status quo related to the placement and retention of prisoners into SHU and ad seg cells indefinitely is not acceptable – regardless of what programs or privileges are provided therein.

We have rejected CDCR's Security Threat Group-Step Down Program and presented our reasonable counter proposal for the creation of a modified general population type program for the purpose of successful transitions between SHU and general population. CDCR's top administrators have refused to negotiate, insisting upon moving forward with their STG-SDP. We are evaluating options.

Again, we need an end to the "mandatory" aspect of the ridiculous journals. We need to touch our loved ones and they need to be touched by us. Until mid-1986, all SHU prisoners were allowed to receive contact visits. There is no legitimate basis for not allowing them now.

We celebrate the brothers who are getting out of the SHU after decades of confinement and understand the willingness to participate in the current CDCr charade.

We recognize those brothers in Corcoran who are refusing to participate in the SDP.

We've patiently observed the political process at issue for the past year, since such was the basis for "suspending" our 2013 action, and it's becoming clear that those in power are still not seeing us as human because they refuse to end long term solitary confinement – in spite of international condemnation – ensuring the continuation of such psycho-social extermination policies.

Lawmakers' refusal to abolish indefinite solitary confinement in response to the established record of abuse and related damage it causes to prisoners, outside loved ones and society in general – supported by the record of the joint Public Safety Committee hearings – supports our position that we are subjected to systematic, state sanctioned torture. This is a permanent stain upon this nation's human rights record. Their continued refusal will require us to re-evaluate all of our available peaceful options.

Keeping all of the above points in mind, we respectfully encourage people inside and outside these walls to commemorate this two-year anniversary of the Agreement to End Hostilities by joining with us in living by these principles inside and outside these prison walls.

We remain united, onward in struggle, always in solidarity.

- Todd Ashker, C-58191, PBSP SHU D4-121, P.O. Box 7500, Crescent City CA 95532
- Arturo Castellanos, C-17275, PBSP SHU D1-121, P.O. Box 7500, Crescent City CA 95532
- George Franco, D-46556, PBSP SHU D4-217, P.O. Box 7500, Crescent City CA 95532

Agreement to End Hostilities

To whom it may concern and all California prisoners:

Greetings from the entire PBSP SHU Short Corridor Hunger Strike Representatives. We are hereby presenting this mutual agreement on behalf of all racial groups here in the PBSP SHU Corridor. Wherein, we have arrived at a mutual agreement concerning the following points:

1. If we really want to bring about substantive meaningful changes to the CDCR system in a manner beneficial to all solid individuals who have never been broken by CDCR's torture tactics intended to coerce one to become a state informant via debriefing, now is the time for us to collectively seize this moment in time and put an end to more than 20-30 years of hostilities between our racial groups.
2. Therefore, beginning on Oct. 10, 2012, all hostilities between our racial groups in SHU, ad-seg, general population and county jails will officially cease. This means that from this date on, all racial group hostilities need to be at an end. And if personal issues arise between individuals,

people need to do all they can to exhaust all diplomatic means to settle such disputes; do not allow personal, individual issues to escalate into racial group issues!

3. We also want to warn those in the general population that IGI (Institutional Gang Investigators) will continue to plant undercover Sensitive Needs Yard (SNY) debriefer "inmates" amongst the solid GP prisoners with orders from IGI to be informers, snitches, rats and obstructionists, in order to attempt to disrupt and undermine our collective groups' mutual understanding on issues intended for our mutual causes. People need to be aware and vigilant to such tactics and refuse to allow such IGI inmate snitches to create chaos and reignite hostilities amongst our racial groups. We can no longer play into IGI, ISU, (Investigative Service Unit), OCS (Office of Correctional Safety) and SSU's (Service Security Unit's) old manipulative divide and conquer tactics!

In conclusion, we must all hold strong to our mutual agreement from this point on and focus our time, attention and energy on mutual causes beneficial to all of us prisoners and our best interests. We can no longer allow CDCR to use us against each other for their benefit!

Because the reality is that, collectively, we are an empowered, mighty force that can positively change this entire corrupt system into a system that actually benefits prisoners and thereby the public as a whole, and we simply cannot allow CDCR and CCPOA, the prison guards' union, IGI, ISU, OCS and SSU to continue to get away with their constant form of progressive oppression and warehousing of tens of thousands of prisoners, including the 14,000-plus prisoners held in solitary confinement torture chambers – SHU and ad-seg units – for decades!

The reality is that, collectively, we are an empowered, mighty force that can positively change this entire corrupt system into a system that actually benefits prisoners and thereby the public as a whole.

We send our love and respect to all those of like mind and heart. Onward in struggle and solidarity!

Presented by the PBSP SHU Short Corridor Collective: Todd Ashker, Arturo Castellanos, Sitawa Nantambu Jamaa (Dewberry) and Antonio Guillen; and the Representatives Body: Danny Troxell, George Franco, Ronnie Yandell, Paul Redd, James Baridi Williamson, Alfred Sandoval, Louis Powell, Alex Yrigollen, Gabriel Huerta, Frank Clement, Raymond "Chavo" Perez and James Mario Perez

Editor's note: Long-time readers may be curious why George Franco has replaced Antonio Guillen as the Northerner among the four main reps. Franco was one of the original four-man group but was sent to Corcoran during the first hunger strike. When he returned to Pelican Bay, he was moved from the pod where decisions were made. Antonio then stepped in. An attorney working closely with the reps reports both exchanges were very friendly.

18

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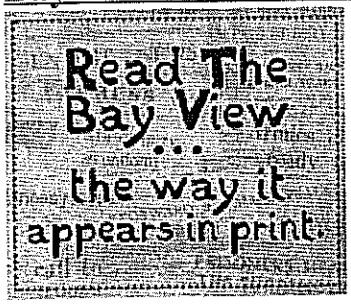
Leave a Reply

Enter your comment here...

BayView Classifieds - ads, opportunities, announcements



Prisoner Human Rights Movement: Agreement to End Hostilities has changed the face of race relations without any help from CDCr

January 28, 2015

http://sfbayview.com/2015/01/prisoner-human-rights-movement-agreement-to-end-hostilities-has-changed-the-face-of-race-relations-without-any-help-from-cdcr/

by Sitawa Nantambu Jamaa

It is incumbent upon all men prisoners across the state of California and globally to embrace the struggle of women prisoners as a whole. We, the four principle negotiators of our Prisoner Human Rights Movement – George Franco, Arturo Castellanos, Todd Ashker and Sitawa Nantambu Jamaa (Dewberry) – recognize the women prisoner struggles and the PHRM supports them. These other prisoner activists do as well: D. Troxell, L. Powell, A. Guillen, G. Huerta, P. Redd, R. Yandell, J.M. Perez, J. Baridi Williamson, A. Sandoval, P. Fortman, Y. Iyapo-I (Alexander), A. Yrigollen, F. Bermudez, F. Clement and R. Chavo Perez.

These representatives, whom CDCr leading officials recognize as prisoner activists, are changing the face of race relationships within CDCr first, without any assistance from CDCr. Isn't that amazing! The above named prisoner activists, along with the thousands of other prisoner activists throughout the California prison system, have changed the way prisoners should be treated as human beings.

I encourage all men and women prisoners to continue to press onward with our Agreement to End Hostilities (AEH) through all corridors of state and county facilities.

Prisoners' era of retrospective study and constructive struggle

We are beacons of collective building while clearly understanding that we the beacons must take a protracted internal and external retrospective of our present day prisons' concrete conditions to forge our PHRM onward into the next stage of development, thereby exposing CDCr's racial discrimination and racist animus tactics against our prisoner class. This is why our lives must be embedded in determined human rights laws, based on our constructive development of our scientific methods and laws. Therefore, through our concrete conditions in each prison, our struggle shall be constructed through our Prisoner Human Rights Movement representatives and negotiators.

The PHRM has realized that CDCr has been setting up prisoners and creating racial tension among all racial groups, from various geographical locations up and down the state of California. It has become abundantly clear to the PHRM that Gov. Jerry Brown is an outspoken racist and overseer who has clearly shown that his discriminatory practices are directed at minorities and people of color: New Afrikan (Afrikan Amerikan), Mexicans (Latinos) and White working poor, who have all been suffering blatant discrimination in county jails and state prisons.

Gov. Brown went out and hired the most blatant racist prison superintendent in the U.S. as his secretary of corrections. Yes, CDCr Secretary Jeffrey Beard is continuing to torture, isolate, maim, racially assault, and racially, religiously and culturally discriminate against prisoners.

Gov. Brown and Secretary Beard are continuing their practices of long term solitary confinement. Now, it is a known fact that Gov. Brown and his personally appointed CDCr Secretary J. Beard do not want to STOP racial tension within the CDCr or the state of California as a whole, because if they did, the historical document, the Agreement to End Hostilities, would have been distributed by the CDCr to all women and men state prisoners, county jail prisoners, youth authority prisoners, juveniles, probationers and parolees throughout this state.

Since Oct. 10, 2012, when the Agreement to End Hostilities took effect, to the present day, California women and men prisoners' racial and cultural hostilities have decreased, without any assistance from Gov. Brown or his subordinate, Secretary of CDCr Jeffrey Beard. It is important that all citizens here in California and throughout the United States realize that Gov. Brown and Secretary Beard do not care about reducing the violence among prisoners, nor do they care about the safety and security of Californians who are not incarcerated.

Our civil rights are violated daily. We citizens realize that the safety and security of California prisoners and our neighborhoods throughout California will only come from the people, not from corrupt law enforcement agencies! Because we know that the majority of California law enforcement policies have been brutal to our inner city citizens – killing and maiming our family members – and that the brutality has been sanctioned by Gov. Brown and carried out by CDCr Secretary Beard et al behind California prison walls against all prisoners and especially Level 3 and 4 prisoners.

CEASE the human torture! CEASE the racial profiling, Gov. Brown and Secretary Beard!
I want everyone to know that I agree with my co-principle negotiators' articles in the October 2014 SF Bay View newspaper: 1) "California prisoner representatives: All people have the right to humane treatment with dignity" on page 5 and 2) "Unresolved hunger strike issues" on page 16. I want to encourage everyone to subscribe to this newspaper. It is the voice of all people!

To all U.S. citizens and the world community, support our Prisoner Human Rights Movement!
We are fighting for human justice. We are upholding the U.S. Constitution and California Constitution and the liberties therein, while establishing the freedoms that our ancestors struggled for over the past hundred years in California.
Determined to preserve our human lives and those of all prisoners within the state of California, we, the Prisoner Human Rights Movement, call on all citizens to get involved with social change now. In the course of our work, PHRM realizes that it is natural that we should meet opposition from CDCr, because of their ignorance and lack of knowledge manifested whenever CDCr ruthlessly deceives and deprives prisoners of our human rights and civil rights daily.
With the dawn of this new prison era, the Prisoners' Era of Retrospect and Construct, know what its essentials are; know its principles and strive to attain our goals and objectives in the truest sense of our Agreement to End Hostilities. We know what forced solitude causes: psychological and physical warfare, for prisoners and their outside family members as well.
Politically speaking, the world has changed and so have prisoners. Human progress means change, and today we need to prepare for a higher life, for tomorrow's liberty – educationally, socially and politically.

Determined to preserve our human lives and those of all prisoners within the state of California, we, the Prisoner Human Rights Movement, call on all citizens to get involved with social change now.

No one wants to be tortured, dehumanized, racially profiled, religiously profiled and viciously targeted by acts of sensory deprivation by Gov. Jerry Brown's state government and his California prison officials to implement the New Jim Crow, i.e., the Security Threat Group/Step Down Program (STG/SDP), which is actually criminal acts of torture by way of low intensity warfare. This is an act against all California citizens and humanity itself. Our PHRM was threatened by CDCr officials and employees as we championed the cause of the Agreement to End Hostilities, and we thank God that our prisoner class did not fall prey to CDCr's threats to destroy our AEH across this state. Prisoners hold their destiny in the palm of their hands and we shall not allow any prison correctional officers, sergeants, lieutenants, captains, associate wardens, chief deputy wardens, wardens, the director of adult institutions, the undersecretary or the secretary or even Gov. Brown to destroy our faith in humanity. The Prisoner Human Rights Movement shall stand as ONE clenched fist in solidarity against CDCr oppression.
I want to make it clear that Gov. Brown and Secretary Beard operate with the mentality of Donald Tokowitz Sterling, the former Los Angeles Clipper's owner. Just review their policies, rules, laws and practices directed at all prisoners and their family members, relatives, friends and all citizens within this state.

We shall not allow even Gov. Brown to destroy our faith in humanity. The Prisoner Human Rights Movement shall stand as ONE clenched fist in solidarity against CDCr oppression.

Stand up against injustice. Stand up against racism. Stand up against sensory deprivation.
People, get involved in struggle!
Revolutionary love and respect!
Brutha Sitawa
Send our brother some love and light: Sitawa Nantambu Jamaa, s/n R.N. Dewberry, C-35671, 4B-7C-209, P.O. Box 1906, Tehachapi CA 93581. PRISONER HUMAN RIGHTS MOVEMENT. ORG

App #6 A

[ACTUAL EXAMPLE REPORT]

TO: PLAINTIFFS' COUNSEL, et al
FR: PHRM – LOCAL COUNCIL, [Name of Institution/Facility] [S.V.S.P./Facility C*]

RE: REPORT ON MONITORING PRISON CONDITIONS

Dear Counsel(s):

A lot goes on here at Salinas Valley State Prison (SVSP) that the outside world is not informed of, as it relates to the prison conditions. We, the Prisoner Human Rights Movement-Local Council here at this institution/Facility-C are submitting this prison monitoring report relative to the Settlement Agreement.

Here at this prison there are four main Facilities, “A” through “D” (Fac. “A” is “SNY”; Fac. “B” is a level 270 yard; Fac “C” is a Level IV/180, comprising of dual-split Yards: #1 consisting of Units 1-4, & #2 consisting of an independent Dept. of Health Service (DHS)-operated Enhanced Outpatient Program (EOP) in Units 5 & 6; while Units 7 & 8 are for Fac.”C” G.P. Housing; and Fac. “D” is Ad/Seg Housing). Here on Fac. “C” G.P., the two Yards are separated by a wall, connected by a Patio area where the Facility Program Office, Medical Clinic, Canteen, Library, and Education areas are also behind another wall.

For years, Facility-C officials have not provided constructive programming for the G.P. prisoners here, including no Full-Time Yard, Recreation, Telephone or Entertainment Activities access, due to the Facility being operated on a modified program. This leaves this G.P. Population in a state of idleness.

Today, the lack of full-time constructive programming remains the same, which deprives the Men of much-needed opportunities to be able to participate in such programs that are essential for CDCr to genuinely provide “Rehabilitative” services on these Level IV/180 institutions. For example, prisoners on Fac.-C need fair and equal access to CDCr's mandatory Full-Time Yard, Dayroom Recreation, Telephone and other Educational, Leisure Time Activity Groups, Computer Literacy, etc. – Programs that also allow, for those who need to prepare for their pre-BPH hearings (e.g. SB 261 eligible Prisoners) and/or who are desiring to achieve Certificates, positive Chronos placed in their files.

For those of us who have been held illegally in Solitary confinement 1-30 years are now being punished by being deprived of constructive programming, which has created an adverse effect for us and others being released hers.

On Tuesday, October 27, 2015, we spoke with the Warden of SVSP during the recent meeting event with Barrio Unidos, Danny Glover and SVSP Fac.-C Prisoners. At that time we notified the Warden of the above issues, as well as making it clear that, as representatives of the Agreement to End All Hostilities, we do not support any attempts by his Administration to orchestrate hostile yard policies, as they are trying to do with the SNY, Bulldogs on Yard #2, who cannot constructively program with the overall Facility-C G.P. prisoners, as noted in SVSP's own CDCr records (e.g. CDCR 3011-B Program Status Reports, etc.). There is room available on Facility A for such prisoners designated SNY/Unable to program with the overall General Population (who is currently being restricted and punished from having full-time programming access because of these few SNY, etc).

On Friday, November 6, 2015, we spoke with the Associate Warden about the lack of Programming her at this Facility, (as identified above), to which he responded positively (as did the Warden above) about their seeming acknowledgment of the above issues and are committed to improving the conditions and constructive programming here. However, to date, there has been no Full-Time Yard, Dayroom, etc. The Man here have demonstrated their rights to receive such overdue programs.

EXHIBIT COVER PAGE

APPENDIX
6-A
EXHIBIT

Description of this Exhibit: **CDCr 3022-B Program Status Reports attachment to PHRM Monitoring Prison Conditions Report (Example)**

Number of pages to this Exhibit: 7 pages.

PROGRAM STATUS REPORT
PART B – PLAN OF OPERATION / STAFF & INMATE NOTIFICATION

Describe only this reporting periods specific Plan of Operation

INSTITUTION	EFFECTIVE DATE OF PLAN	PROGRAM STATUS NUMBER:
SVSP	April 15, 2008	FC-08-08-07

☐ NORMAL PROGRAM ☒ MODIFIED PROGRAM ☐ LOCKDOWN ☐ STATE OF EMERGENCY

☐ INITIAL ☒ UPDATE ☐ CLOSURE

RELATED INFORMATION (CHECK ALL THAT APPLY)

AREA AFFECTED

- ☐ INSTITUTION:
- ☒ FACILITY: Facility C yard 2
- ☐ HOUSING UNIT:
- ☐ VOCATION:
- ☐ EDUCATION:
- ☐ OTHER:

INMATES AFFECTED

- ☐ ALL
- ☒ BLACK
- ☒ WHITE
- ☒ HISPANIC
- ☒ OTHER Bulldog
- ☐

REASON

- ☒ BATTERY
- ☐ DEATH
- ☒ RIOT / DISTURBANCE
- ☐ GROUPING
- ☒ OTHER Incremental Release
- ☒ On-going Violence

MOVEMENT

- ☒ NORMAL Inmates on Phase Release
- ☐ ESCORT ALL MOVEMENT
- ☐ UNCLOTHED BODY SEARCH PRIOR TO ESCORT
- ☐ CONTROLLED MOVEMENT
- ☒ OTHER: I/M on modified program in restraints

FEEDING

- ☐ NORMAL
- ☒ CELL FEEDING
- ☐ CONTROLLED FEEDING IN DINING ROOM
  - ☐ HOUSING UNIT/DORM AT A TIME
  - ☐ DORM POD AT A TIME
  - ☐ TIER AT A TIME
  - ☐ HOUSING UNIT SECTION AT A TIME
- ☐ SACK MEAL BREAKFAST
- ☐ SACK MEAL LUNCH
- ☐ SACK MEAL DINNER

DUCATS

- ☒ NORMAL
- ☐ MEDICAL DUCATS ONLY
- ☐ CLASSIFICATION DUCATS
- ☐ PRIORITY DUCATS ONLY

VISITING

- ☒ NORMAL VISITING I/M released to program
- ☒ NON-CONTACT ONLY I/M on modified program
- ☐ NO VISITING
- ☐ OTHER:

WORKERS

- ☒ NORMAL I/M release to program
- ☐ CRITICAL WORKERS ONLY
- ☐ CULINARY
- ☐ CLERKS
- ☒ VOCATION/EDUCATION I/M released to program
- ☐ CANTEEN
- ☐ CLOTHING ROOM
- ☐ RESTRICTED WORK PROGRAM
- ☐ PORTERS
- ☐ NO INMATE WORKERS

SHOWERS

- ☒ NORMAL I/M released to program
- ☒ ESCORTED I/M on modified program
- ☒ ONE INMATE PER SHOWER – OWN TIER
- ☐ CELL PARTNERS TOGETHER – OWN TIER
- ☐ DORM SHOWERING BY GROUP
- ☐ CRITICAL WORKERS ONLY
- ☐ NO SHOWERS

MEDICAL

- ☒ NORMAL MEDICAL PROGRAM I/M released to program
- ☒ PRIORITY DUCATS ONLY I/M on modified program
- ☒ LVN CONDUCT ROUNDS IN UNITS I/M on modified program
- ☒ INMATES ESCORTED TO SICK CALL I/M on modified program
- ☐ EMERGENCY MEDICAL ONLY
- ☐ OTHER:

LEGAL LIBRARY

- ☒ NORMAL I/M released to program
- ☒ APPROVED COURT DEADLINES PLU progressing to GLU for I/M on modified program

DAYROOM

- ☐ NORMAL
- ☒ NO DAYROOM ACTIVITIES
- ☐ MODIFIED:

RECREATION

- ☒ NORMAL I/M's released to program
- ☒ NO RECREATIONAL ACTIVITIES I/M's on modified program.
- ☐ MODIFIED:

CANTEEN

- ☒ NORMAL I/M's release to program
- ☐ NO CANTEEN
- ☒ MODIFIED: $45.00 canteen draw for modified I/M

PACKAGES

- ☒ NORMAL
- ☐ NO PACKAGES
- ☐ MODIFIED:

PHONE CALLS

- ☒ NORMAL I/M released to program
- ☒ NO PHONE CALLS I/M's on modified program.
- ☐ MODIFIED:

RELIGIOUS SERVICES

- ☒ NORMAL
- ☐ NO RELIGIOUS SERVICES
- ☒ MODIFIED: I/m's on modified program in cell worship.

REMARKS: Facility C will release Phase VIII in Building 5 on 4-15-08 and return to the normal odd/even building rotation for yard. Phase II in Building will be released 04/15/ 2008. Inmates identified as Fresno Bulldogs will continue to be modified pending administrative review into incident SVSP-FC5-0 04-0198 "Battery on an Inmate with a Weapon" which occurred on 04/09/2008. The remaining population once released within their Phase Groups will be normal program. The Behavior Modification Unit and those inmates identified as Others are at normal program.

NOTE: Facility Lieutenant(s) will ensure completed PSR's (Bs) are posted in all affected facility program, buildings and control booths.

State of Emergency only: Postponement of nonessential administrative decisions, actions and the normal time requirements:

☐ Approved ☐ Disapproved

PREPARED BY:	DATE	NAME / SIGNATURE (WARDEN)	DATE

PROGRAM STATUS REPORT
PART B – PLAN OF OPERATION / STAFF & INMATE NOTIFICATION

Describe only this reporting periods specific Plan of Operation

INSTITUTION	EFFECTIVE DATE OF PLAN	PROGRAM STATUS NUMBER:
SVSP	June 4, 2008	FC-08-08-07

☐ NORMAL PROGRAM ☒ MODIFIED PROGRAM ☐ LOCKDOWN ☐ STATE OF EMERGENCY

☐ INITIAL ☒ UPDATE ☐ CLOSURE

RELATED INFORMATION (CHECK ALL THAT APPLY)

AREA AFFECTED

- ☐ INSTITUTION:
- ☒ FACILITY: Facility C yard 2
- ☐ HOUSING UNIT:
- ☐ VOCATION:
- ☐ EDUCATION:
- ☐ OTHER:

INMATES AFFECTED

- ☐ ALL
- ☐ BLACK
- ☐ WHITE
- ☒ HISPANIC Southern/Northern Hispanic
- ☒ OTHER
- ☒ Bulldog

REASON

- ☒ BATTERY
- ☐ DEATH
- ☒ RIOT / DISTURBANCE
- ☐ GROUPING
- ☒ OTHER Incremental Release
- ☒ On-going Violence

MOVEMENT

- ☒ NORMAL Inmates on Phase Release
- ☐ ESCORT ALL MOVEMENT
- ☐ UNCLOTHED BODY SEARCH PRIOR TO ESCORT
- ☐ CONTROLLED MOVEMENT
- ☒ OTHER: I/M on modified program in restraints

WORKERS

- ☒ NORMAL I/M release to program
- ☒ CRITICAL WORKERS ONLY
- ☐ CULINARY
- ☐ CLERKS
- ☒ VOCATION/EDUCATION I/M released to program
- ☐ CANTEEN
- ☐ CLOTHING ROOM
- ☐ RESTRICTED WORK PROGRAM
- ☐ PORTERS
- ☐ NO INMATE WORKERS

DAYROOM

- ☐ NORMAL
- ☒ NO DAYROOM ACTIVITIES
- ☐ MODIFIED:

RECREATION

- ☒ NORMAL I/M's released to program
- ☒ NO RECREATIONAL ACTIVITIES I/M's on modified program.
- ☐ MODIFIED:

FEEDING

- ☐ NORMAL
- ☒ CELL FEEDING
- ☐ CONTROLLED FEEDING IN DINING ROOM
  - ☐ HOUSING UNIT/DORM AT A TIME
  - ☐ DORM POD AT A TIME
  - ☐ TIER AT A TIME
  - ☐ HOUSING UNIT SECTION AT A TIME
- ☐ SACK MEAL BREAKFAST
- ☐ SACK MEAL LUNCH
- ☐ SACK MEAL DINNER

SHOWERS

- ☒ NORMAL I/M released to program
- ☒ ESCORTED I/M on modified program
- ☒ ONE INMATE PER SHOWER – OWN TIER
- ☐ CELL PARTNERS TOGETHER – OWN TIER
- ☐ DORM SHOWERING BY GROUP
- ☐ CRITICAL WORKERS ONLY
- ☐ NO SHOWERS

CANTEEN

- ☒ NORMAL I/M's release to program
- ☐ NO CANTEEN
- ☒ MODIFIED: $45.00 canteen draw for modified I/M

PACKAGES

- ☒ NORMAL
- ☐ NO PACKAGES
- ☐ MODIFIED:

DUCATS

- ☒ NORMAL
- ☐ MEDICAL DUCATS ONLY
- ☐ CLASSIFICATION DUCATS
- ☐ PRIORITY DUCATS ONLY

MEDICAL

- ☒ NORMAL MEDICAL PROGRAM I/M released to program
- ☒ PRIORITY DUCATS ONLY I/M on modified program
- ☒ LVN CONDUCT ROUNDS IN UNITS I/M on modified program
- ☒ INMATES ESCORTED TO SICK CALL I/M on modified program
- ☐ EMERGENCY MEDICAL ONLY
- ☐ OTHER:

PHONE CALLS

- ☒ NORMAL I/M released to program
- ☒ NO PHONE CALLS I/M's on modified program.
- ☐ MODIFIED:

VISITING

- ☒ NORMAL VISITING I/M released to program
- ☒ NON-CONTACT ONLY I/M on modified program
- ☐ NO VISITING
- ☐ OTHER:

LEGAL LIBRARY

- ☒ NORMAL I/M released to program
- ☒ APPROVED COURT DEADLINES PLU progressing to GLU

RELIGIOUS SERVICES

- ☒ NORMAL
- ☐ NO RELIGIOUS SERVICES
- ☒ MODIFIED: I/m's on modified program in-cell worship.

REMARKS: Based on incident SVSP-FCY-08-06-0307, Facility C will suspend the incremental release of the Southern Hispanic and Bulldog populations on yard 2 pending further administrative review. Due to Northern Hispanic participation in the incident, the Northern Hispanic population on yard 2 is modified pending administrative review. The "Other" population will remain modified pending further administrative review. The Behavior Modification Unit is at normal program.

NOTE: Facility Lieutenant(s) will ensure completed PSR's (B) are posted in all affected facility program, buildings and control booths.

☐ Approved ☐ Disapproved

PREPARED BY:	DATE	NAME / SIGNATURE (WARDEN)	DATE
C. SCHUBERT	06/4/2008	M. S. EVANS	06/4/2008

STATE OF CALIFORNIA
CDCR 3022-B (REV. 07/07)

DEPARTMENT OF CORRECTIONS AND REHABILITATI

PROGRAM STATUS REPORT
PART B – PLAN OF OPERATION / STAFF & INMATE NOTIFICATION

Describe only this reporting periods specific Plan of Operation

INSTITUTION	EFFECTIVE DATE OF PLAN	PROGRAM STATUS NUMBER:
SVSP	June 24, 2008	FC-08-08-07

☐ NORMAL PROGRAM ☒ MODIFIED PROGRAM ☐ LOCKDOWN ☐ STATE OF EMERGENCY

☐ INITIAL ☒ UPDATE ☐ CLOSURE

RELATED INFORMATION (CHECK ALL THAT APPLY)

AREA AFFECTED

- ☐ INSTITUTION:
- ☒ FACILITY: C
- ☒ HOUSING UNIT: C5-C8
- ☐ VOCATION:
- ☐ EDUCATION:
- ☐ OTHER:

INMATES AFFECTED

- ☐ ALL
- ☐ BLACK
- ☐ WHITE
- ☒ HISPANIC Southern/Northern Hispanic
- ☐ OTHER
- ☒ Fresno Bulldogs

REASON

- ☒ BATTERY
- ☒ DEATH
- ☒ RIOT / DISTURBANCE
- ☐ GROUPING
- ☒ OTHER Incremental Release
- ☒ On-going Violence

MOVEMENT

- ☒ NORMAL Inmates on Phase Release
- ☐ ESCORT ALL MOVEMENT
- ☐ UNCLOTHED BODY SEARCH PRIOR TO ESCORT
- ☐ CONTROLLED MOVEMENT
- ☒ OTHER: I/M on modified program in restraints

FEEDING

- ☐ NORMAL
- ☒ CELL FEEDING
- ☐ CONTROLLED FEEDING IN DINING ROOM
  - ☐ HOUSING UNIT/DORM AT A TIME
  - ☐ DORM POD AT A TIME
  - ☐ TIER AT A TIME
  - ☐ HOUSING UNIT SECTION AT A TIME
- ☐ SACK MEAL BREAKFAST
- ☐ SACK MEAL LUNCH
- ☐ SACK MEAL DINNER

DUCATS

- ☒ NORMAL
- ☐ MEDICAL DUCATS ONLY
- ☐ CLASSIFICATION DUCATS
- ☐ PRIORITY DUCATS ONLY

VISITING

- ☒ NORMAL VISITING I/M released to program
- ☒ NON-CONTACT ONLY I/M on modified program
- ☐ NO VISITING
- ☐ OTHER:

WORKERS

- ☒ NORMAL I/M release to program
- ☐ CRITICAL WORKERS ONLY
- ☐ CULINARY
- ☐ CLERKS
- ☒ VOCATION/EDUCATION I/M released to program
- ☐ CANTEEN
- ☐ CLOTHING ROOM
- ☐ RESTRICTED WORK PROGRAM
- ☐ PORTERS
- ☐ NO INMATE WORKERS

SHOWERS

- ☒ NORMAL I/M released to program
- ☒ ESCORTED I/M on modified program
- ☒ ONE INMATE PER SHOWER – OWN TIER
- ☐ CELL PARTNERS TOGETHER – OWN TIER
- ☐ DORM SHOWERING BY GROUP
- ☐ CRITICAL WORKERS ONLY
- ☐ NO SHOWERS

MEDICAL

- ☒ NORMAL MEDICAL PROGRAM I/M released to program
- ☒ PRIORITY DUCATS ONLY I/M on modified program
- ☒ LVN CONDUCT ROUNDS IN UNITS I/M on modified program
- ☒ INMATES ESCORTED TO SICK CALL I/M on modified program
- ☐ EMERGENCY MEDICAL ONLY
- ☐ OTHER:

LEGAL LIBRARY

- ☒ NORMAL I/M released to program
- ☒ APPROVED COURT DEADLINES PLU progressing to GLU

DAYROOM

- ☐ NORMAL
- ☒ NO DAYROOM ACTIVITIES
- ☐ MODIFIED:

RECREATION

- ☒ NORMAL I/M's released to program
- ☒ NO RECREATIONAL ACTIVITIES I/M's not released to program
- ☐ MODIFIED:

CANTEEN

- ☒ NORMAL I/M's release to program
- ☐ NO CANTEEN
- ☒ MODIFIED: $45.00 canteen draw for modified I/M

PACKAGES

- ☒ NORMAL
- ☐ NO PACKAGES
- ☐ MODIFIED:

PHONE CALLS

- ☒ NORMAL I/M released to program
- ☒ NO PHONE CALLS I/M's on modified program
- ☐ MODIFIED:

RELIGIOUS SERVICES

- ☒ NORMAL
- ☐ NO RELIGIOUS SERVICES
- ☒ MODIFIED: In-cell worship I/M's modified program

REMARKS: Facility C has completed the administrative review of Incident SVSP-FCY-08-06-0307 and will begin the Incremental Release of Southern Hispanic and Fresno Bulldogs on Yard #2 with Phase 1 on June 24, 2008. The Northern Hispanic's on Yard #2 will remain on modified program pending review. The Behavior Modification Program is at normal program.

State of Emergency only: Postponement of nonessential administrative decisions, actions and the normal time requirements:

☐ Approved ☒ Disapproved

PREPARED BY	DATE	NAME / SIGNATURE (WARDEN)	DATE
J. CELAYA	06/24/2008	M.S. EVANS	06/24/2008

STATE OF CALIFORNIA
CDCR 3022-B (REV. 07/07)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

PROGRAM STATUS REPORT
PART B – PLAN OF OPERATION / STAFF & INMATE NOTIFICATION

Describe only this reporting periods specific Plan of Operation

INSTITUTION	EFFECTIVE DATE OF PLAN	PROGRAM STATUS NUMBER:
SVSP	July 8 2008	FC-08-08-07

☐ NORMAL PROGRAM ☒ MODIFIED PROGRAM ☐ LOCKDOWN ☐ STATE OF EMERGENCY

☐ INITIAL ☒ UPDATE ☐ CLOSURE

RELATED INFORMATION (CHECK ALL THAT APPLY)

AREA AFFECTED

- ☐ INSTITUTION:
- ☒ FACILITY: C Yard #2
- ☒ HOUSING UNIT: Buildings 5-8
- ☐ VOCATION:
- ☐ EDUCATION:
- ☐ OTHER:

INMATES AFFECTED

- ☐ ALL
- ☐ BLACK
- ☐ WHITE
- ☒ HISPANIC Southern Hispanic
- ☐ OTHER
- ☒ Fresno Bulldogs

REASON

- ☒ BATTERY
- ☒ DEATH
- ☒ RIOT / DISTURBANCE
- ☐ GROUPING
- ☒ OTHER Incremental Release
- ☒ On-going Violence

MOVEMENT

- ☒ NORMAL Inmates on Phase Release
- ☐ ESCORT ALL MOVEMENT
- ☐ UNCLOTHED BODY SEARCH PRIOR TO ESCORT
- ☐ CONTROLLED MOVEMENT
- ☒ OTHER: I/M on modified program in restraints

FEEDING

- ☐ NORMAL
- ☒ CELL FEEDING
- ☐ CONTROLLED FEEDING IN DINING ROOM
  - ☐ HOUSING UNIT/DORM AT A TIME
  - ☐ DORM POD AT A TIME
  - ☐ TIER AT A TIME
  - ☐ HOUSING UNIT SECTION AT A TIME
- ☐ SACK MEAL BREAKFAST
- ☐ SACK MEAL LUNCH
- ☐ SACK MEAL DINNER

DUCATS

- ☒ NORMAL
- ☐ MEDICAL DUCATS ONLY
- ☐ CLASSIFICATION DUCATS
- ☐ PRIORITY DUCATS ONLY

VISITING

- ☒ NORMAL VISITING I/M released to program
- ☒ NON-CONTACT ONLY I/M on modified program
- ☐ NO VISITING
- ☐ OTHER:

WORKERS

- ☒ NORMAL I/M release to program
- ☐ CRITICAL WORKERS ONLY
- ☐ CULINARY
- ☐ CLERKS
- ☒ VOCATION/EDUCATION I/M released to program
- ☐ CANTEEN
- ☐ CLOTHING ROOM
- ☐ RESTRICTED WORK PROGRAM
- ☐ PORTERS
- ☐ NO INMATE WORKERS

SHOWERS

- ☒ NORMAL I/M released to program
- ☒ ESCORTED I/M on modified program
- ☒ ONE INMATE PER SHOWER – OWN TIER
- ☐ CELL PARTNERS TOGETHER – OWN TIER
- ☐ DORM SHOWERING BY GROUP
- ☐ CRITICAL WORKERS ONLY
- ☐ NO SHOWERS

MEDICAL

- ☒ NORMAL MEDICAL PROGRAM I/M released to program
- ☒ PRIORITY DUCATS ONLY I/M on modified program
- ☒ LVN CONDUCT ROUNDS IN UNITS I/M on modified program
- ☒ INMATES ESCORTED TO SICK CALL I/M on modified program
- ☐ EMERGENCY MEDICAL ONLY
- ☐ OTHER:

LEGAL LIBRARY

- ☒ NORMAL I/M released to program
- ☒ APPROVED COURT DEADLINES PLU progressing to GLU

DAYROOM

- ☐ NORMAL
- ☒ NO DAYROOM ACTIVITIES
- ☐ MODIFIED:

RECREATION

- ☒ NORMAL I/M's released to program
- ☒ NO RECREATIONAL ACTIVITIES I/M's not released to program
- ☐ MODIFIED:

CANTEEN

- ☒ NORMAL I/M's release to program
- ☐ NO CANTEEN
- ☒ MODIFIED: $45.00 canteen draw for modified I/M

PACKAGES

- ☒ NORMAL
- ☐ NO PACKAGES
- ☐ MODIFIED:

PHONE CALLS

- ☒ NORMAL I/M released to program
- ☒ NO PHONE CALLS I/M's on modified program
- ☐ MODIFIED:

RELIGIOUS SERVICES

- ☒ NORMAL
- ☐ NO RELIGIOUS SERVICES
- ☒ MODIFIED: In-cell worship I/M's modified program

EMARKS: Facility C will be implementing Phase III of the release of Southern Hispanic's on Yard #2 on July 8, 2008. The Fresno Bulldogs will remain on modified program nding assessment. The assessment of the Whites and Northern Hispanic's is completed. The White and Northern Hispanic's will be released to program beginning July 8, 2008 ie Behavior Modification Unit is a full program.

ate of Emergency only: Postponement of nonessential administrative decisions, actions and the normal time requirements:

☐ Approved ☐ Disapproved

REPARED BY:	DATE	NAME / SIGNATURE (WARDEN)	DATE
CELAYA	07/08/2008	M.S. EVANS	07/08/2008

(EXAMPLE MONITORING RECORD)

PHSS/CALIFORNIANS' PUBLIC/JUDICIAL/LEGISLATIVE GOV'T. ACCOUNTABILITY < TRANSPARENCY EFFORTS MONITORING/INVESTIGATING/REPORTING ON CAL. GOv'T.-CDCr —EMPLOYEES. NON-COMPLIANCE, ANTI-AGREEMEN SETTLEMENT-RETALIATORY REPRISALS/HARRASSMENT/THREATS VIOLABLE ACTIVITY < THEIR SUPPORT OF CDCr/GOV'T LONG TRADITION SUPPORTING VIOLENCE/HOSTILITIES BETWEEN RACIAL/ETHNIC GROUPS

App #6 B

NAMENOF CDCr INSTITUTION/ FACILITY(S)	IDENTITY OF PHSS/CLASS MEMBERS/REPS & THEIR HOUSING	IDENTIFY ISSUES/ MATTERS OF CONCERN	IDENTIFY ALL CDCr/ STAFF/EMPLOYEES
SALINAS VALLEY (SVSP) Facility-C	SITAWA N. JAMAA BARIDI WILLIAMSON	DENIAL OF FULL YARD & DAYROOM/PHONE ACCESS	W. MUNIZ

App
#7 A

ASSEMBLY HEARING, Sacramento Tom Ammiano, Public Safety Committee Aug. 23, 2011
Policy review of CDCR SHU. Purpose is to help educate us as assembly members on the issues surrounding SHU. Recent events brought these units to the forefront and we want to ensure these units are administered in such a way as to maximize security (prison, public)

We will hear from former inmate from Corcoran, relative from PB SHU, series of academic speakers who will present on effects of isolation, reps from CDCR inform and update updates on current SHU policies, and any changes to those policies. updates and questions. For a lot of us it is a highly emotional issue.

We all have the same goal, to ensure the best outcomes of the safety of the public. This is a very small first step, we want as much transparency as possible what is happening particularly as to conditions in the SHU and this won't be the only hearing. Future/progress, commitments that have been kept, a report back hearing.

Steve Knight, the only Assemblyman who appeared (others did later, 4 of 6)

First panel: SHU inmates prospectus and supporters, Earl Fears, Glenda Rojas, Rev. McCarthy

My name is **Glenda Rojas,** speaking on behalf of my family and hundreds out there who have someone in SHU. My cousin is serving a life sentence, falsely accused of being gang member oct 2009. This horrible accusation was backed by false evidence. The CO's who handled this case said he stabbed a man and they found blood on his shirt, which was not true, and a knife, not true either. Another officer went as far as lying, testified he witnessed the stabbing. Also the mistakes made state by gang investigation and still my cousin was falsely validated. The system of gang validation is wildly out of control and needs some real oversight with the power to enforce,

Because of these officers' lies, my cousin spent 3 months in SHU and 7 in ad/seg. It was 10 months that felt like 10 years, for both my cousin and our family. our world changed drastically overnight (crying). We were physically and emotionally and psychologically drained. We all lost weight, sleep, and peace of mind. Not to mention fighting the CDCR system is very stressful, the 602 process is delayed on purpose by COs, letters that we sent out and phone calls that we make are very seldom answered, and when they are answered they give you a runaround and we are treated very disrespectful and they have no professionalism at all. I was threatened several times by his counselor at the time and by two CO's, they told me to stop calling about this case or else.

My cousin was able to get out of ad/seg after 10 months of fighting. It was not because the institution said we made a mistake, it took phone calls to the warden, sergeants, the gang valid unit and letters to different departments within the prison. Also contacted the ombudsman, the inspector general, and Assembly rep from Modesto. This case was unusual because of dedicated family members and we were very blessed to have Carol Strickman and CPF to help us in exposing the lies that were constructed against my family member. If not for their help and our dedication as a family he would still be in there serving time for something he didn't do.

The positive effect is that I'm now encouraged to help other inmates who likewise have been falsely accused of gang affiliation. Some fighting for over 2 years; if they don't have outside help … 3 of members lost contact with family because letters are "misplaced" or never make it to their destination. Let me be clear: prison did not destroy families, but false placement in SHU destroyed the family bond. In my eyes this is called abuse, no matter what anyone else wants to call it or how they want to look at it. And someone out there needs to hear our cries as a family and as a community and do something about it and put an end to this corrupted nonworking system.

Earl Fears (former Corcoran SHU) speak on behalf of being locked up in SHU programs and the system in general of lockup. When I come in here today I don't usually speak for a person that dress in front of a panel with suits and ties because that's not what type of person I am.. when I was in the system I was being punished because of reasons that I did do in society. I admit to being a small time crack dealer, I admit to being an alcoholic, I admit to being a small time burglar, and these things are real.

I want to come in here today to speak on behalf of someone who wears T-shirt, saggin pants, crooked baseball cap because this needs to get out to people like yourself and people of the panel. These idea of going to prison cause me to one time go to the SHU program for a short time. But when I was in the SHU program I felt that this right here has gotta be crazy. I did 18 years in and out of prison but the SHU program is the bottom of the pits. What I witnessed in this short time I feel that when you cry, a man cry, a gangster cry, a killer cry, a con and an ex-con cry, it has to be a reason. I feel that these people who started the hunger strike they had to be wanting to get out to get their voice to somebody to hear it. For in order for a person to be willing to lay down and die just for somebody to hear the situations that go on in a SHU program they had to be serious.

Just small things in a SHU program causes people to wanna yell beat against the walls or whatever. I'm saying you got some kind of program you run in SHU program where you discipline people, but I don't think that a person that's in the SHU program should be punished by little things that are to aggravate a person that's locked down just because they have the power TO AGGRAVATE against a person who is already in a state of mind that's going through a mental process, small things like, maybe let's not deliver them their toilet paper today because I don't feel like passing them out. Let's not escort them to the showers today because I don't feel like running shower day today. When I want to go outside to see the outside which is straight up because there is nothing else around and I want to breathe natural air and somebody has the right to say let's not have unlock today and take 'em to the yard, this is the type of things I'm talkin' about that causes mental stress in a SHU program.

If I'm on a yard or in an open program inside prison I can talk to someone, I may get to a phone, but to get a phone or a letter that was given to me today and I don't receive it for 2 weeks or 3 weeks I think that's cruelty. If somebody working that shift that day and says something as small as "your mother died today." and you holler out your little tray slot and say, "what are you talkin' about my mama died today?" — "well I don't know what happened, you have to look into it"—well that's not right. Know what I'm sayin', the courtesy of a death or serious situation like that, I think a person that's being paid or running that shift should have the courtesy to stop and say, "Mr. Z, you had a member in your family death today."

I want to talk about the situations where people are released from different parts on the lockdown to put on the yard at the same time when fights can occur and people can sit back and laugh on who won that day. I want to also state from my understanding there's no prejudice in a SHU program because blacks, whites, browns, whatever all treated the same. I'm sayin I understand I'm in a SHU program because I did something wrong or accused of something that I didn't do, but I'm being punished, I AM HUMAN, and by bein' human I do have certain rights to get a shower, receive something to clean my physical parts, and then I do have emotions, emotions such as a grown man crying because you can't get in contact with your mother or your child or somebody. And what hurts really in your heart because when you have nobody to complain to because talking to a wall you don't get no response but sometimes we get the feeling in SHU you want to tell somebody, you wanna ask somebody for information, how do I go about. I really don't read, I really don't write, I really don't know how to go and talk to somebody that's superior to me about I'm having this problem. That's some of the cries you hear from some of these guys in the SHU program.

If I'm in this SHU program a year, or a month's time, I feel that why if I'm put in this place and I'm locked in this confinement, at times I start having mental problems, you start to have dreams. I have thoughts will I ever hear from my wife again, will I ever hear from my mother again, will anybody come in here today and teach me how to pray, teach me to just to deal with outside this wall because there is a world that goes on outside of this wall, and now I am confined, and in such as a SHU program, you shut off to all society. I can't get a phone call and call my lawyer and sayin' something wrong is being done here because in the hole you don't have a phone call to call a lawyer, you don't have a phone call to call your mother, to call your brother, to call your son, to call your child. You don't have that right when you in that SHU program.

I know you have this SHU program, have rules and regulations and it's not everyday prisoners sent to the SHU program, but they still are human and somebody has to look into it. I know that you have things you need to do each and every day. It might seem to you that having toilet paper may not mean something but try not having it yourself for a day. Being able to talk to a mental person that is a professional, you don't have that right once a month. Or whatever. One time—I'm an insulin dependent, I take shots, and it works better for you when you take your insulin shot on a routine day like 4:30, take it at 4:30, at 6:30, take it at 6:30, that's what my doctor said, but if the person who's passing out the insulin that day doesn't seem to feel that's important to get me on time, that could give me a reaction that could cause me to go into a diabetic coma, or cause me to go into a diabetic reaction, and the timing is important. Things that a lot of people in here today ..

I wanted to come in here, and if I was coming in here my way, if I was talking to a doctor or lawyer on a street I might have used a little profanity and might have said a something a little disrespect, but now I'm here representing 1000s of people incarceration, they just wanted to get the word out here. I didn't know how to come out here, because I know how to go to the streets and be a criminal, I know how to become a better person by going to school or something like that, but I don't know how to get from inside the walls of a person in confinement and ask, how do I go about this, how do I learn about this, how can I get some knowledge out here to pass to the next family or the next member of a person that's in a SHU program.

REV Bill MCGARVEY
Pastor of Community Christian Church PITTSBURG
Past chair Justice Committee of SF
Bay Area Religious Campaign Against Torture,

One of earliest clergy signers on convention against torture. Regularly visit elected leaders with contingent asking for transparency in military and police forces. NRCAT campaign against torture – including torture in US prisons. Over 300 religious organizations … Religious practices in solitary w/in ENDING PROLONGED ISOLATION: sol confinement typically embodies the following: prisoners are confined alone in 8 x 10 often cage like sensory deprivation or sensory assault, cell 23 hours a day, sometimes years in isolation and suffer lifelong consequences in ability to function. Prolonged … is Considered a torture, particularly those with mental illness and learning developmental disabilities. May 18 2011 3,249 held in CA SHUs and hundreds more in ad/seg awaiting SHU assignment. People of faith all over CA are calling for comprehensive and public review and end to practices as solution for prisoners.

Our laws and all faith traditions Recognize inviolate and inherent dignity of all human … Thurgood Marshall: "when the prison door slams behind an inmate, he does not lose his human qualities." [history] new criminal codes and penal reform that spread throughout world (1700s). 1787 phil soc for alleviating the conditions of public prisons, reforming penal system to make prisons more human. Penn Quakers significant efforts at prison reform; who came up with the idea of solitary confinement as rehabilitative practice, thinking have time to reflect would result in penitence. Wall Street Jail, built in 1776 (Flynn and zohn), had all hellish conditions of predecessors. Conditions brutal and inhumane, 1790 renovated into penitentiary, separating men women and children, corporal punishment banned. Bay Area Religious Campaign Against Torture, William McGarvey [{GET ON WEB}} Colonial penal system based on revenge.

Thought contemplation and self control would bring about redemption and prisoners return to society. Then as now lack of human contact led to psychoses among population; then and now, suicide a frequent response by those left in sol for long periods. Wall Street Jail. Practice of solitary confinement abandoned from 1880s through 1970s when revived in most extreme form in supermax units.

What began as reform has become cruel system for warehousing without concern for rehab and reclamation. We all suffer the consequences … Prisoners and communities suffer when many who have been isolated, return to community psychologically broken and unfit for society. Show some of the same effects as POWs and hostages. Causes social injury to inmate, moral injury to staff who participate in this system.

Psycho and social impairments which solitary confinement produces; it is used to enforce cultural biases particularly around race and religion. Native American inmates have been put into solitary confinement for not wearing hair short, Rastafarians for not cutting off dreadlocks (a protected religious xx); Virginia for keeping Biblical injunction found in Numbers 6:5 for "there shall no razor come upon his head." Also in VA moved to maximum-security prison for Noncompliance for hair to be above one's shirt collar. Muslims situation is worse: significant # new form sol, communications management unites or CMU under blatant assumption they are terrorists and need to be separated. CMU prisoners forbidden any physical contact during their visits.… Center for Constitutional rights, prisoners forbidden any physical contact with family/loved ones during visits. Lesbian, gay, transgender – 67% report sexually assault by another inmate during incarceration, Rape should not be a part of anyone's sentence, yet rate 15 x higher than general population. Surprising # have reported knowingly committing smaller infractions to get into SHU/solitary to avoid (rape) and other brutal form of treatment, not just inmates but also staff. (CA offers conjugal visits for same sex.)

US is a signatory of the UN Convention Against Torture, we agree it is the law of the land. I submit persistent long-term confinement constitutes torture, an intentional infliction of mental pain and suffering. Offers freedom if they become informants also breaks this convention. There are ways to protect who are a danger to themselves and others without completely isolating from community, and what we are doing in supermax, SHUs, control units in CA is a form of torture and a violation of human rights in which we all are implicated.

The National Religious Campaign Against Torture vehemently believes even those convicted of crimes are human beings with dignity and worth and deserve humane treatment. Called to recognize bless each person – the image of god found within each of us. What concerns us is destruction of human spirit, when human beings are subject to conditions that destroy who they are, it is incumbent on the whole faith community call culture and government to accountability.

If we allow solitary confinement to continue even when we have been informed of the harmful results, what does that say about the kind of people we have all become?

PANEL #2: Research-based Perspectives on SHU.

Charles Carbone, Laura Magnani, Dorsey Nunn, Terry Kupers, Craig Haney

Public Safety Committee, Holly J Mitchell … dist 47, LA – D

Charles Carbone, I'm a prisoner rights attorney from SF, litigated more gang validation cases, counseled more inmates in SHU and visited more SHU units than any other advocate in US. Based on that (JD prisoner rights lawyer) offer my thesis, the reasonable conclusion that SHU policies serve neither public safety nor prison safety. In fact they undoubtedly undermine prison safety by creating a disparate system of segregation and punishment for prisoners based on protocols and procedures that unjustly place men and women in SHU without sufficient legal or factual assurance that they are deserving of such treatments. a San Francisco prisoner rights lawyer with extensive experience representing gang members, stated that SHU's undermine both prison and community safety

(will not address conditions of confinement, Thelton Henderson reviewed, "SENSELESS suffering and wretched misery"). Focus my comments (not addressing conditions of confinement) on three issues:

- brief history of SHU policies and legal parameters that have led us to this particular point;
- present state of the law, which requires and demands action from the legislature (judiciary not equipped, nor does it have the jurisdiction grant of authority to fix many of these issues, which places a greater emphasis and obligation on legislature);
- poverty of lawful application of gang validation policies

I – 2 elements of brief history of SHU: We've done this already. Had legislative hearings between 2002 & 2004 (leadership of Sen. Vasconcellos and Romello [Romero?]) appellate record. Unfortunately many issues raised are exact same issues we are discussing here as today, and many if not all of those issues went wholly unresolved. 2) Castillo case, I personally litigated for 8 years in [US District Court, California] Northern District before Hon. Martin J. Jenkins. Three lessons learned:

1) Prior to 2004, despite law being very clear that CDCR had an obligation to tell prisoners what was the evidence being used against them and give those very same prisoners opportunity to rebut that evidence, CDCR did not do that for years and years, up until about 2004.
2) Second, one of directives out of the Castillo case was effort to move away from mere association to purposeful participation in unlawful gang activity. Title 15, supposed to be done by "articulable basis," meaning something that resembled logic had to fly out of the mouths of institutional gang investigators why the association between two gang members had to be more than just the weather or prison life, that it had to be about gang activity. That's something the CDC committed to in 2004 and has not done so at all to date.
3) Use of confidential sources of info. Hundreds of prisoners validated based on evidence that is completely and utterly confidential, CDC 1030 is a scant amount of detail, minimal amount of information. Strange that first of this month governor signed bill disallowing the exclusive use of confidential informants in criminal cases, yet have this same practice in SHU, serving minimum based on confidential sources. If the core concern is those informants are suspect or unreliable, perverse incentives, that principle should apply to SHU. Section 3341, also Title 15 section 3378 were embodied, and section 3341 of Title 15.

How policies not applied today:

1) I've seen the past decade a great variance between institution within department how are applied; lack of training; had wildly differ interpretation depending who we were talking to relative to on same set of rules, most of these policies are based on personality not policy.
2) They are decision makers, which raises a whole set of red flags in terms of the competency of CO's, competency question, making decision if person stays in SOL for minimum of 6 years. supposed check and balance is Office of Correctional Safety, good at taking square pegs and stuffing in round holes, because their record of overturning those gang validation packets is next to nil. There is no meaningful checks and balance. Within the department vis a vis OCS.
3) Association for purpose still lingers.
4) Lingering question whether all or 1 evidence has to be 6 years or older [newer?]. Department takes crude position of only one item. Department still relies on "laundry list", mere naming of names without criminal activity being identified; single source pool, counting same incident a number of times; overbreadth; historical facts that are being used to support gang validation cases (George Jackson) gang validation (the Art Of War) to base a validation on, strange considering we have PC 2601, Prisoner bill of rights, allowing prisoners to have periodicals.
5) Form of retaliation; allow debriefer to occur w/in one year being violated
6) 6 year inactive requirement and active requirement; substantial questions over this
7) in response to media, CDCR spokesman Hidalgo said SHU prisoners earned their way into the SHU because of numerous staff or inmate-to-inmate assaults; if that were true, where are the 115s? the serious rules violations? Overwhelming Majority of SHU based on a gang validation have not committed serious rules violation of any kind, much less related to gang activity.

I submit that Substantial changes are needed in this area, and is the proper purview of legislature to xx these changes.

Craig Haney Prof. of psychology UC Santa Cruz, studying psych in prison conditions and solitary confinement for more than 30 years, including many if not most facilities in CDC, including
PB SHU. Several brief points:

1) Historical context: CDCR officials certainly knew when PB SHU created in late 1980s that it would expose prisoners to dangerous psych =condition of confinement. Known since at least mid 19th century was psychologically harmful and could significantly damage persons subjected to it on long term basis. Dickens, de Tocqueville wrote eloquently about evils of solitary confinement and its power to drive prisoners mad. *In Re Medley*, Justice Miller said this form of imprisonment had been universally abandoned because 'considerable # prisoners fell after even a short confinement into a fatuous condition from which it was (almost impossible to get out of), others became violently insane, suicide, those who withstood did not recover sufficient mental activity to be of any subsequent service to community.'

2) CDCR must have been aware of more immediate ones: 10 years before, engaged in continuous litigation … late 1970s through 80s focused on these issues; on harmful affects of solitary confinement and wrongheadedness of using it to control gangs. Stanley Weigel repeatedly chastised CDC for inhumane conditions in Quentin, Soledad, DVI. (I provided much of testimony that provided those facts.) Instead of taking info and admonishments to heart, cynically ignored them, and moved to create another lockup, created enormous unprecedented scale to impose unimaginable levels of isolation in PB. No doubt they knew the risks they were taking of prisoner psyches who were confined there. I, Dr. Kupers, and at least one fed judge repeatedly told them so. Throughout entire period of litigation CDCR never presented one credible witness; just indifferently ignored us. Exposed prisoners to extreme psychological dangers and nearly uncharted levels of complete isolation to which PB would expose, CDCR chose to open PB SHU and operate over a year w/ only 1 Masters-degree level psychologist to administer to the needs of the entire population of 4000 and including 1500 housed in dangerous isolation. Judge Thelton Henderson acknowledged PB SHU " may press against the outer limits of what humans can psychologically tolerate." Henderson ordered significant changes, force policies in screening, and removing most serious prisoners (mentally ill). Did not shut PB SHU down, had only been in operation a few years at time of hearing of Madrid case 6 years … In 1995, as Henderson himself noted, "we could not begin to speculate on the impact the PB SHU would have on inmates confined for 10 to 20 years or more."

3) We no longer need to speculate. Some of the men on first busload of prisoners brought to a barren and desperate land are still there. These men continue to be treated very badly, routinely worse than any prisoners anywhere in the world, under conditions that many regard as torture. They live entire lives inside 80 sq. ft. windowless cell, leave for an hour for concrete barren exercise pen. Save for small glimpse of sky they have no contact with natural world at all, not even to touch or see a blade of grass, no contact with normal social world, except for incidental brushing up against CO escorting them.. visit loved ones through thick glass, denied opportunity to touch another human being with affection. This has gone on for years and years, for some of these men for decades now. This mistreatment had terrible consequences for many. PB prisoners complain of sadness, hopelessness, desperation, suicide, are paranoid, anxious around and afraid of people, lose grasp on sanity, others certain never able to live normally again. Paying terrible price as pawns in this an experiment, perhaps a greater price when released and find unable to cope with demands of normal social life outside prison.

4) There is now clear and convincing evidence that the SHU model of dealing with gangs doesn't work and may even make things worse. PB had a serious prison gang problem in 1989; now has the worst one in the entire nation. A compelling argument can be made that the SHU units make the gang problem much worse; in this sense sadly, the suffering of the prisoners is not only in vain, it is counterproductive.

Laura Magnani American Friends Service Committee in SF, author of study "Buried Alive: Isolation in Prisons," 2008, addressing torture in SHUs. Working on this issue since 1970s, yet shocked when began to gather these statistics. Committee on Safety and Abuse in American Prisons found 80,000 prisoners in long-term isolation in year 2000, 40% increase from just 5 yrs earlier. Most experts put number at 100,000 nationwide. Our research found CA holds close to 4000 in SHU and close to 14,500 in some form of segregation (protective custody, administrative, psychological). REPORT ON PAGE 6. Shocking stats given. State is hard up for $ and costs at least twice as much to house people in these units. Over 240 in isolation are women, face particular hardship because of special needs, and extreme lack of privacy. When male COs have 24 access to women's most intimate functions, creates extreme form of oppression, and often trauma, made all the more acute because history of abuse in prisons at hands of men. Isolation on the one hand, also lack of privacy–even in their isolation they cannot escape the cameras, and slots in cell doors, seeing every move.

No clear definition of torture? UN Convention Against Torture and Other Cruel And Degrading Treatment or Punishment: any state-sanctioned action by which severe pain or suffering, mental or physical, is intentionally inflicted for obtaining information, punishment, info, intimidation, discrimination. By this definition SHUs fail on several counts: they cause severe pain both physical and mental, they do so often or even primarily for the purpose to extract info and intimidation, and are the most racially segregated part of the prison system.

By our estimate people held there is over 90% people of color, because they are used largely to control, to judge what prison officials judge gang-related matters, no distinction made between association and alleged affiliation [membership]. UN human rights [commission] responsible for implementation of convention on rights say prolonged solitary confinement is prohibited as a form of torture. Units themselves = torture; violent cell extractions, 3 pt restraints or hog-tying, or more recently contraband watch (diapers, leaving them in their own waste for days at a time). No only do these practices violate international treaties, they violate our sense of human decency. Justification is always the prisoner "may" have engaged in some kind of violent behavior.

"No exceptional circumstances whatsoever, whether a state or threat war or political emergency … may be invoked as a reason for torture."

Legislative recommendations to begin to move the state away from torture:

1) (always been vetoed) Restore right of reporters to enter facilities and interview prisoners, not just those hand-selected by administrators. FREE PRESS, one of most important safeguards against abuse.
2) Implement limits on amount of time a person can be held in isolation. (More than 30 days), must get due process w/ access to attorneys and impartial judge, not just an administrator. Short of an actual time limit … to determine if sentence is prolonged (review every few months).

Assembly members now here: SKINNER AND MITCHELL AND HAGMAN

Dorsey Nunn, Exec Director of Legal Services for Prisoners with Children, a public-interest law office. All of Us Or None, a project of LSPC [working for] full restoration of civil rights of incarcerated people. I have been visiting within CDC for 51 years; 22 years personal visits, 29 years professionally as paralegal. Contacted consistently since opening of PB where prisoner rights being violated. June 28, 2011, with HS looming, visited PB for first time. Too hard to ignore people stating they were willing to risk lives … Interviewed people with standard questions, med history, emergency contact info, and … potential death of the strike efforts.

There must be a line to cross where punishment becomes torture. [Isolation] may not be torture for a few days, few months, but can be something totally different to isolate them for a few years or a few decades. One of the people I visited was PJ, knew him as fellow prisoner. They had put him in ad/seg in 1988; he knew about Abu Graib, Guantanamo Bay, knew about torture, [didn't understand] why something would be considered torture at Guantanamo Bay and not Pelican Bay. Noncontact visiting area; [PF] was much lighter, lost color. I learned that the lack of direct sunlight where people exercise, referred to as the dog run – there, unable to experience what is considered 'outdoors': no trees, no grass, natural sunlight has to squeeze over a very high wall. It's a blessing to see the sun and the clouds, blessing not to get wet on rainy day, lack of protection against inclement weather. I wonder if white people could tell when black people experience color change? Do we always appear to be tanned to them?

Two people told me that day, hey I miss talking to black people. What it would be to be annihilated culturally? found it refreshing to talk to the same race in America. One guy complained he only spoke to one other black person legally in 20 years; other time he made the attempt he was given disciplinary report. What does this mean to reentry when only contact with other human beings are hostilities; not to be touched or only to be touched suspiciously. [Nunn questioned the deprivation of human contact and the ability of someone to do something as simple as speak to someone of the same race.]

PJ was locked up most of this time because of association, and the fact he did not name names. If this particular visit has any real meaning to this hearing, you would have to consider:

- Can justice be had absent an admission of wrongdoing? It is my belief people have been tortured for multiple years.
- Can a system be fair and just if based on confidential info extracted through questionable means?
- Should people have a fundamental right to confront their accuser? Placed in ad/seg based on flimsy info secured by questionable methods, unfairly deprive people of right to be reasonably considered for parole. [PJ has been] eligible for parole for 35 years, how much programming and rehabilitation time has been lost?
- Didn't want to be labeled a gang member based on association; labels the state uses to not be held accountable for their acts of violence.

Dr. Terry Kupers, psychiatrist, prof. at Wright Institute: I have served in dozens of litigations about conditions of confinement, currently federal court-appointed monitor in Mississippi of a large class action lawsuit.

Time for legislative oversight very much needed, in a democracy is a duty of legislature to oversee prison functioning. [I speak as an MD and MSP.] Much needed in CA, have gotten out of control, the last Supreme Court decision said have to reduce the prison population, because it's not working and prisoners are being abused.

Prisoners' demands are VERY reasonable; they're actually common sense. They are not asking for anything not spelled out in 2006 US Commission on Safety and Abuse in America's Prisons, a bipartisan panel. Prisoners demands come right of that report. CDCR says they are in compliance with that report; they are absolutely not, witness the section on isolation/segregation confinement. Far out of compliance. [The commission's report is] Recommended reading.

Delighted you are looking into this: Problem of secrecy: For abuses, for human damage to go on, for prisoners needs to be blatantly ignored, the process has to be secret. Otherwise citizens would get very upset. By having hunger striking prisoners have direct attention. public media on plight of prisoners in isolation, an important development and offers us opportunity to intervene. Legislature could reverse the media ban—it is illegal for prisoners to talk to media in California, that needs to be reversed as part of legislation that flows from this intervention.

CDCR will say they are doing many of the things this panel recommended they do, "it was already in the works." In 2007 there was a very high level work group that made a report advising the very changes the prisoners asked in their demands; none of that has been implemented. While CDCR will say they are implementing changes like what we are talking about today, they actually haven't done a thing and legislative oversight is very much needed, urgently.

The question of security comes up: There is delicate balance between constitutional safeguards and security issues. In litigation we get to "X or Y is violation of 8th amend (cruel & unusual punishment)." DC will say need it for security. The US Constitution was written with security in mind! The Constitution takes security into consideration, and the requirement that we need security is not a reason to violate constitution. CD will say need Supermax is to control gangs; this is contrary to social science research. Since late 1980s, advent of Supermax, has witnessed *increase* in violence within the prisons… Mississippi (I gave a hard copy of our report to this committee) downsized from 1000 to 200 cells – the result was a *decrease* in violence throughout the entire Mississippi CDC and a decrease in infractions … so Supermax not necessary to support safety. When prisoners, when they get out of Supermax they are still in max security, a prison issue, they are not going home from supermax.

Legislature should address:

1) Due process should be addressed: Wilkinson v Austin, out of Ohio; Supreme Court did not hold existence of supermax unconstitutional but said it constitutes significant hardship, so prisoners have standing and are entitled to due process, spelled out in great detail. Ohio policy was in violation of that rule and they were forced to rewrite that policy, and once that was done as in Mississippi, rate [of violence] went down in Ohio prisons. So needs to be something spelled out, I am happy to work with committee, has to be more than what CDCR now allows, because lot of violations of their own policy are in practice every single day.

2) Conduct-based SHU assignment, for a lifetime indeterminate sentence, they don't get out, so a lot there since late 1980s since designed.. Needs to be conduct-based consignment to segregation. If get in fight, penalty of 30 days to segregation and then you get out. In Calif, it's not conduct that gets you in there but *assumption* you're gang affiliated, often on very poor [evidence?], and you're in there for life, unless you debrief, give up information about other gang members, which is likely to get you killed. In Indiana and New Mexico, SHU used for very different purposes elsewhere, to change behavior w/in prison. They are in max security community, and if misbehave put in SHU for delimited time, usually 6 months, given a program with assignments they have to accomplish, and if do and stay out of trouble they get out. And this changes their behavior, and this is far from how these units are being used in California and would go a long way… most states, gangs left in general population unless do something (gang behavior) that is proven with due process,

3) Phase programs: we have statistics, research, talk to 1000s of prisoners and CO staff, one of the most stunning statistics in criminology today, suicide is a big problem in jails today, over twice [the rate as in the] general population at large in any state prison system. This is true in CA in spades, over half of actual successful suicides in entire prison system involve the 2-6% of prison population that happens to be in segregation in any given time. That is a stunning statistic and supports the idea that the despair of these kinds of segregated situations breeds suicide (among other things, acting out and other problems). So need to reverse the dead time in segregation, an indeterminate sentence, not going to get out until they die or

inform on someone else. What that does is breed despair, and despair leads to suicide. That can be reversed by legislative means – phases within the segregation system can be offered to prisoners to learn to behave right so they can get out and be law-abiding citizens. That can be included in legislation.

4) Need alternatives to debriefing. Violence in CA prisons has been skyrocketing while supermax units have been in existence. One has to wonder why that is. One reason: one of most violent is PB, half SHU, half general population. GP is maximum security, and If you get out of SHU you will be typically placed on yard at PB and you'll be killed -- because it's assumed you snitched on somebody, assumed that's how you got out– so a lot of violence on yard in PB. So to extent that's the case, that is example of the existence of the Supermax *increasing* rather than decreasing the violence. So alternative to debriefing is phases where people can work their way out of a gang by behaving appropriately within the phases. (Connecticut, northern correctional facility)

5) Maxing out of the SHU – people leave and go immediately into community, there's bad record of drug use, recidivism, more crime because in isolation for years. Most states with these units have 6-month policy in congregate resocializing program before released. Made big mistake in Calif in 1980s, big prison violence due to massive crowding from War on Drugs. Instead of reversing crowding and population as Supreme Court has now ordered Calif to do; we villainized a subsection of prison pop and said violence is due to them being predators and called them 'worst of the worst' and it has been downhill ever since. We should have reduced the crowding and set up rehabilitation in which learn skills other than fighting with others. An opportunity for legislature to do that now.

AMMIANO: [some are] concerned we are up here parroting 2 years ago and how we got stuck, and I am committed to making sure there is some movement on this.

NANCY SKINNER , CA state assembly, dist. 14, Berkeley – D
Aware of any comparisons of costs, life w/o parole vs. style of incarceration in PB—is it higher?

[MAGNANI?:] It's twice as expensive as cost of housing people on mainline; security costs very high, ratio of officer to prisoner is very high. Charles Carbone: about $57,000 per SHU inmate. Embedded cost is also intersection between SHU/ and policies and board of parole hearings. If you have been subject to gang validation, prospects of parole are virtually non-existent, so impact on state for prisoners servicing long sentences for achieving parole and ongoing costs for lifetime …

KUPERS: Conversion: these buildings exist, people locked up 24/7, but the buildings can be used for other purposes. In New Mex., downsized SHU and knocked hole in wall to create an outside yard—one reform agreed to was to allow prisoners to go outside for actual exercise and recreation—and built a recreation area. Conversion is relatively inexpensive (cheaper), [SHUs] can be converted for other uses. they don't have to stop using the building.

LAST PANEL – CDCR
Scott KERNAN, undersecretary of Operations, CDCR
Anthony Childs, Chief of Operational Safety (he didn't talk)

Assemblyman CURT HAGMAN, district 60, Chino Hills, R

SCOTT KERNAN, CDCR: facts need to be illustrated. SHU created in response to serious security threat of gangs in our system. Way to protect inmates, staff, public from tangible threats from gangs – murder, extortion, rape, drugs, are examples of criminal activity that require the department to do something. About 3000 inmates in SHU in total pop of 165,000 inmates in our system, "*very small number*." 8000 assaults or stabbings the department has each year, gangs would be primary cause. Millions of taxpayer dollars wasted each year, gangs would be identified as primary problem. People not show up because afraid of gang retaliation.

During HS we did prevent the media coming into PB during course of it but right after HS was dismissed, we invited members of media to come in and tour our SHU. We simply don't allow media to talk to individual inmates for fear of them sensationalizing their crimes, like Charles Manson or Scott Peterson having media inquiries all day.

Segregation is critical to protect inmates who want to program. [Segregated: only] 3000 out of 165K. SHU has been heavily litigated. Courts have upheld validation in due process and conditions. Admittedly there are harsh conditions but not unconstitutional and not torture or human rights violations. What might be a violation is the violence the gangs perpetuate. That is, [a prisoner] must stab a member of a rival gang or be in fear of retaliation. We have duty to protect all the rest of the inmates in our system. CDC agrees we can and should make some changes in policy, in

fact as a result of the HS we are in discussions with advocates and inmates, we can make some positive policy changes and still allow us to protect our charges.

CDC in 2007 contracted national experts to review policies and make recommendations on best national practices. Many were related to validation and debriefing process. A lot of it involves stepping down process where by virtue of behavior [prisoners] can be placed elsewhere and show by behavior where they can program without violence. Overcrowding has been a problem, we just have not had the space. The 3 judge panel, the reductions, the government realignment program will provide for the first time in many decades additional space for the department to make some of those positive changes.

Realignment panel has given impetus for some quality decisions on program on SHU and still maintain safety: behavior-based system with due process, incorporate best process and incorporates safety; not another study but substantive changes that can occur in short term. We must be careful how we make these changes; what's [hangs] in balance is safety of inmates and staff in our system. 1000 [inmate-on-inmate] assaults last year, and same number of inmate-on-staff assaults; we cannot permit policy changes to perpetuate violence, people's lives are at stake.

Will work with all parties, many of the panelists today we have worked with as a result of the HS, anticipate the CDC will evaluate our policies in matter of months, not years, to come up with a policy that meets the target. We will involve all state, law enforcement, CCPOA, labor unions, legislature itself, national experts. (heard you, Mr. Chair, that you would like to have continued hearings, so you can get full bearing of extent of problem). We have gathered SHU policies, our lockup policies, for 28 states, developed a warden's advisory group to evaluate and develop the policy, once the Secretary approves that, then the stakeholder review, then regulatory process. We do believe process that gives inmates [incentive for] disciplinary-free behavior is appropriate…[???] targets 6 prison gangs needs to be modified, and need to ID security threat groups. I do admit our policies just target prison gangs today and not capturing those inmates who should be segregated.

Process would allow inmates to earn way out of system by behavior and require the department to document when we feel not the case. Weighted system, not process permit us to just ID an inmate as having associated with a member and therefore must remain in SHU; will require us to document that behavior and stand the test of due process. Step down process is a critical part: have to show while in SHU have to be involved in programs with other gangs and races and to not participate in violent behavior and they can earn their way out.

The CDC gang policy: With 3000 of 165K inmates is intended to protect inmates we are charged with, and staff, policy has been litigated and court tested and upheld. Dept is committed to making changes, please rest assured we are going to do it with this in mind, to protect inmates we're charged with.

AMMIANO: CCPOA was invited here..., we DO want a balanced … there was no malevolent gesture to exclude anybody … We've been going now for an hour and a half, will have quite a bit of public comment, how to handle the rest of this, with time constraints follow template, and will be scheduling another hearing. [seems very committed]

AMMIANO: it's 2011, any ideas about why recommendations made in 2007 haven't happened?
KERNAN: Worst economic times since Great Depression. A lot of this requires resources; the CDC is challenged with realignment, biggest change in history;
AMMIANO: I want to work with you so it happens—and [before] 2015!

AMMIANO: Are you making changes to debriefing program? That comes up a lot.
KERNAN: Inmates have a choice to come out of the system. We will always use all intelligence that we get in making our determinations. If you talk to inmates who went through debriefing process, 99% say, 'You got it right. When you validated me as a gang member, you got it right.' So for them not to have a voice in this as well would not make any sense. We will continue to have a debriefing process. That will not dissuade someone who by their behavior wants to get out of the gangs.

AMMIANO: What about point that debriefing can place prisoner at serious risk for their lives and the lives of their family?
KERNAN: people making conscious choice of their own to dissociate from gangs; we should be encouraging that. that's one way to get out of SHU. The Department does wonderful job documenting using numbers of sources of information, I think that we got it right. The 3000 inmates in SHUs are the ones perpetuating the gangs, are the generals, disciplining inmates who don't stab staff on sight.

AMMIANO: under new model will you address due process concerns?

KERNAN: any inmate who doesn't want to be in gangs there will be a way out. There will be a hope for them. One of problems with the Department has been, these inmates, the desperation, these are people who are involved in gang activities every day, so they will be able to by own behavior work their way out of the SHU.

AMMIANO: will you continue relying on anonymous informants?
KERNAN: yes, use confidential informants as a source, not the only source. weighted system, we have to use that, every law enforcement in the country uses confidential information sir.

AMMIANO any process for prisoner to confront or appeal an anonymous witness?
KERNAN: no, it's one piece of weighted system

AMMIANO: were you ever require, do you see this on the horizon, corroboration of a debriefer statement, considering alleged to be coerced and therefore reliability questioned?
KERNAN: we corroborate all evidence, so yes.

AMMIANO: Who judges if prisoner guilty of committing such behavior and , what protections …? (We want to do something fair and impartial) You are in the trenches, you have your perspective you have a lot of experience but there's still something wrong. We need to know how to make this more fair, I'm not saying you'd like the suggestions, but we're trying to come up with something impartial and would meet some of the reasons as I see it for that HS.
KERNAN: we're going to continue to make our policy with stakeholders as fair as we possibly can, I told you that all along, many issues raised by the panelists have been litigated by the courts. There is a safeguard for those processes. We are going to make the decision as the people responsible for the prison system. And of course there will be external review of the offender.
AMMIANO: legislature has a role in this: I did like some of the suggestions for legislation. MORE TO COME.

NANCY SKINNER: my intention is not to have any kind of conflict in our discussion today but I am /… the data we heard in the panels and also the data I've seen through press reports and other materials indicates once a prisoner is in PB SHU it is very infrequent for them to be moved out. So I'm concerned, rather I see a bit of a disconnect, between your answer and at least the data I've seen.
KERN: average stay at PBSP SHU is 6.8 years. Certainly there are offenders been there much longer. I can give you those statistics. But average stay is 6.8 years.
SKINNER: given your remarks earlier, doesn't that seem rather a long average stay if our policy is to be able to move them? it seems contradictory to the comments you had made earlier.
KERNAN: the 6.8 years that an offender in SHU is an average of the total. The offenders in SHU with mountains of documentation of illegal criminal activities both out on the streets and public in prison is vast. Not information that we because of its sensitivity would necessarily share with public, clearly these are the generals and are involved in terrible assaults on other inmates and on staff. The SHU serves a purpose to separate those inmates from those that want to program safely in our prison system. I agree CA has a unique gang problem and I agree with the panelists it's not curtailed and may have even increased. Separating these offenders has in my opinion led to a decrease, it should be much higher if we let these .. run prison gangs.

HAGMAN: from notes, we talk about current and future policies: right now, you have SHUs in existence since the 80s, can you outline what gets you into a SHU, and current policy what gets you out?
KERNAN: system based on points: offender has to have 3 points to be validated as a member (tattoos, stabbing, self-admission, any number of criteria), generally have to have 3 pieces of evidence to support their placement as a validated member in indeterminate SHU. System Contemplating much to the 2007 report would weight those systems; confidential informant piece of information might be worth 2 pts. for example and not enough; but that plus tattoo plus gang paraphernalia in house might be sufficient. That's what other states are doing. What experts say.
HAGMAN: so prior to prison system can be ID'd or do have to do particular acts while sentenced to go to that level?
KERNAN: one point of the 3 points of validation can be given to us from outside law enforcement agents; all this is documented in personnel file;
HAGMAN: To be released out of that area into different populations you have a protocol,
particular outline for behavior?
KERNAN: inmate who has for 6 years no information, has come forward involved in that activity; they can be placed on inactive status and out of SHU, that's the current process.
HAGMAN: Some of the reasons for solitary, communication with other inmates; panelist talked about being on their own, no human contact, can you explain security side of that reasoning?
KERNAN: One of primary things do in SHU does in segregating offenders is inhibit ability to communicate and call orders to other inmates or hits to other inmates. The inmates can write family members, number of other activities the inmate can. One result of HS we're evaluating is creature comforts (we don't allow holographs or colored pencils because had instances of passing on gang information; maybe we could permit hobby craft items). Privileges we're evaluating.

HAGMAN: does CDC have studies does it act as deterrents from activities happening?
KERNAN: difficult position dept. is in, only place in segregation, could only anecdotally what might have been prevented …
HAGMAN: you testified 8000 stabbings in general population and you're trying to pull out the worst offenders and isolate them from the gangs … it's easy to look at one side, I'm trying to get bigger picture, future legislation, does these things work as deterrent, do they work as rehabilitation, what data can we gather from that, compare to similar people with similar types of crimes in GP.
KERNAN: we know that inmates who elect to debrief come back and tell us about SHU; ID leadership of gangs are and criminal activities. So not anecdotal, information comes to us of individuals retained in SHU of their current activity in criminal enterprise. So a future panel, balanced, Panel of law enforcement experts in state, many of our gang xxx are involved in .. RICCO, cases, running other systems, gang activities across the nation.
HAGMAN: any kind of independent advocate in your organization among inmates? Fair ear to listen to today if feel unrightly charged with something, authority to go look at some of the confidential information without compromising security, to give a third party position? Do you have someone like that Advocate general, internal affairs law enforcement, can look at them independently and say validated, give more peace of mind systems are being followed, with a particular inmate not weighted, but fair process.
KERNAN: we are most audited and reviewed DEPT in state government. Office of inspector general has independent oversight and May have been doing review of SHU cases and asked DEPT for information BSA. We have internal affairs, if allegations of excessive force or inappropriate valid, we have an appeal process, if all of that doesn't get the inmate, they can go to the courts.
HAGMAN: There are things now where inmates can go to internal affairs or court if feel unrightly being treated or classified.
KERNAN: we have internal ombudsman offices, just spent 15 years with Madrid class action settlement a master attorney that spent a lot of time in PB SHUS evaluating our policies and our issues, just got that class action resolved. And they're gone now.

HOLLY J. MITCHELL: To follow up [on question of Assemblyman] Hagman, current rules that govern SHU system: according to our notes, 5 yr. term murder of a guard, 3 yr. term for murder of other prisoner; so I'm curious, as you move into your new system, will it amount to less time than 6.8 years?
KERNAN: now segment if offender breaks the rules have determinate SHU;
MITCHELL: if gang affiliated is indeterminate, will that be the consistent policy going into the new system?
KERNAN: I believe it will but we are evaluating now; will it protect public safety that dept. believes needs to be protected.
MITCHELL: I'm curious. And just to give us a context, going back to the determinate sentences, non-gang affiliated; how many guards have been harmed or murdered in last 10 years?
KERNAN: I can tell you there's been a number of staff that have been harmed, both inmate on inmate and inmate on staff: I don't have that information but can say [there are a] number of staff who've been harmed. [I can provide that info]
MITCHELL: I was cautiously optimistic about hearing your presentation, given what we've read and heard. and I have to say Mr. Kernan, I'm concerned, frankly I'm disappointed because my sense is based on your comments that your feeling or belief is the status quo is appropriate, as you talked about the numerous lawsuits that have been settled, the current SHU policies meet constitutional, standards and expectations. My concern is your leadership in the transition into a new system would be compromised in that you feel [it] is appropriate for the kind of inmates currently being serviced. My sense is that constitutional guidelines are the *floor*. I fully appreciate the challenges you experience in terms of the amount of crime that takes place in CDCR institutions today. I get that. My point, as a legislator with oversight responsibility my goal and expectation, that recently [CDC(R)] added R back to your name, is that constitutional guidelines not be our goal, but that our goal be to really look at *human rights* policy, in terms of how we deal in very tense crime ridden environment that poses to public safety to inmates and CO's. As we hear about research that suggests that rather mean-spirited arcane tactics that we're using in SHU don't work in preventing ongoing violence, that a transition may not be successful.
KERNAN: real public safety that I see every day in our systems, and the violence that occurs every day, so I go into it not with status quo at all, we want to evaluate and make good policy that gives due process and is fair to the inmates we're charged with, but not lose focus of real public safety threat perpetuated by gangs in our system. We're gonna ask for input from all involved and hope what comes out of the system is fair more due process system. whether that will reduce terms I don't know that, what pops out with national experts and best practices I don't know but it is not status quo. Policies have been in place for well over a decade. So now Today we're embarked on looking at system with a real eye to making changes to system.
MITCHELL: it's going back – and thanks for the clarification of gang validation – and the new system that really won't incorporate any changes in terms of the sense … Who makes the decision in terms of how long a gang validated inmate stays in SHU? (I am hypersensitive to this issue) Clearly if I am in the SHU, I am gang-validated, which I could be based on the 3 points you identified …
KERNAN: [??] based on your threat to public safety …

MITCHELL: What's check & balance? One individual decides I am a threat to society and I should stay there for 30 years plus?
KERNAN: prison staff development process, comes up through a process including our chief of safety who reviews and makes sure meets that standard, so not just the CO staff at the prison but it is not just … dept. makes the decision, don't envision there will be a change with this policy.
MITCHELL: Those individuals have greater powers than those on the bench, this body, and yet we have this administrative only process that decides how long someone can stay in the SHU.

SKINNER: Also the case in our DJJ [juvenile justice] system in that our CO's there have the ability to give our youth inmates the time add… so their sentences are indeterminate but they can serve far longer because the judicial system doesn't give a specific time but serve far longer than what the judge might have anticipated or envisioned due to the time adds. BUT: you made comment that prison in CA gang situation was unique. I haven't seen enough studies to indicate the accuracy or not of that, though am aware there are prison gang situations in many other states. NY IL TX. And that gangs (not a defense) are as an organization structure or unit are sort of a feature of many aspects of different human activity (not in any way supporting the existence of gangs…) but we see that type of organized activity in variety of situations and not so unique to CA. Trying to understand what makes ours so unique and is it possible that different structures we put into place, that perhaps ours are stronger just because of how we have dealt with them by comparison to other states?
KERNAN: One of major contributing factors is just size of Calif, with nearly 172,000, just the amount of offenders in our system makes us somewhat unique, so structures of gangs are very very embedded into the system. An inmate coming into the system from Sacramento, just by virtue of coming into system and not saying a thing but because of what he's wearing, can be stabbed, or because of race, where it's so violent a white would kill a black or vice versa just by virtue of color of skin. Most of experts I've looked at, and can provide additional data, Federal Bureau of Prisons (TX, FL) have unique problems with gangs in prisons.
SKINNER: just the number of people we incarcerate adds to it?
KERNAN: Population of our state, judges send inmates to us, our responsibly to incarcerate them. Size, overcrowding, all contributing factors; and now more than ever we have an opportunity as the population is declining to make some positive substantive changes to our policy.
SKINNER: important for us to look at what if any ways we are adding to this. Clearly we see, sad but true, the type of activity you're describing; just last week there was violence at candlestick park between 49ers and Raiders. One (sociologist) could come up with typical traits with way people identified with their … and thus it evoked sadly they were prone to violence, one died … there are human behaviors that are like this and we see the evidence in lots of different contexts, we in state and CDCR need to examine way we handle it and whether we are contributing to those incidents in our own contexts.
KERNAN: [hope 49s/Raiders …] our system in itself may create the problem; from personal experience can only say, the victims of the gang violences in our system, an offender who wants to do his own time or rehab himself, he cannot. An offender that wants to rehabilitate himself he cannot, an inmate telling him to go stab somebody or HE will be killed. So that is the root of why we have a policy to separate those people who prey on the weaker, why those in SHU, my comments, why we have a SHU in the first place to separate them so those inmates can program.

AMMIANO: I appreciate the comments made by panel members. I do respect you [addressed to S.Kernan] getting up here, and feel you've been very candid in many ways. Like a lot of us, you would like improvement but sometimes we can't see the forest for the trees, I'd like to work with you on that. I think there is some basic concern here about human rights and in that case, sir, we wouldn't let cost get in the way. There's been some stonewalling, that's to be expected, but I think it's a new day here in the legislature, particularly with court rulings, changes in administration, etc. We are gonna pit-bull this issue. I know we will be seeing a lot more of each other.
KERNAN: I know that Sec. Cate will look forward to working with you in the future.
AMMIANO: we're *going to* have more hearings on more specific issues.

PUBLIC COMMENT:

Luis Garcia: Thank you on behalf of prisoners to look at torturous conditions they're living under. Member of PB prisoners support group, group of friends and family members, name Is the senate select community committee on the California correctional system, member of Santa Monica group Dolores mission/ministries; 2 questions for purpose of policy review: 1) please review the HSers want to know how long it's gonna take to 5 demands be put in writing, and 2) disingenuous behavior of negotiators, including Kernan, when tells prisoners only take a 2-3 weeks to institutionalize the 5 demands apparently the DC (agreed).

Jen Lasko: fed of teachers, represent over 120,000 teachers, counselors psychologists across the state… believe a real reason for gang issues is poverty; spending 56K per year for inmate, 6K for K-12students exasperates the problem among other things; it's public policy, misallocation of resources to expensive guard contracts and prison bureaucracy is also a cause of the increased violence; present a letter signed by 1100 teachers counselors letter

supports expanded educational program in SHU, we believe public cuts exasperates the school to prison pipeline, you have teachers union, CFA, anything we can do to support. Thank you for having this hearing.

Julie Tackett: 16 years in short corridor PB. Bryan was willing to go to lengths of peaceful protest to shine light on conditions in PB SHU. (quotes how he got into sol conf) I take full personal responsibility … it has to be recognized that my validation as a gang member was based solely on confidential debriefing of inmates who.. could no longer suffer under these conditions of perpetual isolation in solitary confinement; .. is no individual accountability under CDC policies … I have now been in sol conf for over in a decade not based on CDC rules violation, but rather on a false label by inmate informant broken by SHU conditions." Ask for meaningful way to program out of the SHU, a fair shake to prove I'm no longer a 25 year old but a 38-year-old man who is far wiser and more mature. We are at the mercy of CDCR's closed system.

Virginia Mackerras? Brown: husband in PB SHU since 1989, 22 years, and all of them in the SHU. That Should be unheard of in USofA but unfortunately it's not. He hasn't been Not allowed to get any sunlight, walk outside, take a picture in those 22 years. No wall calendar or drawing paper …those were taken away and the answer is always for the safety and security of prison. Our Visits are only 2 hours long, but far away. Can't hold hands during visits like other inmates and their wives as our visits are behind glass. All of this excessive punishment because he has been labeled associate of a gang, labeled without any evidence as such, only speculation and accusations of unknown informants. no right to confront any accusers, and is judged solely by prison staff, prison staff can do this as they are not held accountable in a court of law and are free to condemn inmates to an indeterminate sentence the SHU at will

James Harris, LA: Socialist Workers Party. It's obvious SHU is unusual and cruel punishment, should be abolished, almost absurd to argue about that fact when you can see the conditions people are kept under. I want to stress the SHU is not primarily or ostensibly about gang activity; no more than the war on drugs is about a war on drugs. These are fakeries, it's about the same thing: attacks on the working class in this country as a whole and they are meant to terrorize us;that's what's behind their bizarre and arbitrary application; out of activity and put fear into our hearts. I applaud people here today standing up to a system that will carry out what people are doing like what they're doing to people in the SHU… these prisoners are not just victims but capable of organizing themselves to fight.

Gail Brown, life support alliance, talk about timely parole for lifer inmates, Mr. Carbone these inmates in the SHU really have trouble being able to meet criteria that the board puts in front of them to be eligible for parole, like you look at that; like to see that stakeholders include many those that are in the groups who came to talk to you today.

Harriet: brother in law has been in SHU for 25 years, he was at SQ and often had family visits, then he was moved to Folsom, when he was moved he was in the hole, not sure, some piece of contraband, he was wrong, punished was fine; then sent to PB been there for over 20 years in the SHU: if he is a gang member or was a gang member, what can he do in the SHU, he's 65 years old, what could he possibly be continuing to do in gang activity when locked up 24 hours a day? How can he possibly still be a gang member, people that were in the gang or alleged to be, these people are gone? What can a 65-year-old man still be doing? So the people who said he was a gang member, because he won't debrief, what chance does he have to get out? His Mother is dead, his children are grown, what can he do to just be a part of his family? Just a chance? What can he do to be paroled?

Manuel La Fontaine: former prisoner; CDC has been framing this gang the "worst of the worst" and what they're framing is justification, they're framing a smokescreen just to get away with inhumanity. Heard a report speaking to media, someone said the SHU is like a 5star hotel. The Reality is HSU is not a 5 star hotel; something that helped me change my destructive manner inside when behavior, one thing they told me: "We are the gang. north and south not gonna play in our house, we are the gang and you are gonna follow our rules." That helped make me conscious of what's going inside. Just because we label somebody, does that mean we *allow* torture people to be placed under inhumane conditions in a 6 x 10 chamber with no access to sunlight?? If we believe CDC wants R, how does rehabilitation play into CDCR?

Amber: brother been in PB SHU for last 10 years. These inmates were prepared to lose their lives to expose the injustice that goes on behind our prison walls. The Solitary confinement was not created for entire sentence! Majority of housed in SHU have gone over a decade without human contact, religious services below par medical attention. CDC wants to house in SHU because like it or not, because they are moneymaking machines. SHU double the cost to house from regular prison population; inmates require 3-4 guards per inmate, creating job security for largest union in CA. Demand change occur. Words from Maria Robinson: nobody can go back and start a new beginning, but anyone can start today and make a new ending.

G2 Sadiki: Mr. kernan, the things he talked about, there is a huge disconnect between what he said and what actually occurs in the SHU program. I am a former SHU prisoner spent 4 years in SHU, in 1970s, I would still be there without (current) governor.. I've experienced extraction from the cell, where you have 6-7 guards lined up behind, beat you

down. These men don't' have an opportunity to speak for themselves, these men have been dehumanized, they need opportunity to come home and do some of the things I've done. I've raised my children; I have had an opportunity to raise my 3 children, single father, I was classified as a prison gang member; I've been subjected to, paramilitary force, that works in conjunction with CDC. I've had guns put to my head as part of a parole search and had my mother watch me while I could have my head blown off… the sum total of crime I was charged with was being in sister's house defined as clandestine residence and arrested for … {{HE IS CRYING}} The things he talked about … apologize …I know these things first hand. A lot of men in SHU now they have consistently been in SHU for over 30 years. I know these things first hand. A lot of men started with me in the 1970s. Unless you have courage to really look at them when you talk about gang members, don't talk to individuals and say they are prison gang members.

Carol Travis: chair of MT Diablo peace and justice center in WC … last week interview 7 prisoners in SHU. Emotional experience was profound and surprising to me. these individuals were incredible people who taught me a lot about humanity and dignity and suffering. I support the 5 demands; they make sense. It is barbaric to keep people for years for indeterminate sentences in isolation. These people don't often see people's faces. One of the people I visited had not had a visit since 1989, an elegant graceful warm human being … I bring to you a couple of things that are different kind of demand that are very simple: want picture taken once a year and sent to either a friend or relative, many relatives have not seen what they look like for more than a decade... Would like more than one box a year of things they can buy through a special vendor of more than 30 pounds. That's a Ridiculous limit. They want Vendors that have some fresh nutritious food not just junk. They Need the proctors so they can take the exams off the courses they're taking by TV. They would like some Mental health videos on TV including ways to meditate or something to help them. They need More serious mental health people there. LUCIFER EFFECT/Stanford professor, has some frightening conclusions about incarceration and the importance of outside oversight.

Dolores: son in SHU in 10 years. I know that Unless changes take place he'll be there for 10 or 20 more years, Kernan said they're the generals, and they're the ones that have all the guards stabbed and all the inmates stabbed …if that's they're way of thinking then why they just conduct HS, willing to risk their own lives, where they were only ones suffering hunger in a nonviolent demonstration that spread across thousands of men involved in a peaceful demonstrations crossing racial lines: thousands and thousands . It's because they are human beings and they do have dignity and they want to be heard as human beings *not as generals* (crying!)

Lisa: 2 brothers in PB SHU. One was validated by working with someone labeled as a gang member (day to day activities) – I don't see how that's legal.

Azadeh Zohrabi: brother is not a gang member; he was validated for a book written by George Jackson, which is XXX; another source item was an article he had written regarding black culture; and another book on black culture that had a validated gang member name on it. nobody who is validated knows who they can and cannot associate with (cannot challenge). The source items they used to validate him are Items would not be uncommon for me to have in my bag at any day, I'm a third year law student …it doesn't' take anyone well versed in law to know off reviewing the validation packages that there is fundamental violations of first amend, due process, equal protection. Solely because he's a black man and he has Items related to black culture and ideology, he's being validated and put in the SHU indeterminately, respectfully look at validation packages, I'm sure if you review some of them I'm sure you will be appalled.

Man: how can there not be an appeal process for gang validate, especially when some of them are still there for years and years, this is like their only way of xxx. How easily you can placed into gang validation database (3 points), similar for the attire like hip hop, short , hair, live in a gang-infested community, you can imagine how many young people fly into that gang database category. He explained the outside point is one used to put people in the SHU. So now there is a way to get out but process is hectic, but the fact it's hard to get out but so easy to get in, why isn't there an appeal process? Should have been hand in hand.

Delphine Brody: policy director calf mental health clients. 1900 members in SF People with mental health challenges Often find ourselves in criminal justice system, and in SHU and units so deleterious to our mental health, that many more people experience mental health issues during incarceration and in the community during their release. Calif network believes in wellness recovery and rehabilitation and supports 5 demands.

Deborah Mendoza: former alameda county probation officer 10 years, Ventura youth facility where we had a protest this Sunday asking for same demands end of sol confinement and use of food as punishment; parallel demands here today. So want to echo that. … if you're not compelled by the stories today I don't know what would move you, because you are our representatives. Were hearing of people in sol conf for two decades and labeled gang members and having an indeterminate sentence … I don't know what would compel you to act. you are our link, I am here for those who have no voice, I feel it is your duty to do something about this immediately. And demand the release of PJ today.

Woman: Oakland, organizer with Critical Resistance. Issue of conditions of torture at the SHU. Seems clear this is a concrete indicator of conditions throughout the system (how HS spread t throughout the prison system) center of international xxx because of overcrowding and health care … it is imperative the CA legislators take broad based action. Threat of shifting torture from PB to the jails … We the people and residents of CA , public opinion polls after poll, we are making it really clear WE WANT changes to the prison system. We want our loved ones and our family members to come home and we want services to support them.
Carol Strickman, staff attorney for LSPC [Legal Services for Prisoners with Children] and part of the coalition to support the HS. Health care: We've heard many reports from prisoners in PB who've told us they are told by HC providers if you want good medical care, debrief. Withholding of medical care is part of the coercion that is attempting to get these guys to debrief. This is wrong and has to stop. I've brought Brought letters of support and concern about health care issues from prison health committee, American health association, petition with signatures of individuals, and international health workers. 7 copies to give to committee members. We're hoping that this hearing will encourage legislators and staff to go up to PB Corcoran other prisons where there are SHUS and interview not just the debriefers the CDCR would have you talk to but talk to a wider cross section including people who were on the HS and people in there long term and short corridor.

Karen Shain, Policy Director for Legal Services for Prisoners with Children: biggest changes I've seen as happen as quickly as they did in CDCR was in this last period with 6600 people in these CA prisons stopped eating in order to get your attention. We are so proud of them and so thankful to them because finally we are at a point where we are having hearings and are deeply committed to making something happen, so I will be seeing you at this next legislative session.

Woman: My son was out and validated not even there, has been out for 17 months, validated when he was not even there; he had a job, was taking college courses that I was paying for and providing; was a MAC rep, his captain said all the other officers knew his rep there, he was called the peace keeper and now he's facing a SHU sentence. I have no idea now, what the SHU, what my son, Now I don't know what my family has to look forward to. I'm broken hearted. If you don't help us to correct some of these things; my son said another person in the cell next to him had gotten a book off a cart that had been distributed to him and it had a validated name in it and they validated that young man… so things they say about not validating on general principles, has to be colors; he gave a list of 16 CO's, captains sergeants, and they said they were going to have an investigator get statements [vouching] for him. They never did it. They never did it.

Jack Price [?]: …Oscar Grant movement. Pleading with you: please do not believe what that man said: 2 biggest gangs in CA are police union and correctional office unions. They go around with guns. It's a shame these young men, all over the US and CA, what they're going through to be in the SHU. Me going to visit him in Death row, a nightmare, just going in his cell I get a panic attack, Kevin Cooper, what I take for granted is the sun, the stars, and the sea. Whenever Kevin, he's an artist, he draws, "because I've been in this death row for 24 years, I've never seen the sun in the last 24 years, the stars, and the moon things" we take for granted. I ask you please look into this, this really has to be addressed.

Marta: I have a brother, afraid to say his name for what CDC can make to them … my mother died 2 years ago he was 14 years in PB and they only gave us 10 minutes in PB to tell him that our mother was dead. One of the demands is a phone call. I haven't talked to my brother in xxx years. I haven't seen my brother's face in 14 years. My kids love him because we talk about him, but we really need connection between family and prison so they can have another chance. Thank you to xxx because I'm sorry but I enjoy to see Mr. Kernan's face in front of people that are above him.

Meredith Rennan: Son in SHU at PB haven't seen in 5 years, I've tried they come up with strange reasons why I don't qualify for a visit, things I've witnessed that I know to be true … but what I'm looking to is not as politicians but as just human beings to look into your heart and see that what is happening in our country and in this state is so beyond belief that the public needs to understand that this is really happening. You can be the vanguards for change and social consciousness so we can have a state we can say we're proud of …at least as far as law making capacity.

Marie Levin: sister to PB SHU person. My brother has been incarcerated for some time but has been, in SHU for 19 years, only by the grace of god he is not insane. Tried to get approval for leave to give his kidney but they didn't let him because he was in the SHU. She died last year. He holds onto the memories of us, his family, my mom now has … dementia caused by stress; he being for 30 years locked up has been a longtime stress of hers wanting him to come home. So I'm pleading for the injustices of the SHU to be taken care of so that my brother can one day come home. He should have been home. Other two people were there, they got out. He's still locked up; It wasn't gang related. He sent literature to us to read and he's locked up because of a book?

Marilyn Smith: I am a proud member of All of Us Or None; I am a formerly incarcerated person. What CDC is saying is to cover themselves; because to be inside and then to be a productive citizen, you really know ho unjust things are when you've done that time.… I'm asking you to please not just look at what we do here but what we do here in CA will make a world impact, to stop the torture, because that's what it is throughout the country. President said he would start change and basically work on torture, then we need to work right here in this Legislator to change in the SHU, and how they treat us like we are not human beings. What about the women's prisons as well? You gotta look at it, not just California has done the HS, but HS throughout the US. Des Moines IA only 6% black in the state. If these other people putting lives on the line to know we are dying in here anyway so why not just do it by our own hands. That's something to really look at. No one wants to be incarcerated and then think about the guards …

Willie Tate: Hugo pinell, only surviving member of SQ6 still in prison; every one of us got out, except for him. why they keeping him in the SHU, locked up since 1969; our trial ended in 1976. Hugo was convicted of assault; he's still in there, he's still in there, and he's in the SHU of all places. He hasn't had a write-up for over 30 years. He's 66 years old, why are they holding him? I mean, this brother … We became political while inside we changed our life. We dedicated ourselves to serving the people. Hugo Pinell deserve to have a real chance at freedom and deserve to be taken out of the SHU. That's no way to force a man to live his life, that's inhumane. Free Hugo Pinell.

Elizabeth: my loved one just got validated this April; literature, cultural drawing, an informant who didn't want to be in the SHU. I don't want him to be in the SHU 30+ years. Make it right for those who have been, and so he doesn't have to go through that because of a drawing or another inmate doesn't want to be in the SHU.

Michelle …: the answer coalition, we support the 5 demands of the HS, because it's a human rights situation. their rights are being violated as you've seen. I'm concerned with 2 of the points the CDCR put forth today: 1, they need to house inmates in the SHUs separate from general populace to prevent gang violence, but left out the role of prison guards actively play in increasing gang violence in the system, whether it be housing gang members with others helping to give gang affiliation status, or put rival gang members in the same cell knowing they have a fight To kill others. 2) They don't want to let media in to provide prisoners with a way to sensationalize their case: if there's any unfair proceeding to get them in there they should have full access to media to get their case to the public, secondly officer Meserle who killed Oscar grant was given FULL ACCESS to the media during his trial and sentencing, never seen any inmate having that especially inmate of color ever having that.

Anne Weills: civil rights attorney, Oakland. OPD gang injunction impose on our young people: Now trying to validate people who are 12 years old, so now a pipeline to a SHU. This IS A CRISIS IN CALIFORNIA> I've been through a lot of struggles, this is the most inhumane system I've ever seen. You all have a tremendous responsibility, we will support you, we will organize, figure out how to stop this debriefing policy, the most unbelievable secret system of stereotyping, it has no meaning it has to do with stereotyping. with carol Travis went up to PB interviewed 8 prisoners – these people in the SHU are some of the best and the brightest not the worst of the worst. As a lawyer you think of but for … that person … But for their class their ethnicity, growing up in poverty-stricken areas, not having access to good lawyers, you don't see many rich white people in our prison .. this SHU thing is so bizarre. You guys are going to have a huge problem getting down to what's going on. There is such tremendous secrecy, even with legislation and good recommendations, who is going to enforce it _? 2007 recommendations, nobody has enforced this. You guys carry a big burden. This is an opportunity We have to trust our legislature, judiciary, we will struggle with Jerry brown, a HS will come again if you guys don't get with get CDCR and leadership in order. this is a crisis in California. This is the most inhumane system I've ever seen. You all have a tremendous responsibility, we will organize and ...

Linda Evans: LSPC in SF and All of Us or None: hope this has touched your hearts; if not we are confronted with a steadily deteriorating situation where people like us are forced to demand to be human beings. What does this say about our country to put forward that people in prison are human beings? Take very very seriously your responsibility for oversight. 2 specific things: look at the Cal Gang database and look how that influences goes to the SHU, how young people are being put into data with no exit strategy and no opt out opportunities from lies and deception. For them to be labeled and racially profiled as teens or younger is cheating crisis in SHU. Find input into database with no exit strategy; one of the fundamental reasons people are validated when put into the prison system, profiled as teenagers; urge you to find an independent review process so that all the men & women in the SHUs have an opportunity for a true review, where a panel actually reviews the validation packets, so locking them up and makes sure these kinds of ridiculous reasons for validating people and locking them up for decades in a cage are defeated and refuted.

Urszula: no one believes this validation is working. It is broken. I hope we can start rather than paying CDC for violence, letting them increase their budgets because there is so much violence, but we hold them accountable and raises based on how much people are no longer committing crimes. Had a perfect record; on day of 6-year anniversary, had a final inspection. During that the guard conducted inspection, says completely out of the blue say oh I just heard you say you are still a member of the gang. Turns to guard in the watchtower did you hear it? Yes I did

… and he gets 6 more years. That is a joke. No one believes this validation process is working' it is broken. Rather than paying CDC for violence, letting them increase their budgets because there is so much violence, that we hold them accountable for this violence. Their raises should be based solely on how such people are no longer committing crime.

Ron Ahnen: California Prison Focus. We get dozens of letters every week, Hundreds of letters every month that complain about these types of things. It's true there's an ombudsman and inspector general. *They do not work.* If you listen to story after story after story, and I read dozens of letters a month and I can't believe this is going on. One prisoner said … if they put me into a cell next to a gang member...[if I tried to escape I would get] at least a warning shot from tower...and no warning shot [with regard to associating with a gang member]. now I'm six years in isolation, there's no sociological study that says that 6 years is a good amount of time. None whatsoever. The system is totally being abused, but there is a reason: guys getting false validations are the ones who stand up for themselves, the ones who stand up for other prisoners and who put in those 602s and the ones that help sue the systems. Those are the guys who are falsely validated so they can control the systems for themselves. You need to have transparency and you need to create a whole new oversight.

Joe Partansky: war on poverty, counselor … for 2.5 years going as member of public to California council of xxx Offender (assembly) never seen more than 1 or more members (yourselves) held every other month. Stpt 5 at headquarters of corrections. One of the advocacy groups. No single mention of SHU but theoretically advise the legislature and the governor.

Deandre: [I want to] speak to the heroic and courageous actions of the prison HSers who quite frankly...this hearing would not even have happened if not for their actions, and the fact they were able to win support from thousands of people around this country. You have in your files letters from people like Susan Sarandon, who actually are putting a spotlight on California. I'm a distributor of Revolution newspaper. Proud of this struggle. Dozens of letters in your file from (celeb and intellectuals) who are putting a spotlight on CA. A country that goes around the world that proclaims itself a leader of freedom but is actually, a leader of torture. A liberal governor in CA (a liberal) has not even commented on the just demands of the HS. A word of advice: if CA is going to maintain any credibility as being a place where human rights are even considered, (rev communist party), something better be done. We honor the strikers because—as a member of Revolution distributors--the HSers have actually united many different groups, which before had not come together, and were working together very well just like the HSers went across racial and national lines and organized themselves. Gives hope to people who look at the world who say nothing can be done. Look what the hunger strikers did in the most isolated and draconian situations. They organized themselves, and presented a whole goal of the way of doing that for the rest of society and the world.

Valerie: 3 pt. sys: 20 year old son whose father is in the SHU< has tattoo and started when he was 12; when he hits prison he will automatically go to the SHU. Somebody needs to check on that; all the gang members can go to jail for what a regular person … automatically 10 years more, they have no chance.

Deirdre Wilson: California Coalition of Women Prisoners and a former prisoner myself: start to look under the rock...people who were willing to give their lives. Will take a lot of chipping away and a lot of light … a closed system can get away with a lot of abuse. It's a huge thing to deal with but if we can just look at these 5 demands, they make sense. If we can't bring a little bit of humanity to 6000 people willing to lay down their lives for, then I really wonder what hope we have.

Jay: Critical Resistance: Kupers pointed out that some of the demands, particularly around gang valid and long term soli, have been addressed in other states so no reason CA cannot … Many community members drove long distances to come to this hearing because feel maybe it's the only one chance for their loved one inside, talk to someone that actually matters. I notice that when Mr. Kernan was done speaking with you he didn't stick around to hear the members [of the public], shows where his priorities are.

Edward: Homies Unidos; I been to the SHU, and I see that people put their xxx down on gang members, I was 30 years on 18th St, Today I'm not from nowhere, but I believe in helping people … should put down a person's character and not judge him … SHU experience one of worst I ever had; lost my father and wouldn't let me go to the funeral because it was max sec Corcoran. I'm not a gang member no more, I'm a Mexican Jew.

Steve: former prisoner from Folsom, never been to the SHU, but I can imagine how it is. In SQ first 30 days you don't get no mail, nothing I went crazy even in (general) population. It's insane. But they org themselves to get this xx going on, what you people hear, to be heard, and now I'm trying to help, UVPR trying to help. If You put a dog behind bars, behind cage, he will go mad. What does that say to a human being brain…in the case of the PB SHU and other SHUs in CA gang valid is being used to justify torture conditions. What CDCR says that it's someone is found to be a gang member it's OK to keep him in 6 x 10 cell for years, on end. is it ok to feed them substantial food? Is it ok to not

let them see the light of day, is it OK to deprive them the touch of their family? Where does the R part of CDCR come in ? since when does any act justify torture of a human being?

Cynthia: Prison Activist Resource Center and LGBT: the only time a prisoner has a voice is with a pen, paper … PB built to break people using lt solitary conditions … 23.5 hours a day for years at a time. I'm Urging you the legislature, the rep people of California, to hold CDCR accountable and make substantial and lasting changes to the SHU conditions. Lot of victims of sexual deviant people.
AMMIANO: we did have a bill vetoed by last governor around transgender issues in prison; some fed guidelines coming down.

Kamala: youth worker, critical resistance, coalition of CA united for responsible budget … challenge you to see what actually comes from this, have heard throughout this hearing policies and suggestions made on how to change the conditions and those have not been acted on, and beyond going to informational hearings and developing these proposals, what are we actually going to do? We as citizens have done what we know how to do; we have lobbied, we have rallied, Julie has been camped out at Crescent City camped out the entire time during the HS, family member driving up and down the state, people from NY and MI, here to make sure the voice of the prisoners have been heard and their humanity xxx. CDC, not going to put the R in there because that is completely ridiculous to suggest they have any means or idea or intention of R the people they have put in these cages for 23 hours a day… you know they are not following through and upholding their end of the bargain and not doing what they are supposed to do. So the question is, *what are you going to do?*

Winsey Witt?: with critical resistance: changes to the gang valid and xx are not unprecedented, Mississippi changes have reduced violence in prison and more successful upon release … urging you to review changes made by other states and hold CDC accountable and make similar changes in CA.

Alejandro, Homies Unidos LA: we have people that actually can bomb the twin towers kill a lot of people but yet a lot of them they at least at Gitbay get to walk out of their cells, from where this mike is to that wall for whatever reason. Solitary confinement in the SHU has an effect on your spirit and when you do get out it affects you. And it really affects you in so many ways, that your family, your wife, you know, they see something different about you . Like the soldiers that go to war and come back a whole different person. We have to take it out.

Marilyn McMahon, CPF: anecdotes: some SHU prisoners can be dying of cancer, they come back from major surgery and they're given no pain relievers greater than ibuprofen; medical staff have said to prisoners in the SHU "if you want better medical care, get out of the SHU." [Only ways to get out:] Parole, snitch or die, and many of them can't get paroled, so that basically means you're gonna not get out of there unless you debrief (well, they can go insane and then they will be removed). One prisoner during HS had a very serious heart problem, he was rushed to an outside hospital. When he regained consciousness he surrounded by guards trying to get him to debrief (virtually on his death bed!). He was almost dying and all they cared about was getting him to debrief. Another prisoner has end stage liver disease, was in outside hospitals, bounces between those and prison clinics, and some months ago he was told he had 6 months to live. Estranged from his family. The outside doctors talked to him about that and said it was time to talk to his family. "You don't have long." He thought about it and decided it was right and wanted to talk with his family before he died., so requested a phone call. Now, in SHU they don't get phone calls. So he made a special request: let me talk to my family once before I die. The request was granted. On the day the phone call was set up for, the guard came to his cell, held a piece of paper up and it said "DEBRIEF." He refused, and he didn't get that phone call.

Amanda Perez, LA : if this doesn't change here I really feel it has to go to the UN. Surprised Kernan didn't have his numbers together when asked how many staff killed or injured; priors to SHUs being built, and since built, how many have been injured or killed since it's safety and security? 77K per inmate, multiplied by thousands, is it profit vs. people? Hopeful in next hearing there are some numbers to be shown, and hopeful this legislature will do something different otherwise

Angelica, UCR : AB900 granted billions for new prisons construction; meanwhile education and social services are being cut; PB alone to keep it open is $180 million (?) not the other 32 prisons. If shut down PB, would have been enough to avoid fee increase in UC and avoid loss of a lot of jobs, so reconsider, what really IS a threat to our public safety?

Teresa Amen: my son in the SHU for 8 years, his daughter is graduating next year, she is preparing a year in advance, she would love to be able to talk to her daddy when she graduates (on the phone) or would like a picture of her daddy. Was supposed to possibly get out of the SHU this month and has had 2 falsified reports that just happened, and he can tell already they will do everything in their power, he will not get out of the SHU. Meantime my granddaughter was 3 years old when she got to play with her daddy in the main line, now it's behind glass and take

turns to talk because we only get to use the one telephone and only have an hour and a half and Drive 14.5 hours to have sat/sun visit, 1.5 hours. Please start helping these men and women in the SHSU and Stop this nonsense, because there are some innocent families and children and all of us loved ones who would like to see things right, less prisons and more programs.

Chico, San Diego: to watch Kiernan decide, it's up to CDC how long these guys are going to get in the SHU, sad someone like me, all tatted up, can be …

[?] Ortiz: loved one in Tehachapi SHU. I was studying to be CO and now I don't want to be a part of it, looked into law school now, many men in there wrongly accused of things they didn't do.
It's on CDC how long

MITCHELL: [Though Mr. Kernan had to leave, several CDCR staff are still here, and they took notes. I want you to know you have been heard by the department.]

AMMIANO: Meeting adjourned.

App #7 B

TRANSCRIPT (FULL) JOINT LEGISLATIVE INFORMATIONAL HEARING ON SOLITARY CONFINEMENT CALIFORNIA, OCT. 9, 2013 CO-CHAIRED BY SEN. LONI HANCOCK, ASSEMBLYMAN TOM AMMIANO

Housing in CA's Prisons Today: Describing the Physical & Programming Conditions of Segregated Confinement, California State Legislature

SENATOR LONI HANCOCK: Thank you all for being here as a part of that discussion as it opens.
ASSEMBLYLMAN TOM AMMIANO: I want to thank the Senator because she's been terrifically focused on this issue and knows how complicated it is and how frustrating it can be. This is I think the third hearing we're going to have on the SHU, and its management processes and I know the Senator previous before I had got to the Assembly had visited Pelican Bay, and earlier this year in February. I hope through these hearings we can find a common ground among the stakeholders to implement, you know, whatever policy changes may be necessary. You know, I'm older. I don't want lip service, you know. I want real testimony from those who are the most concerned and, if necessary, I want legislation from these hearings.

I'm not particularly thrilled with the process of solitary confinement. I'd like to hear what CDCR [California Department of Corrections and Rehabilitation] has to say in regard to the justification for it. I know that sometimes, in fairness, they're between a rock and a hard place. However, you know, many, many of the situations that have been described to the Senator and I are beyond the pale, of people being in the SHU for 25 and 30 years.

The hearings that we have previously resulted in what I thought were some cosmetic changes, not changes that have the kind of depth and substance that we're seeking. So, you know, spare us today. Tell us the truth even if it's not pleasant because maybe working together we can come up with a solution to what I think has been a very, very aberrant policy attitude on the part of the CDCR. I'm not saying everybody there is a bad person or any of that, but there's real people and real families and are we really doing the right thing?

So today, we'll hear from the Inspector General, who is charged with overseeing the state correctional system, and from representatives from CDCR who will provide us with the physical description of the conditions of segregating confinement. Next, we'll hear from the academic speakers, including the Associate Director of the ACLU's National Prison Project. And finally, we'll hear from a former inmate of the SHU at Corcoran and Pelican Bay state prisons. And then we will be able to take some public comment. And we know that we do have a line of communication, as member of both houses, with the Governor and we want to translate what happens today to the Governor and the Governor's staff.

Both of us, in general, have been very supportive of the realignment issues. But of course, rehabilitation, I think, is one of the top issues for us. There will be, as I mentioned, a select committee meeting in the future of the Assembly in regard to prison overcrowding, and I hope many of you who have expressed interests in this hearing will continue that interest by attending some of those select committee meetings.

So with that, first on our agenda is (panel) Robert A. Barton, Inspector General; Michael Stainer, Director Division of Adult Institutions; and Kelly Harrington, Deputy Director, Division of Adult Institutions. (4m) If you would be so kind as to take a seat, and we'd be very, very willing to hear from your points of views, and perhaps some solutions we could all work with and perhaps legislation that may come out of these hearings.

ROBERT BARTON, OIG, Inspector General:
Good afternoon. My name is Robert Barton. I am the Inspector General for the state of California with oversight of CDCR. By way of an introduction, I have been a member of the Inspector General's office since 2005, originally in a supervisory role in Central California, which included two of the prisons we're going to be speaking about today Tehachapi and Corcoran – I am very familiar with having visited probably close to 20 or 30 times each of those prisons. I was appointed in 2011 as the Inspector General and for the last two years have run the office with about 100 employees statewide in three offices – one in Southern California, one in Central California, and one here in Sacramento. And we are in the prisons every day – our staff – monitoring various processes within Corrections. I personally have visited every prison in the state, most on multiple occasions, including the four that we're talking about today that have security housing units – that being specifically Pelican Bay, California State Prison in Sacramento [New Folsom], California State Prison in Corcoran, and California State Prison in Tehachapi.
My office is independent of the CDCR. We intake and process approximately 250 to 300 complaints each month regarding CDCR as a whole. Some of those do come from SHU inmates and we follow up on those complaints. We

are statutorily mandated to monitor and oversee the rehabilitative efforts of CDCR, so this issue is one of paramount interest to our agency in that role. And we also oversee their internal affairs, their medical care, sexual abuse complaints, use of force, critical incidents, retaliation claims, warden selection, and the department's adherence to their own strategic plan. We are available to review any policy or practice of the CDCR upon request of the legislature or the Governor, and I was asked to provide you with some statistics and facts regarding the current state of secure housing units within California.

So first, as a matter of semantic clarification, so we all understand what I'm referencing, the California Code of Regulations Title 15 Article 7 that defines security housing units does so in a broader scope labeled "segregated housing." Sometimes those terms are used interchangeably, mistakenly. In actuality, segregated housing is a broader context that includes, for example, administrative segregation units that each prison has, which is a shorter term of confinement. It also includes, for example, the condemned housing in San Quentin and protective housing units for those inmates who are not being disciplined or have any gang validations but for their own safety cannot mix with other inmates.

AMMIANO: If I may jump in …Administrative could be used for – for instance – transgendered prisoners?

BARTON: Administrative segregation? It depends on what purpose they have to put them in there. But I think you're probably thinking in terms of protective housing units if for their own protection they needed to.

AMMIANO: Well, that as well but also the anecdotal is that transgendered inmates often are put in administrative segregation as a first step, and just checking that out.

BARTON: And while I have, in fact, seen transgendered inmates in administrative segregation, typically there are other issues at play – either they're in danger or there's been some other reason for their classification to be in question.

AMMIANO: Do we have transgendered guards?

BARTON: Yes, CMC does.

AMMIANO: You do? Okay.

BARTON: Well, I'm not CDCR so some of these questions I'll defer to those from CDCR. But I have visited yards specifically at California Men's Colony that does.

AMMIANO: No, I don't mean yards. Guards.

BARTON: Oh, I'm sorry. I though I heard yards. [Overlapping audio] I have no idea in terms of prison officers what the … [talked over]

AMMIANO: It might be helpful.

BARTON: Okay. The segregated housing, as I said, what we're talking about today is a sub-category of that, specifically security housing unit – SHUs…And I would include within that the psychiatric service units or PSUs, which is a smaller subset of inmates that otherwise would be in security housing except they require and have been diagnosed with psychiatric disorders so they receive enhanced outpatient program level of mental health care, often referred to as EOP. And they have living units that have services provided to them by the mental health staff of CDCR. And I'll give you the actual breakdowns in numbers.

So here's a snapshot of what I consider to be the security housing units themselves. First of all, there are the four located in Tehachapi, Corcoran, Pelican Bay, and Sacramento. Two of these – Sacramento and Pelican Bay – also have smaller psychiatric service units.

What the general public might not realize is that each of these four prisons also house other inmate populations in other parts of the institutions, including minimum, medium and maximum general population inmates, as well as sensitive needs inmates. So if you think about a common prison having about 4,000 to 5,000 inmates, each SHU population is roughly about 1,000 or so. So it really is about a quarter, typically, of the overall population of that whole prison, unlike some in other jurisdictions where a true supermax is devoted specifically to those persons on lockdown.

Currently, as of the beginning of October [2013] – and again, these numbers change on a weekly basis but not drastically – there are approximately 4,054 inmates currently in security housing units in California. 4,054. Of that, 327 are in PSUs or psychiatric service units.

The breakdown is as follows: There are 1,248 at the California Correctional Institution in Tehachapi SHU. There are 1,213 at the Corcoran SHU.

1,179 in the Pelican Bay SHU. And 87 in the CSP Sacramento SHU. And as I said, Pelican Bay and Sacramento both have psychiatric units. So at Pelican Bay, there are currently 97 inmates in their psychiatric units. And in CSP Sacramento, there are 230.

AMMIANO: Do they have designated staff ratios?

BARTON: According to their blueprint, they are following their standardized staff ratios, yes.

AMMIANO: So that would apply to each of the prisons?

BARTON: Correct.

AMMIANO: It would be a uniformed ratio?

BARTON: Correct. And the other thing that I wanted to bring up because it was a question that I know the committee had on their minds in terms of how many of these inmates are double-celled, because we tend to think of secure housing unit as single-celled, and while that's true for many of them, there – approximately half of them – half of the 4,054 – the actual number is 1,998 are doubled celled. So that breaks down to 948 in Tehachapi have a cell mate; 746 in Corcoran have a cell mate; 264 in Pelican Bay have a cell mate; and then 40 out of the 87 in Sacramento have a cell mate. So there are some of these people in secure housing units – some of these that do have cell mates.

Let me also add because I would be remised if I didn't – we don't tend to include them in the conversation – I think we should – and that is the 74 women serving SHU terms at the California Institution for Women currently. And there are also a handful that are awaiting transfer from CCWF. So there is a secure housing unit designed for women at CIW as well. So let me talk to you about …

ASSEMBLYWOMAN NANCY SKINNER (D-Berkeley): Of the women, how many are – you mentioned before a number of psychiatric in for the men. So if that 74 SHU women – would you qualify any of them…?

BARTON: They don't have a separate standalone psychiatric secure unit that I'm aware of that I've personally visited or seen. Then again, I may be wrong.

MICHAEL STAINER, ACTING DIRECTOR OF CDCR, DIVISION OF ADULT INSTITUTIONS: Good afternoon, I'm Mike Stainer. I'm the Acting Director for the Division of Adult Institutions. With regard to the female SHU population, we do not segregate or separate their EOP or CCCMS population from the non-mentally ill inmates, but we do provide all the services with regard to their level of care within the SHU.

SKINNER: And are these women with roommate or solitary?

BARTON: Again, it's mixed. I wasn't provided with that specific category. Typically, the department for space reasons tries to double-cell whenever they can. But there are some people they're not able to for one reason or another. So that number I don't have the specifics on how many of them are double-celled. If I were to hazard to guess, I would say that it's probably about the same ratio, you would have some that are and some that aren't out ,of the 74.

AMMIANO: Excuse me, as long as we have this interruption, we will get to Mr. Stainer and Mr. Harrington, I would like to explore the transgender issue a bit, but I wanted to acknowledge some of my colleagues. You've heard from Assemblywoman Nancy Skinner; Sen. Joel Anderson, as well as Assemblymember Ken Cooley. So now that I've taken care of those formalities, please continue.

BARTON: Thank you. Let me talk to you about the actual living conditions themselves. The physical space or characteristics for the security housing units vary slightly from prison to prison. You've been provided, I believe, in your informational packet, with some photographs. Let me tell you from my purview of these photographs they all appear to be Pelican Bay photographs. Is that accurate?

So I'm going to talk to you about a little bit of differences in a couple of other facilities.

The physical characteristics of a cell range from 75 to 85 square feet. In Corcoran, the cells measure 12 feet 4 inches by 6 feet 10 inches or approximately 75 square feet. They have windows that allow in exterior light. They're narrow windows and, again, you don't see those in these pictures necessarily. And their cells have the same mesh front that you would see in these pictures. So the front of the cell is that metal mesh.

In Pelican Bay – those are the pictures that you're seeing – the cells actually measure 8 feet by 10 feet or roughly 80 square feet with metal mesh fronts, and while they don't have a window to the exterior, they have skylights that allow in ambient light to the unit, and those fronts are open metal mesh that you see in the photographs.

In Tehachapi, the cells measure 7 feet by 11 feet, or 77 square feet. They, however, don't have the metal mesh front doors. They actually have solid metal doors that have two narrow windows that the inmates can see out of, that staff can see in, and a trace lot that opens.

CSP Sacramento has 7 feet by 12 feet, approximately 85 square feet cells with solid cell doors like Tehachapi, with the two windows and the door and the tray slot. And I believe there's another window next to the doors typically that looks out.

As a comparison, basic general population cell is 6 feet by 8 feet or 48 square feet, typically housing two inmates, but of course those inmates spend significantly fewer hours confined to their cells. Each cell has a toilet, sink, concrete bunk beds, mattress, electricity for radio, TV. Approximately, as I said before, half of the security housing unit inmates are double-celled.

The units are configured and – those of you that have been there and I know a few of you have – the tiers will change. So the minimum you would have four cells on the bottom of the tier and four cells on the top. So you have eight total cells in a particular unit. And that would go all the way up to potentially 24 inmates in one unit in cells that were double-celled and you had stacked. And the reason that that is important to understand is when you're talking about interactions, if you will, those are the only other people other than staff that they're interacting with.

Inmates are allowed to talk to one another within their units, cell-to-cell. They do so on a regular basis. I've talked to them myself through the cells on multiple occasions.

Officers do have routines throughout the day – counts on an hourly basis as well as interaction as needed for feeding, mail delivery, escorts, shower, medical, dental, mental health appointments, law library, attorney visits. Also, chaplains and teachers are allowed to interact with inmates cell-front if they request or in a voluntary education program. My understanding currently is that about 750 of the 4,000 are currently availing themselves of some type of self-directed education program, be that basic literacy all the way up to college programs. The units also have inmate porters who interact with the inmates and interact between inmates.

SHU inmates typically are fed breakfast between 6 a.m. and 7 a.m., at which time they are also provided with a sack lunch. A hot dinner meal is provided in the evening but all of their feeding is done in-cell. As far as any out-of-cell activity – again, depending on the configurations – it's a little bit different. Pelican Bay is unique in that they allow inmates 90 minutes of exercise on an enclosed yard that is attached to the unit. You have the photographs of that within your documents. And that unit is actually considerably larger than the units provided in the other SHUs. It's approximately 26 by 12 feet, about 325 square feet enclosed on all sides by concrete walls, but there is a mesh ceiling, if you will, that is open to the air and sunlight, etc. So there are 90 minutes of exercise on that yard per day. And as I said, you can see those in the pictures.

They are housed in a manner that allows them to be non-escorted. In other words, the officers can open the cells, they can walk out to that exercise yard – same way they can walk to showers.

In the other three SHUs, it's different. Their exercise facilities are not attached to the unit itself. They're actually outside of the units. They're outside in the open air and they also have different measurements, each one of them roughly 160 square feet. So Tehachapi's fenced-in units where the inmates are allowed to exercise are 12 feet by 14 feet. Sacramento's are 10 feet by 15 feet. CSP Corcoran's are roughly 15 feet by 11 feet. So again, you've about 150 to 160 square feet to exercise in. If you're double-celled, your cell mate and you have the option to go to the exercise yard together or not.

The inmates during that time – again one of the differences in Pelican Bay – you may have the opportunity to interact while you're walking to and from exercise or shower through the cells with other inmates. In the other SHUs, it's a constant rotation where they're bringing inmates out to the walk-alone yards and bringing inmates back in. So it's a constant rotation because they're trying to get through all the inmates with a minimum of three days a week, minimum of 10 hours per week. So you might be out there anywhere from two to four hours and during that time while you physically cannot interact with inmates in another walk-alone unit, you can certainly see them, talk to them, etc. They're separated and fenced in. So that's what the out-of-cell activities in terms of exercise is like.

In terms of showers, Pelican Bay allows them daily and they run through it on a constant basis to allow for everyone to get a shower. The other SHUs allow for shower every other day and it's on a rotating schedule.

Programs in terms of SHU incarceration are extremely limited. Within the past year, however, the department has begun, as I said, to offer academic education, and about 750 have availed themselves of that, where you have instructors who can go to the cells, give self-directed information, can proctor exams, et cetera. We've actually had a few complete their GEDs while in security housing this last year.

AMMIANO: What about counseling?

BARTON: Counseling in what sense?

AMMIANO: Well, counseling for emotional and mental health issues.

BARTON: Yes. Mental health clinicians do visit the security housing units as well, and they can request that as well. So there's reviews that are done on a routine basis. They also – I should have said this before - Out of cell, they are allow time in every SHU to go to the law library. While they can't go to the library like you or I would for recreational reading, they are allowed to request books and can keep up to 10 of them either by requesting it through the library or selecting books off a cart that's brought into the SHU.

AMMIANO: In relation to the communication part, are sometimes inmates written up for a rules violation for communicating with another inmate?

BARTON: We actually had that – I don't know if you recall – at the end of the last hunger strike, my office went up and did a review of that at Pelican Bay and what we found was that they weren't written up just for talking to other inmates. What they were written up for was when they were in the view of the department inciting other inmates to violate the rules, in essence be in the hunger strike. And so we wrote an entire report on that.

AMMIANO: It just occurred to me now and I apologize to the other committee members: Your title is Inspector General. What exactly do you do as Inspector General?

BARTON: I oversee the office that has the mandate within the statutes of the Penal Code to give transparency and accountability to the Department of Corrections.

AMMIANO: Okay, so then you would do visitations to the different facilities?

BARTON: As I said, my staff is in the prisons every day, as have I. In addition, Pelican Bay as well as the other SHUs allow for inmates to purchase typewriters recently. Also they're allowed to have radios, televisions. Each of them has access to TV channels. Pelican Bay has 23 channels, Corcoran 21, Tehachapi 12, and CSP Sacramento 16 total.

They are limited in the items they can purchase from the canteen. So you also have within your materials here the actual sections within the department's Operations Manual where it talks about what property they're allowed and not allowed to receive. But they can purchase some publications. They receive mail. They can receive packages.

Where there is a big difference between security housing and any other population is they are not allowed any contact visits. So all of their visits on weekends, while they are allowed the time to have those visits on weekends and holidays, they're non-contact visits, so they're through a Plexiglas barrier.

AMMIANO: There are visitors. It's just that it's …

BARTON: Yes. It's just non-contact.

AMMIANO: No touching…

BARTON: Right. It's not like in an open – normal visiting rooms that I've been in, you sit at the table with your family. You can talk to them. You can hold hands. That sort of thing. In these, you're literally talking on a phone, seeing the person through Plexiglas, but there's no touch.

AMMIANO: Ms. Skinner was asking how much time?

BARTON: Minimum of two hours – [audience murmurs] – and I know it depends on where you're at. That's what they're supposed to have. I hear the groans. I know that there are issues in getting people there, and I know that there are places where the travel time to and from is counted against the inmate. So there are issues like that. But that's what their own rules provide for. **SKINNER**: Two hours once a month? Two hours – ?

BARTON: Per visit on the weekends. So the real issue is where these prisons are located. It's hard for family members to get there. So to get up to Pelican Bay for a two hour visit, even if you get the whole two hours, is difficult for many. But I don't think any of us in the room here now chose the locations. However

AMMIANO: I've been violating my own rule here because we want the information, we are going to let you finish and go on to the other panelists, and then hit you with questions. (27m)

The next thing I was going to talk about was the terms of confinement. Inmates are placed in Security Housing Units either for determinate or indeterminate terms. Depending on the institution, they're confined to their cells for approximately 20 to 22 hours per day with out-of-cell time, as I said, for yard, shower, attorney visits, weekend visits, law library, medical, dental appointments.

If an inmate, while in prison, commits a serious or violent offense, they can be placed in the SHU for a determinate term of 6 months to 5 years. That means that at some point, that term is going to end, depending on the offense. Approximately 40% of the current SHU inmates have determinate terms of 5 years or less that they're currently housed for. Inmates who are deemed to be validated gang members or associates by CDCR can be placed in SHU for indeterminate terms. These account for approximately 60% of the SHU population and are about to break down what you mentioned before.

As of July 2013, there are approximately 1,900 out of the 4,000 inmates in secured housing units that have life terms. There are now currently 23 inmates who have served more than 25 years in the SHU. There are 84 who have served more than 20 years. There are 106 who have served more than 15 years. And there 197 that have served more than 10 years. And another 574 that have served more than 5 years. So it's basically 984 out of the 4,000 have served more than 5 years in secured housing units. From September 2012 to September 2013, approximately 273 inmates have paroled directly from a secured housing unit. So that's an average of approximately 23 per month average. In closing, I would thank you for this opportunity to brief you on those physical and programming conditions of secure housing units in California and as I said will be glad to answer any questions I can, but defer those to the department regarding any specifics.

AMMIANO: I thank you and we will go on to the other two presentations. So, Mr. Stainer:

MICHAEL STAINER, DIRECTOR OF CDCR DIVISION OF ADULT INSTITUTIONS, and KELLY HARRINGTON, DEPUTY DIRECTOR OF CDCR DIVISION OF ADULT INSTITUTIONS:

Thank you …Based upon our understanding of this hearing today, I did not prepare a statement. However, I'm more than willing to take any type of questions that the panel may have.

KELLY HARRINGTON, Acting Deputy Director for CDCR: Good afternoon. Kelly Harrington. Currently the Acting Deputy Director for the Department of Corrections. I oversee the field operations and prior to this assignment, I was the Associate Director for the High Security Missions for the last three years, which oversees all the security housing units. So as Director Stainer said, we're here to answer any questions for the panel. Thank you.

AMMIANO: Okay. Were there any disciplinary actions taken against the inmates who participated in the hunger strike this summer?

STAINER: There were.
AMMIANO: And what kind of disciplinary actions were there? Privileges revoked or…?
STAINER: Well, they're still going through the hearing process in quite a few of them. However, each of the inmates that did participate in the work stoppage or hunger strike or refusing cell mates at the various prisons were – if they continued on the demonstration for more than 3 days on the hunger strike, they did receive a rules violations report [RVR].
AMMIANO: And are they informed of what the rule violations would be?
STAINER: Absolutely.
AMMIANO: And they don't change? You don't move the goal posts during the game and – ?
STAINER: I'm not sure I understand …
AMMIANO: Well, let's say you told me what a rule violation is and somewhere along the line there was another rule violation
– are they uniform? Are they constant? Or do they change – what would violate a rule – and is the inmate informed that that rule has changed and now something that was allowed is not allowed?
STAINER: Yes, I think we understand your question. Anytime we make any type of changes to the Title 15 or any of our rules, or DOM, those rules are posted. The inmate should be informed. We have specific processes in each of the institutions on how they inform inmate population of any specific rule changes.
AMMIANO: The gentleman referred to determinate sentences, 5 years etc. But What's the longest term an inmate has served in the SHU?
STAINER: I don't have that figure right off the top of my head. However, I want to say we have somebody in there that's been in there probably really close to 30 years.
[Audience: "Forty"]
AMMIANO: Yeah. And more. [Gavels] Here, see this? (gavel), I did it …
STAINER: So I'll defer to the crowd.
AMMIANO: So you don't know what the longest term. Approximate 30. So the rationale for housing inmates in the SHU is safety. Recently, CDCR received and reviewed, I mean, released from the SHU inmates who have been considered gang associates. Has there been any increase in the level of violence due to the release of the former SHU inmates into the general population?
STAINER: I think at this point, you know, we are monitoring that. We're trying to collect that data. We've recently just begun collecting that data. So I cannot say that there has or has not at this point with any type of assurance that it's correct.
AMMIANO: Is there an update that you might have about the SHU inmates who have been hospitalized because of the hunger strike? Are they back in SHU or are they fine in terms of their physical ailments?
STAINER: At this point, we do not have any inmates that participated in this mass disturbance that are still hospitalized.
[Audiences jeers]
AMMIANO: I think there's some dispute, you could say, I think it's safe to say. [smiles]
STAINER: Excuse my use of those words. That's, you know xxx
AMMIANO: Yeah.
STAINER: However, I was at Pelican Bay on Monday, and I actually talked to quite a few of the individuals that did participate, and I was pleased that they were doing as well as they were.
AMMIANO: Any other questions?
SEN. LONI HANCOCK (D-OAKLAND): Yes thank you. I have a number of questions about how we manage the SHUs. Who specifically at CDCR headquarters is responsible for monitoring the conditions of confinement in SHU and AdSeg? The Inspector General comes in under certain conditions but somebody must be monitoring them all the time. Is that your position, Mr. Harrington?
HARRINGTON: Yes. Well, that was my prior position as the Associate Director over the High Security Mission. So I had all of the security housing units under my purview. Then now that I've moved over as Deputy Director, we have another individual in that position that monitors that.
HANCOCK: Okay. And the title is Associate Director of the High Security Mission?
HARRINGTON: Correct.
HANCOCK: Thank you. And maybe you could just clarify for me, Mr. Barton, how does the Office of the Inspector General get involved and when?
BARTON: There are three or four different ways. So one of them is in the complaint process. When we receive complaints from inmates or inmate family members or the legislature or the Governor's office specific to a secured housing unit inmate, we will follow up on that and determine whether or not appropriate actions are being taken.

Second way that we are involved is in our use of force monitoring. Every single use of force used in the prisons are to be documented, recorded, and we monitor that. And so typically, when there is an issue that ends in a use of force, we are going to be monitoring how the department behaved before the incident, what led up to the incident, how it was handled, what the appropriate outcomes are, whether there was negligence or misconduct or inappropriate force, etc. So that's another way we would get involved.

The third is in terms of our overall monitoring of the discipline process within CDCR. So anytime there's a staff complaint or allegation against staff, we have our attorneys or inspectors who basically sit in with Internal Affairs to review those misconduct complaint allegations against staff. And so if an investigation has started, we will monitor that investigation.

And I haven't done a specific study to find out how many staff members in SHUs received complaints as opposed to staff members in other parts of the prison. Something I certainly could look at in the future. We tend to look at them all – all of the staff complaints in the same milieu, if you will, so I've never broken it down. But that is another way where we become involved.

And then ultimately when we're vetting wardens for the Governor's office, we do an institutional review and of the prisons that we're talking about, Pelican Bay has a recently retired warden, so they'll be having a new warden. Corcoran recently had Ms. [Connie] Gipson, who went through the vetting process. Tehachapi had Ms. [Kim] Holland, who recently went through the vetting process. And CSP Sac[ramento] has not, at least while I've been the Inspector General; they've had the same warden the whole time. So while in that vetting process we are scrutinizing the whole prison. But because they have such major portions that are secured housing, we will go in, talk to inmates, talk to staff, see what the problems are, see if the warden or the prospective warden is handling any issues, is aware of those issues. So that is another part where we interact, if you will, with these SHU prisons. So in all of those areas, we come across issues with SHU and oversee them.

But when you were talking about on a daily basis, who's making sure things are happening in the SHU the way they're supposed to, unless there's something that's triggered us to take a look at it, you know, I don't have staff who are standing there side-by-side with the correctional officers. We get called in or we're reacting to a complaint or one of our other mandates.

HANCOCK: Okay. Thank you. But at the moment, you're not breaking out SHU confinement as against general population?

BARTON: In terms of staff complaints, no. But I have to think – I'm certainly not the person in charge of our IT section – I have to think that's something a computer could do.

HANCOCK: Yeah, I would too. And I think it's the kind of information that would be very useful to us. So then, I have a question for Mr. Harrington. What specific mechanisms do you use in CDCR to monitor the conditions in the SHU? *Of particular interest to me is how do you test the gap between policy and actual practice in the prisons*?

HARRINGTON: So, there are several documents that we utilize. The most important one is probably our COMPSTAT reviews that we have for each of the institutions, which breaks down several areas as far as their population, grievances or appeals that they received from inmates, their population, disciplinaries. It goes through the whole gamut of operations at the institution. And so as the Associate Director, you identify any issues or concerns on that COMPSTAT report and then directly with the wardens during site reviews, we're required to go out to each of the sites. The High Security Mission has 9 prisons. We go out at least once a quarter, meet with the wardens, meet with their staff, and tour each of the units, and that includes the security housing units, so ensuring that those mechanisms are in place. And if you see any spikes in issues or concerns that, at our level, we address them with the warden and their staff as they come up.

HANCOCK: Okay, well, specifically, for example, how would you know if an inmate was wrongly validated as a gang member and placed in SHU for that reason?

HARRINGTON: So if an inmate believes that they are wrongly validated, they have a process that they go through and that process is through the 602 grievance process for the inmate. (41m) And as those work their way through the system, that's when I would become aware of it, if it made it up to our level. Most of those are either granted or denied at lower levels before they get to the Director's level or the third level of review. And that – I know we don't want to get into the new step-down or security threat group concerns now, but that's some of those items that we're looking at or in the pilot program that we're addressing to put in some more due process at this time.

HANCOCK: I'm glad that you're doing that. Could you just describe the process right now? The prisoner has been accused, validated as a gang member. And to whom does the prisoner approach? What kind of a hearing is there? What level of officer who is hearing the appeal?

STAINER: Just to go real briefly through the process. So the gang investigator, once they complete the investigation and if they believe there's enough information to validate the inmate, they would submit a package. Once they put that package together, they'll actually meet with the inmate and allow the inmate a chance to rebut the information. You know, I'll be candid. Most of the time, that information still goes forward and it'll be submitted to the Office of

Correctional Safety. The Office of Correctional Safety will review all the information and see if it meets our criteria with our policy. And at that point, they will – yesterday's policy, they would actually say that person is validated or not validated. With today's policy, they will make a recommendation now to either accept or reject that validation and then send it back to the institution.

The biggest change to this policy is now the inmate will now appear before a committee who will actually review that. So – and this was never been the case before, where he'll actually sit in front of a classification committee chaired by a correctional captain, who then review every aspect of that validation and at that point affirm or reject that validation. And at that point, the inmate is either validated or not validated. Now, once that's taken place, the inmate still has all of his appeals rights where they can appeal – continue through that process.

HANCOCK: But appeal to whom?

STAINER: To the institution. [audience laughter] You know, a lot of the inmates will… They will appeal to the institution…

HANCOCK: Does that mean the warden? Who does it mean?

STAINER: It's an actual process, ma'am, and what it is, is that they would fill out a document to submit it. They would receive a log number. It will be reviewed by the institution at two levels. First and second level. And then it would go – if it's denied through those two levels, it can be submitted for the Director's level review or the third level review.

And if it's at that point still denied, then the inmate…has exhausted his administrative remedies and he may file a writ

HANCOCK: He may file a what?

STAINER: A writ, to the courts.

HANCOCK: Where in this process does the prisoner have an advisor or an advocate or counsel? (44m)

STAINER: Well, the counsel would be, of course, if he chooses to retain counsel through the writ process. However, at the institutional level, he can receive a staff assistant during the interviews provided that he – if there's any mental health issues or if the person has any communications barriers. But for the most part, there's no counsel or advocates or representatives

HANCOCK: Or advisors …

STAINER: to give advice through the institutional appeals process.

HANCOCK: Let me just say that seems to me to be a huge problem. [Audience applause]

How would you make judgments about the quality of the food and whether food is being used in any way as a punishment?

STAINER: I think after just meeting with four of the Pelican Bay representatives, there's some things that we are supposed to be doing and we're verifying that we are doing those things. And number one is having staff as well as inmate food samplers where they are filing out the forms for every meals, many of them being reviewed by the warden. Want to make sure that that's happening and is alive and well. And that process, I've found, in the past being a former warden and supervisor within the correctional facilities, it's really a good way to actually keep abreast of what the population as well as the staff are thinking about the food service. Presently, our ombudspersons that tour the institutions, every time they're at those institutions, they are sampling the meals. They're doing a review of the food – its preparation, its presentation, the temperatures, so that as well as, when the inmate population's not satisfied with the meals, they're pretty adamant – they will file the appeals. So that again is something that, as a warden or as a prison administrator, kind of tells you what the pulse of your institution.

HANCOCK: Right. And do you keep track of those so there could be a brief report at the end of the year so that we could tell which institutions might be having problems with food in terms of inmate complaints and which ones might not?

STAINER: The appeals are kept track of very closely and logged and the reasons for the appeals. As far as the meal reports themselves that I spoke of earlier, those are maintained by the prison locally.

HANCOCK: Okay. To me, this is an example of the kinds of data that we should be getting on COMPSTAT. It should be identifiable and it should be available to policymakers so that they could be handled without prisoners having to take extreme steps to advocate on their own behalf.

I'm also interested in how inmates for SHU and for AgSeg really are evaluated for either cognitive issues or mental health issues.

HARRINGTON: So any inmate when they're placed first, before they go to SHU, they are placed in administrative segregation. And those inmates are evaluated by our mental health clinicians prior to going into the security housing units or AgSeg in the security housing units. And then if they're placed in a mental health program, then they're constantly monitored. So the inmates that are in Pelican Bay SHU – the Security Housing Unit there – we're not allowed to place mental health inmates into those units up there.

The inmates that are evaluated and are either at the CCCMS or the EOP level of care, they're either housed at CSP Corcoran, Tehachapi or CSP Sac(ramento). And so our mental health clinicians interact with them daily if they need to and on an ongoing basis.
HANCOCK: Can you tell us what CCCMS and EOP mean in terms of popularly understood mental health categories?
HARRINGTON: So triple CMS [CCCMS] is probably a lower level of care for an inmate, and depending on – or mental health care – depending on what their concerns are.
HANCOCK: For example …?
HARRINGTON: Of course, I'm not a mental health clinician. But it could be as small as they have issues sleeping, and so they are prescribed medication. So they would go into the CCCMS level of care. Or an inmate that is severely – has some severe mental health issues could be at the EOP, which is the enhanced outpatient level. So those inmates are seen more often. They have a need for higher level of care. Those are the inmates that Mr. Barton spoke about that ,if they get a security housing term, they're at the PSU – the psychiatric services unit. So they're in interactive processes. They have group therapy. They're taken care of by mental health clinicians a lot closer.
HANCOCK: But they do get placed in SHU?
HARRINGTON: Yes, a lot of those inmates are determinate SHU terms. So they committed some type of crime in prison, either stabbing assaults or batteries. So that's when they get those security housing unit terms.
HANCOCK: OK. So housing is different? When I was at Pelican Bay, I thought the psychiatric unit that I saw was more like a holding place where you would go for a therapy or discussion. It wasn't a different cell.
HARRINGTON: Yeah, you probably went to the treatment area is where you were at. The cells are actually – they're a different design than what you probably saw in the SHU. They're more of a design like you would see at Corcoran or Tehachapi. The cells have windows that go out to the outside. So that's kind of the difference.
HANCOCK: Are they in cell block C or D?
HARRINGTON: At Pelican Bay? No. They're on A yard. [he looked across for the answer] Yeah, C and D is the security housing.
HANCOCK: But to your knowledge, no one with a mental health issue would be placed in SHU?
HARRINGTON: [Pause] With a mental health issue not placed in SHU?
HANCOCK: Right.
HARRINGTON: Well, what they are – the EOP inmates go to the PSU. Inmates that are CCCMS are in security housing units but not at Pelican Bay.
HANCOCK: They cannot be placed in Pelican Bay. Could you just tell me what CCCMS means?
HARRINGTON: It's clinical… [smiles, can't respond]
STAINER: It's Correctional Clinical Case Management System. 52m
HANCOCK: Okay, thank you. And those people can go to SHU but it would be at Corcoran or some place else?
HARRINGTON: Correct.
HANCOCK: Nobody in Pelican Bay would go into the SHU with a mental health issue?
HARRINGTON: Correct.
HANCOCK: Okay. Thank you. Thank you.
AMMIANO: Thank you. Before I go to other … when you mention group therapy, what I saw was group but each inmate is in a different … I don't want to use the word "cage" [audience laughs] … I'll use it … that's group therapy pretty much?
HARRINGTON: Correct. They're treatment modules.
AMMIANO: [smiles, speechless, hesitates before speaking] I … I … I've gotta say this, I know you're doing your best, but there are so many … there are just so many comparisons to a zoo: feeding, terms, treatment modules, I dunno, we gotta do something about that. And my other question is, real quickly, what is the suicide rate in the SHU, do we have any numbers on that?
STAINER: We don't have those numbers with us, we have had suicides in the SHU, I don't remember the last one honestly …
AMMIANO: I think there was one recently … I'm not sure, was just curious … all right, Assemblywoman Skinner, and then Anderson …

ASSEMBLYWOMAN NANCY SKINNER: I think what we would be interested to know is not only the suicide rate and I think it would be important to see it over time, but also attempted … On the fact sheet that's in our packet, the Security Housing Unit fact sheet [provided by CDCR], the first paragraph it states: "The SHU is not." But yet it states that, you can get into SHU … let me step back … it says that it's designed to isolate people who would violate the security of the prison and it's not designed nor intended as punishment for misbehaviors." So I can imagine that there would be some appreciation folks who are very violent while in prison might need to be segregated, but then further it says, you can be put in the SHU for drug trafficking, and I'm not defending that offense, but it's not

described here as a violent offense, so I'm not sure why drug trafficking would – if it's not designed nor intended as punishment for misbehavior – why then it puts a person in SHU.

Or the issue on gangs. If the gang member has committed a violent act in prison, under guidelines this seems to fit, but just being in the gang, as you read this staff, there's, what, 60% of the population is there due to being a gang member. And unless we see some data, they may not have committed any violence while they were in prison [audience applause]. 56m so I'd like to see those number delineated. And how the notion that it's not used for punishment for misbehavior, how that correlates then to the use of putting people, being gangs, in the SHU. I've got a bunch of other questions, you could respond to that, and then …

STAINER: Well, real quick, with regards to the drug trafficking and… drugs are probably one of the biggest issues that we have within the prison and there's quite a link to violence and assaults and debts and inmates that have to lock up due to acquiring drug debts, that are assaulted due to drug debts or struggles for power within the prison system that is based upon drugs. You know, that's why that linkage is there. With regard to the gangs and the membership alone, and I think to answer – yesterday's policy put a man in SHU based simply upon his association or affiliation with a gang. Recognizing the fact that we needed to make some changes within our policies, specifically with regard to that, the new policy addresses individual behavior and individual accountability. So while a man could be validated, doesn't necessarily mean that he would go to SHU based solely upon that validation and being identified as an affiliate of a gang. So, again, we are reviewing inmates every week and some are being retained based upon behaviors; some are being released based upon lack of those behaviors.

SKINNER: That's a good change, but I wonder if there's been any look at whether you had any reduction in gang membership as result of putting so many people in SHU?

STAINER: I don't know that that's the case at all. However, I was just having a conversation with one of our special project team member today and we were talking about just that – what is going to be the effect of this new policy. Are we going to have more or less validations? Are we going to have more or less people being sent to SHU based upon behaviors? Quite honestly, we don't have the database to do that. We've put in special request for funding for that. We need this informational gathering system to judge whether or not these policies are effect, to measure the effectiveness of these policies. And that would lead us into the next phase of adjustments to the policies and are we doing the right thing.

SKINNER: …And that's why I raised it. Because it's like many things in life: If we're doing something ostensibly for one purpose but it's not having – you know, we have a lot of people in SHU, but if we're not having any reduction in gang membership then we have to evaluate whether that's even a useful purpose at all. [Audience applause] And it would be helpful to see some data…

And perhaps, our co-chairs and staff might be able to help us, perhaps we could make a list of, Senator Hancock you raised some data issues you'd like, maybe we could prepare …

AMMIANO: Suicide …

SKINNER: this, some of the data that would be useful, start to be collected so that we as legislators could begin to review this. Especially now with the charge we have not only from the courts but from the legislation we enacted from Governor Brown, in terms of trying to look at a different model in terms of bringing not only our numbers in prison down, but also the pipeline of who's going into prison down, and of course while the SHU is only a percent of our prisoners, it's a factor in all of this. 1h And so this data could be very helpful to us, we should start to make these kinds of lists.

The other piece of data that I would like to see is the growth in numbers of inmates in SHU over, I think probably the last… I'm not sure what would be the most useful, but whether it's over the last 20 years. But that would be useful to know. And why? We may have to extrapolate on why, but definitely seeing the numbers because it seems to me it's clearly grown and has it made our prisons – it certainly caused the state to bear a larger cost because it's quite expensive but is there any associated benefits to us?

The thing I'd say about the gang membership – again, not to defend gang membership – but certainly if you're a prison inmate, because of the dynamics – all humans form groups. That's what we do. No matter what circumstance we're in. [Audience applause]

AMMIANO: I gotta ask you to hold your applause.

SKINNER: And if you're in that kind of setting, you're forming a group for lots of reasons, whether it's for protection, it's for – who knows. But it's a very natural human tendency. And to have as a policy – and I know you've just described some change to it – but to have as a policy being put in the SHU for that reason alone just seems very, very difficult to justify… Other questions …

The women – 74. What was it 5 years ago? I would like to see what was it 5 years ago, what was it 10 years ago. I have a much harder time imagining – I'm not trying to be naive that there's no violent women – but I'm having a much harder time figuring out why there's 74 women in SHU. And if some portion of them are really people that have mental health issues and need mental health treatment, then it doesn't seem to be the appropriate use of our resources to have them in SHU. And I'd like to understand better what causes a woman to be put in SHU.

I guess I really asked this before: The statement around it being mostly to try to segregate violent people and then, the other, that it seems to be the opposite given how many are in there for other reasons. But the 2006 bipartisan Committee – this was a federal committee – [Commission] on Safety and Abuse in Prisons report [2006] and the U.S. judicial committee hearing [Sen. Dick Durbin, June 2010] indicated in their verbal testimony [there is also a written record] that SHU should only be used as a last resort and if again it seems to me that we need to refine our criteria because it doesn't seem now to being used as a last resort.

And I raise this not only because of a concern I have around the impacts of [on] prisoners who are in SHU but also the cost to us. And as chair of the budget, when we're finally in a situation where California is not in a deficit, yet we only have temporary taxes, we have to do everything we can to get our costs of incarceration down and increasing numbers of people in SHU is not getting our costs down.

So I would like to see some more data around who's in there and why and whether we can't refine it so that we really are using it as a last resort. I think those were my primary …

AMMIANO: Let me jump in, we've got about five minutes left, we want the Senator to have an opportunity, and Madame Co-Chair also has a question.

BARTON: I was just going to address the statistical information. One of the things our office just started doing was the adherence to blueprint. And one of those is the gang validation part of it. So we just established the baseline. The report that's about to come out will indicate that of 528 inmates endorsed to SHU terms that have been evaluated thus far under the new process, 343 will be released back to general population. 1h5m To me, that is a very hopeful trend that as we continue, the department is saying they can get through all of them in two years. If those numbers hold true, hopefully another 30%, 40% will be released out of SHU. So I think that's at least hope and we will continue to monitor the progress and give you those reports.

SEN. JOEL ANDERSON (R-San Diego): I've heard about some of the offenses that would qualify you – qualify an inmate to be put in the SHU. But perhaps you can just quickly give me an idea of what some of the other offenses would be to qualify somebody for the SHU?

STAINER: Typically, possessions of weapons, battery on staff, battery on inmates, other violent offenses, narcotics trafficking, attempted murder, murder.

ANDERSON: Okay. And then you were asked earlier the longest length of – perhaps you know what the average length of time in the SHU is.

HARRINGTON: I believe it is 3.93 years. [it has been reported as 6 years]

ANDERSON: And then – so an inmate gets moved to the SHU, is there a set time you say you're going to be in SHU for 5 years, 3 years, 2 years. How does that work? Do they just get put in the SHU indefinitely or do they have a timeframe in which they know that they're going to be released?

HARRINGTON: So the inmates that commit crime within prison that are placed in the SHU, they're given a determinate sentence – kind of a determinate sentence in SHU. So they'll know how long they're going to be in the SHU. Ranges anywhere from 3 months up to 5 years if they commit a murder in the prison. The gang members and some constant issues that inmates that can't program for whatever the reason, they're give like an indeterminate SHU term and they're reviewed at different times during their SHU term to see if they can be released back out as long as they're not involved in gang activity.

ANDERSON: So are there … Since they know they're sentenced to that determinate time, are there any incentives – is there any way that they can reduce that time?

HARRINGTON: Actually, when they're first placed in the SHU under the determinate time piece, a third of that is already knocked off when they go in. So for instance if they're in for a year or if their SHU term is a year, they'll only do a 9 month SHU term. Now, the incentive is to come out in 9 months, but if they violate or have more disciplinary actions while they're in the SHU or the security housing unit, they can lose that time and they can spend up to the year.

STAINER: I can also state that Mr. Harrington and myself both being former wardens and classification personnel within SHU facilities, we see inmates on a regular basis during classification and we have suspended SHU terms just based on the inmate's behavior.

ANDERSON: Perhaps you covered this but I missed it. Are the conditions inside the SHU monitored by any entity outside of CDCR? Is there an outside entity that monitors the conditions?

HARRINGTON: Mr. Barton and his office monitor the conditions. And then also we're going through an accreditation process with the American Correctional Association, who has come out to several of our institutions

and accredited the institutions. And most recently, they have came out to Pelican Bay State Prison and they have been accredited. So they are monitored, and that's an ongoing process that they do audits on those units. [Note: CDCR Sec. Jeffrey Beard is a member of the ACA board; the accreditation is fee-based, paid for. This is not an independent outside monitor.]

HANCOCK: Thank you, I do have just two other quick questions. Could you give us the actual financial differences between having someone in the SHU and someone in the general population? I've heard $20,000 more for a person in SHU. I've heard twice as much. There are all kinds of figures out there but you probably have it down cold.

STAINER: No, I do not have it down cold. However, I think between $15,000 to $20,000 does seem accurate.

HANCOCK: So it would be about $70,000 per prisoner instead of $49,000? OK …. Never mind ..

STAINER: What I'd like to do is actually provide you with the accurate information.

HANCOCK: OK … Because we haven't been very successful sharing savings in probation and we're looking at doing that in parole now so it's interesting to know what the savings would be were we to cut back which might be re-invested in other ways within and without CDCR.

My other question is really a 'public safety in the community' question. I realize that a number of people in SHU are LWOP – life without possibility of parole. They will never get out. They may get back to the general population but they will be in prison. Others are lifers – 25 to life. Unless a parole board agrees, they may spend a very long time in prison. But a number of people are there on a determinate sentence, which means they will be released. Now, you said about 23 a month, Mr. Barton, are released from SHU to parole. I've seen other research data that say someplace between 50 and 100 …

BARTON: I think that was before realignment.

HANCOCK: … before realignment were directly released. My concern is what happens to people who are released from these conditions of deprivation of other human contact or activities or planning for themselves. And I believe you said really the only program open to them is independent study on tapes and that sort of things, and to me that seems like something that every community in California should be concerned about because I don't think they're being prepared for rehabilitation and re-entry. Now, I know you said there's a 45-day program on life skills [audience laughter] but, you know, if people have been there for 5 years or more and are released, aren't there any other programs that you can imagine putting in particularly for that population, which is about 1,800 people?

STAINER: I think we do recognize that same concern. First, I'd like to say self-directed or voluntary education is not the only program that we have right now within the SHU population. The wardens and the administrators at the institutions actually have been quite proactive in putting together some programs.

Each of the SHUs have religion and participants in that – not just at the cell-front although it is the main mode of transmission at Pelican Bay. However, you go to Tehachapi, they actually bring the inmates out in the dining hall and while they are in the therapeutic modules or holding cages, [audience murmurs] they still get to participate as a group in religious activities. They have self-help groups at these institutions as well. AA and NA celebrate recovery at Tehachapi. Parenting, anger management, and Narcotics Anonymous at Corcoran. New Beginnings at Pelican Bay as well as AA and NA. We do recognize that one thing we are lacking is probably some pre-release or transitional programming for the inmates that are going to be released. Presently, we do not have any of those programs. However, we are in discussions – very preliminary discussions -- with the Department of Rehabilitative Programs within CDCR and exploring what we can put in place, whether they'd be some pre-release processes or education or actual transitional programs to better prepare the individual for reintegration into the communities.

HANCOCK: Thank you. I think that's very important and maybe you could again give us for the budget hearing as Assemblywoman Skinner indicated, a list of what is currently available in the SHU of each institution. There's only about 5 of them. OK. Thank you. Thank you very much.

AMMIANO: Thank you Senator. I'd like to wrap this up. One question that has been asked and I've been thinking about it too, is alternatives to the SHU, and Has there been any thought of not having the SHU and having an alternative to some of the problems that are perceived in qualifying for a situation like the SHU?

STAINER: I think probably the closest thing in that we are looking at right now would be our enhanced programming facilities as listed in the blueprint, and these are facilities where we believe there's a number of inmates that get involved in activities because they don't have a choice and we want to provide areas for them. And they don't want to go to sensitive needs yards. However, we believe there's an in-between ground there. If we can get more inmates who want to program, who want to participate in the opportunities that we're able to provide – and provide them an environment where they're able to do that, I think that's an area that we can possibly reduce the violence within our facilities or just confine it to the non-programming type facilities. However, we're always open to suggestions to things we can look at. We're not against that at all.

AMMIANO: OK I want to thank you very much. You know what we often hear in these hearings is we're looking into it, we're reviewing it, we're considering it, we're concerned about due process, and I compliment those sentiments. But until there's action, we're gonna continue to scrutinize, hold your feet to the fire, just as we do everyone who's

incumbent in the positions and responsibilities that we hold. Thank you very much. And Now I'm gonna turn this over to my Co-chair Senator Hancock. 1h16m

HANCOCK: I want to thank you also, we appreciate very much your being here, and the information, and I look forward to the additional information and working with you to resolve some of these issues. Our next panel is on the policy and practice of segregated housing in prison, some of the national dialogue, what's going on in other states, and an overview of the possibilities that may be open to us. We have two members of this panel, one is Margaret Winter, she is an adjunct professor of law at Georgetown University Law Center, and Associate Director of the ACLU's National Prison Project. Her litigation in Mississippi was instrumental in reducing the state's use of solitary confinement by 85 percent, and I'm quite interested in that particular case history in another state in our country. Keramet Reiter is an assistant professor of criminology, law and society at the School of Law at the University of California-Irvine, and has done a great deal of work on specific prisoners and the impacts of prison punishment and policy on individuals and communities. So welcome both of you, we appreciate very much your being here to share your work. 1h18mt

MARGARET WINTER, Associate Director of the National Prison Project for the American Civil Liberties Union:

I would like to thank Senator Hancock and Assemblymen Ammiano and the Public Safety Committee for holding these hearings. I very much appreciate the opportunity to participate in what I consider to be an extraordinarily important undertaking that I think could have national implications as well the implications for the state of California.

In my work with the ACLU over the last 20 years, I have investigated, monitored and brought class action litigation on conditions of confinement in prison and jail systems around the country. I have testified as an expert to the Prison Rape Elimination Commission, to The Committee on Safety and Abuse in American Prisons, to the Citizens Committee on Violence in the Los Angeles City Jails and I was recently invited by the President of the American Correctional Association to speak at the ACA's National Conference on Solitary Confinement. I have been asked by this Committee to give an overview of solitary confinement nationally and recent developments as to what other jurisdictions are doing today to address the issue of solitary confinement.

It is well known that the U.S. has the largest incarcerated population in the world, with 2.2 million people behind bars on any given day and that we have the worlds highest per capita incarceration rate too, a rate that is five to ten times higher than any western democracies like Canada, the U.K., Germany and France. But what is a less well known is that the U.S. prisoners in solitary confinement than any other nation. It is estimated that on any given day there are 80,000 in the U.S. held in solitary confinement.

Human beings are social animals. Being subjected to prolonged social isolation causes extreme psychic punishment and pain. And especially when that isolation is combined with enforced idleness and sensory deprivation – it causes agonizing psychic pain. And over time in solitary confinement, those who start out sane often develop mental illness. Those who start out ill are likely to become more seriously ill. It is well known that a very very big and significant portion of the prison population in California and nationwide is mentally ill to begin with. Some never recover from the effects of solitary confinement; they go round the bend, so to speak, irretrievably so that they don't come back.

All of this has been known for a very long time. In 1890, the U.S. Court described observed the effects of solitary confinement like this: *"A considerable number of the prisoners fell, after even a short confinement, into a semi- fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community. "*[1]

Virtually every reputable study of the effects of solitary confinement lasting more than 60 days has found evidence of its negative psychological effects.

Prisoners with seriously mental illness are particularly at risk. And almost every federal court to consider the issue has ruled that subjecting prisoners with serious mental illness or developmental disabilities to isolation violates the 8th amendment.

Teenagers, young people, are also at greatly heightened risk. Most suicides in juvenile corrections facilities occur in solitary confinement. And, in fact, there is adequate evidence to say that solitary confinement causes suicide. In the California system, the evidence is that 60 to 70% of successful suicides in prisons occur in solitary confinement.

So with all of this accumulated knowledge, why do we have 80,000 people every day in the United States in solitary confinement? What happened since 1890? Or since the mid-nineteenth century when all of this became well

1 *In Re Medley,* 134 US 160, 168

known? What happened was in the mid to late 1990s there was a mania for so-called SuperMax prisons, that is prisons entirely dedicated to long term solitary confinement. This mania swept the country. This was at a time of acute public anxiety about crime. SuperMax prisons, like draconian sentences and 3 strikes laws came into political fashion. It was like a statement that the state was "tough on crime". There was a SuperMax building boom, and by 2006, more than 40 states, as well as the Federal government had at least one SuperMax prison.

In the last few years a national dialogue has opened up strongly questioning the utility and justification for solitary confinement.

Everyone agrees that some prisoners may need to be physically separated for some period of time to prevent them from hurting others. But even when there is a demonstrable compelling need, a security need for physical separation, the issue is whether there is ever, EVER justification for prolonged and extreme social isolation, sensory deprivation and enforced idleness.

There is a growing body of evidence that solitary confinement does little or nothing to promote public safety or prison safety. And that it is so harsh and so likely to damage people that is should be used as sparingly as possible. Only, ONLY for prisoners who pose a current, active, on-going serious threat to the safety of prison staff and other prisoners. It should be used only as a last resort and for as short a time as possible.

The evidence that solitary confinement is not only harmful, but unnecessary and incredibly costly has given rise to a rapidly expanding nationwide reform movement. The reform movement has been fueled in part by the financial crisis. The states are facing crushing budget deficits and spending for education, public health care and other basic public social services is being slashed to the bone.

A serious national debate has already opened up as to whether the staggeringly high cost of solitary confinement is justifiable. Incarceration is expensive. Solitary confinement is by the far the most expensive form of incarceration. The daily per prisoner cost at the Federal Bureau of Prisons highest security SuperMax is $80,000 a year, triple the cost in a non-SuperMax high security facility. The per prisoner cost in Illinois's recently closed Tamms SuperMax was more than $60,000 per year, triple state's average per prisoner cost.

Furthermore there is little or no evidence that solitary confinement actually promotes either public safety or prison safety. A 2006 on the effect of opening SuperMax prisons in Arizona, Illinois and Minnesota found that the SuperMax had either little or no effect on reducing violence or that it was actually associated with increased violence.

A 2007 study by the Mississippi Department of Corrections showed that violence levels plummeted by 70% of previous levels, when the Commissioner of the Mississippi Department of Corrections reduced the number of prisoners held in solitary confinement by 85%. That is, the level of violence declined in almost direct proportion to the radical reduction of solitary.

A reduction in the number of prisoners in segregation of prisoners in Michigan also has resulted in a decline in violence and other misconduct. And furthermore we cannot forget that prisoners who were held in solitary have higher recidivism rates than comparable prisoners who were not held in solitary.

I want to talk to you about Mississippi. Mississippi is the reddest of the red states. Mississippi was the unlikely trailblazer in radically reducing the use of solitary confinement. In 2004, the ACLU won a lawsuit challenging the horrific conditions on Mississippi's death row, which was situated in a corner of Mississippi's SuperMax unit, a 1000 bed facility known as Unit 32. Mississippi has a prison population of about 20,000 prisoners, 1000 of that was in SuperMax. Mississippi's Commissioner had long insisted that solitary confinement was necessary for these 1000 men because they were "the worst of the worst", violent gang members and there was no other way to keep the prison and public safe. But in 2007, after further litigation, something remarkable happened, Mississippi's Commissioner agreed to work with a national classification expert from the NIC, an arm of the Department of Justice, that provides technical support to state prison systems and together with the ACLU's mental health expert and with this NIC national classification expert.

The prison officials sat down with the Deputy Commissioner, the head of the prisoner classification team, with the prison's mental health team, they sat down and over the course of a few weeks, they individually considered every single one of those 1000 cases. They applied evidence based risk assessment tools, which the NIC has developed and which have been tested many times. Applying these evidence based risk assessment tools and factors, they decided after careful review, the Mississippi officials, decided that at least 85 % of these 1000 men in the SuperMax did not need to be isolated, they should not be isolated.

Hundreds of them had serious mental health problems and needed to be diverted to a facility where they could get intensive mental health treatment. Hundreds more were in solitary merely because they were members of gangs or simply because they had violated many many rules, they had history rule infractions, many of them in response to intolerably harsh conditions, some of them acting out because they had behavior problems. But in any event, these men were not actually so dangerous to others as to need to be kept in solitary confinement.

Within a matter of months the Department had actually reduced its SuperMax population by 85%, from 1000 men to 150. And the result of this reduction was equally dramatic. The level of violence in the prison plummet to a small fraction of its former level. And these figures were later documented in a study by the Deputy Commissioner of Corrections and the NIC and the other people involved in this experiment.

I will never forget visiting Unit 32 in November 2007 and witnessing the transformation of a prison. I could hardly believe my eyes. This vast prison yard that always been so silent and empty was now filled with hundreds of men, peacefully playing basketball together in a newly created basketball courts, walking together to classrooms that had not previously existed before and going to a chow hall that had never existed before because they had never left their cells. This was a successful experiment.

Three years later, in 2010, the Mississippi Department of Corrections permanently shuttered Unit 32 and reduced the number of prisoners in solitary confinement, throughout the state, to a small fraction of what it had been. The state, in the process saved millions in operating costs, and that is a big deal in Mississippi which is one of the very poorest states. Mississippi's Corrections Commissioner Christopher Epps has used that experience to become a national spokesperson against the over use of solitary confinement, and as the current President of the American Corrections Association, Commissioner Epps has encouraged corrections officials nation wide to embrace reform.

Other states have followed in Mississippi's path, including states with some of the largest prison populations in the nation. In 2008 New York passed the SHU Exclusion Act, a law that diverts prisoners with serious mental illness away from isolation and into mental health treatment units.

In 2010, Maine Department of Corrections - Maine had exceedingly harsh isolation policy. Maine reversed course voluntarily and made isolation a last resort rather than a default practice. And over the course of 18 months, the state reduced its solitary confinement population by 50%. At the end of 2012 the trend continued. Illinois permanently closed Tamms Correctional Center, the state's only SuperMax prison. In 2013 Colorado closed a 316 bed SuperMax unit after cutting its solitary population by 1/3.

In the last few years, there has been a surge in state legislative activity to limit the use of solitary confinement. In 2013 bills were proposed to limit or ban the use of solitary confinement of juveniles in California, Florida, Montana, Nevada and Texas. Nevada actually enacted a bill that places restrictions on the use of isolation of youth in juvenile facilities. A similar bill on juvenile solitary confinement practices was introduced in Texas. And Texas passed a law requiring correctional facilities to review and report on their use of isolation. Maine, Colorado and New Mexico have each passed bills mandating studies on the use, impact and effectiveness of solitary confinement. And this is an incredibly powerful and important component of addressing the problem, of actually getting the data. Because most states don't have it yet. A Massachusetts bill would require a hearing within 15 days of placement in segregation, limit segregation to no longer than 6 months, except in exceptional circumstances and provide for access to programing to prisoners in segregation.

The Federal government has also recently become involved in the movement to limit solitary confinement. In June 2012, the first ever Congressional hearing on solitary confinement was held before the State Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights. In 2013 U.S. Senate passed the Border Security Economic Opportunity Security Immigration and Modernization Act, which limits the length of solitary confinement to 14 consecutive days, 14 days, unless the Department of Homeland Security determines that continued placement is justified by extreme disciplinary infraction or is the least restrictive means of protecting the other detainees. The bill also banns the use of solitary for juveniles under the age of 18, restricts the use of solitary for those with serious mental illness and for involuntary protective custody.

Also in 2013 something very important happened when the Government Accountability Office , the independent investigative agency of the U.S. Congress undertook a comprehensive review of the use of solitary confinement by the Federal Bureau of Prisons. The Bureau is the nation's largest prison system, holding about 15,000 people in solitary confinement. In May 2013, the GAO issued a report finding that the Bureau had never assessed whether solitary confinement has any effect on prison safety; that the Bureau had never assessed the effects of long term segregation on prisoners; that the Bureau did not adequately monitored segregated housing to insure that prisoners received food, out of cell exercise and other necessities. And the BOP agreed to adopt the GAO's recommendations to gather data, to assess the impact of long-term segregation on prisoners and to assess the extent to which segregation actually serves the purpose of making prison staff, inmates and the public safe.

Another sign of the times that we are on a wave of reform is that in May 2013, the Department of Justice completed an investigation of solitary confinement in a medium security prison in Pennsylvania and found that Pennsylvania was housing prisoners with serious mental illness and developmental disabilities in solitary confinement and that this practice violated the inmates rights, not only under the 8th amendment but also under the Americans With Disabilities Act. The Justice Department notified the Governor of Pennsylvania that the DOC was going to expand its investigation into the use of isolation on prisoners with serious mental illness and intellectual disabilities into other Pennsylvania prisons.

Many major national non-governmental organizations are now involved in the challenge to solitary confinement. The National Religious Campaign Against Torture has made solitary reform a priority. In 2010, the American Bar Association revised its standards on treatment of prisoners to recommend strict limits on the use of solitary. In 2012, the American Academy of Child and Adolescent Psychiatry enacted policy opposing solitary confinement of juveniles. And also in 2012, the American Psychiatric Association approved policy opposing the prolonged segregation of people with serious mental illness. And now an effort is underway to amend the American Institute of Architects' Code of Ethics to prohibit the design of facilities intended for prolonged solitary confinement.
There has been a new focus internationally against solitary confinement. In 2011, the U.N. Special Rapporteur on Torture and Terror called for a ban on solitary confinement lasting longer than 15 days, and an absolute ban on solitary confinement for youth and the mentally ill. There were similar recommendations by the Council of Europe's Committee for the Prevention of Torture, similar, in 2013 from the Inter American Commission on Human Rights, and that Commission concluded that countries should adopt strong concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances, stressing that prolonged or indefinite solitary confinement may never constitute a legitimate instrument in the hands of the state.
There is now massive evidence to support the following 6 basic conclusions regarding solitary confinement:
First. Solitary confinement is so harsh and damaging that it should be used as sparingly as possible. It shouldn't be the default. It should only be for prisoners who pose a current serious threat to the safety of others, only as a last resort and for as short a time as possible.
Second. Even when there is a compelling security need for physical separation, that is no justification for extreme social isolation, sensory deprivation and enforced idleness. Prisoners requiring long term physical separation from others should have meaningful access to telephone calls, letters, reading materials, tv, radio and in-cell programing. And they should have access to confidential counseling with mental health clinicians, not cell front, but confidential. They should recreate alongside of other prisoners even if they have to be confined to separate adjacent exercise yards.
Third. A prisoner should not be placed or kept in segregation without an individualized determination that physical separation is actually currently necessary for the safety of others. And that means real meaningful due process and a real meaningful review by classification team, mental health people, working together to do regular, periodic reviews. Prisoners should not be subjected to segregation merely because they are on death row or merely because they have a life sentence or just because they are gang members. It is a question of whether their conduct, their actual conduct, in prison creates a serious on going threat to safety.
Fourth. Juveniles should never be kept in solitary confinement. Solitary is damaging and dangerous for juveniles.
Fifth. Prisoners with serious mental illness or developmental disabilities should never be housed in solitary. They need to be in a therapeutic environment where they can get treatment. Mental health housing can be secure without being socially isolating people with mental illness.
Sixth, and in some way most important. Prisoners have to be given the opportunity to earn their way out of solitary confinement by their good behavior. Above the gate to Hell in Dante's Inferno was written "Abandon all hope, ye who enter here." And that should not be the mantra of state prisons.
These recommendations aren't far out, they are not fringe. This is now the new, you are going to be seeing that this is the new mainstream. And California, we hope, will not be bringing up the rear, but will take its place in the vanguard of adopting these recommendations and finding a roadmap toward the goal of limiting the cruel practice of solitary confinement to the least possible use.
HANCOCK: Thank you, thank you very much. Professor Reiter …
KERAMET REITER, Assistant Professor at UC Irvine: (1h46m30s)
Thank you to the committee so much for holding this groundbreaking hearing. I think one of the first steps to prison reform in California is collaboration across multiple branches of government, and this hearing seems like a critical step in that direction, so I'm delighted to be here. I'm a professor of criminology and law at UC Irvine, and I've been studying California prison policy and reform for more than 10 years and I'm currently writing a book about the history and uses of solitary confinement in the United States with a special focus on California. So I'd like to contextualize California in the national story that Margaret Winter just gave us and make two straightforward points about segregation and solitary confinement in the states.
First, segregation is overused in California today. And second, as we had a sense I think from the first panel, we need more and better information about who's in segregation in this state and why. So I'll talk a little about each of those in turn – what we know and what it would be helpful to know.
First: Solitary confinement is overused in California. So we heard about snapshot data of how many people are in solitary confinement today in California and how long they've been there, and one of the things we heard today is that there's hundreds of prisoners who've been there for more than 10 years. And when you look at data about people who are released, the average is two or more years that people spend in solitary confinement before release,

but as we heard a large number of people in California aren't released; they're serving indeterminate sentences; they're spending years and even decades in solitary confinement.

And this is unusual. The indeterminate sentences are unusual. According to a recent survey by *Mother Jones*, fewer than half of all states allow indeterminate assignments to SHUs like Pelican Bay. And in many states, only a few prisoners at a time serve these long sentences of a decade or more, and California has a few hundred.

And then again, in California, it's not just the average stays are long, the sheer number of people in solitary confinement is quite high in this state. So California, as we heard today, has more than 4,000 people in SHUs right now, and these cells are actually often overcrowded. So at any given time over the last 10 to 15 years, roughly half the prisoners in the SHUs in California have been double-bunked. So it's not just that we have a lot, they're actually – they're crowded just the way the rest of the prisons are.

Again, very few states compare with the number of prisoners in solitary confinement. Texas, New York, the federal prison system and California have these numbers in the thousands. Most states have a few hundred people in these conditions, and most states don't double-bunk at the rate that California does in these cells where prisoners are there 22 to 23 hours a day.

So there's a couple of big problems with having this many people in solitary confinement for so long. One is that it means that there's thousands of people in any given year experiencing these harsh conditions of confinement and struggling with reintegrating when they get out. So we know that many people have mental health problems after they stay in these conditions and that transitions can be extremely difficult from solitary confinement back to the general prison population and then back to society.

And as we heard earlier, in the last year, a couple dozen people a month have been released directly from solitary confinement to the streets. In previous years, data I've analyzed suggested that it was much more; it was more, closer to a thousand a year, roughly 100 a month being released onto the streets. So we have this problem of lots of people in there but again, they're not there permanently. The vast majority of people are ultimately going to get out and come back to our communities. Also, the impact of this policy is disproportionately felt by minorities. So the most recent data I've seen is that in the SHUs in California, about 56% of prisoners coming out are Latino as opposed to the general prison population where about 42% of prisoners are Latino. So we see this, you know, there's already a disproportionate impact in the prison population but in the SHUs there's an even greater, statistically significant disproportionate impact on minorities.

And then finally, this policy is incredibly expensive. So in California it's estimated that upwards of $70,000 per year to keep a prisoner in the SHU, and that was data that was released in 2012. So it would be good to have updated data as was suggested earlier. This is more than $20,000 a year more than the average per prison[er] cost in California, and this is really high. California's per prisoner costs are generally high within the nation, and this $70,000 number again is comparable to the Federal Bureau of Prisons and not many other places. So that's the overuse of solitary confinement and segregation in California.

But the second point I want to make is about transparency and the kinds of information we could use to make better policies. So I want to talk about three categories of questions that would be really helpful to have more data and data over time, not just snapshot data in a moment at a hearing like this.

So I want to talk about (1) who's in the SHU and why, (2) what happens to people in the SHU upon release, and (3) are our prisons safer and our communities safer because of the SHUs?

So in terms of this question (1) of who is in the SHU and why, what we often hear is that it's "the worst of the worst" prisoners. Unfortunately, there's little evidence behind this claim and less evidence that there are 4,000 or more of the worst of the worst prisoners. One of the main examples in California that is given to talk about the worst of the worst is an extremely violent period of time in California corrections in the 1970s when in a 3-year period 11 correctional officers died and more prisoners died between 1970 and 1973. This is around the time there was a shoot-out with George Jackson in San Quentin, 3 officers died in that. Other officers died around the same time in other prison systems. And this was a notably extremely scary time in the California prison system, especially if you were working there.

However, in the last 40 years, there have been half as many officer deaths as in that anomalous 3-year period in the early 1970s.

So since 1975 or so, our prisons have never been as violent as they were in the 1970s, and the same is true for prisoner homicides.

In the 1970s, the rate was high in California, spiking at about 18 homicides per 100,000 prisoners. And today, the rate of homicides in the California prison system – so, prisoner on prisoner violence – is less than 1 homicide per 100,000 prisoners. So it's one thing that we can actually congratulate the Department of Corrections for, I think, is that their prisoner homicide rates are actually pretty low – lower than the general prison population - and that's been true for a long time.

So this is the little bit of evidence we have about how many worst of the worst prisoners there are in the prison system, how much violence, and we need more. And given this evidence about how low rates of homicides have been in the prison system over the last 4 years, it suggests that maybe there aren't 4,000 worst of the worst prisoners. But we don't know. So the things we want to know are not just, as we heard today, how many prisoners are serving indeterminate sentences in the SHU today but how has this changed over time? So in any given year, how many prisoners are validated gang members, how many have committed rule infractions, what were those rule infractions? And we want to see that consistently over time so we can really analyze this population and look at who's there and how dangerous they are.

And then we also want to know information about what was the evidence used at the hearing. What underlies these assignments to SHU confinement? And what was the evidence used at their regular reviews that kept them incarcerated? These prisoners who've been in there for 10 and 15 years – what did the hearing officers look at to determine that they needed to stay in the SHU? What were those? And was it violent, was it not? So we really need to know more about these people.

We also want to know – it was really interesting – California tries very hard, it sounds like, to not put people with mental illnesses into the SHU. So if as they leave the SHU they have a mental illness, that would also be really interesting to know. So it would be good to know how many people leaving the SHU have developed mental health problems since we know that the state try to ensure that they didn't have mental health problems when they went in.

And then as the state reforms its policies, we want to continue to collect this kind of information – what evidence is being used in these new reviews looking back at these prisoners' files and trying to get some of the people out of the SHU, and how do these prisoners do as they're released into the general prison population? Looking, again, were they the worst of the worst? Were they not? How can we refine this over time?

So that's the first question – (1) who's the in the SHU, why? Better data.

(2) The second set of questions is what happens to prisoners after they are released from the SHU? How did they fare in the general prison population? How did they fare on parole out of prison?

I've interviewed dozens of former prisoners who spent time in the SHU, and my preliminary research suggests it's transitioning from the deprivations of the SHU out to the street can be extremely challenging. Prisoners have trouble making basic decisions. They have trouble being in public places in crowds. All of the things that are happening, having not seen natural light or interacted with more than one person at a time for years -- all of these things create all kinds of overwhelming sensations as they come out. And we don't know what happens to them. As far as I know, we don't track these people as they go out, and this would be really important information to have. And it will help us to think about how we can facilitate the transitions back to the community that 95% of our prisoners make. And it might provide further insight into how well our prison system identifies which of these prisoners are the worst of the worst. People come out of the SHU and they do great as functioning members of society, it raises questions about whether they needed to be in the SHU in the first place.

(3) So the final set of questions is one that's been a theme through some of the comments today, and that is, has solitary confinement made our prisons safer? So just as the Government Accounting Office [GAO] recently found that the federal prison system had never systematically evaluated the safety impacts of the federal segregation units, so California has never systematically conducted such an evaluation either. So we need data about violence and disciplinary infractions that's specifically and systematically collected and analyzed. What disciplinary infractions underlie the SHU confinement? Are prisoners in the SHU because they committed acts of violence within the institution or for some other reason? And do they remain in the SHU because of acts of violence? And then when they're released, do they commit fewer or more acts of violence in the institution? And we also need to know more and more specific information about where and how violence takes place in the prison system. Are there assaults that take place in the SHU units? How frequent are those? Are the SHUs themselves safe places? Are there assaults that take place in the prisons that surround the SHUs? Are those institutions safe or safer for having a SHU? So these are the kinds of things that would really help us to assess: Are these institutions making our prisons and our communities safer?

So I want to sum up by saying that in collecting better data and reducing California's reliance on isolation and segregation, there's a challenge of trying to reconcile two things.

One is that we have to work with correctional administrators to design better policies. On the one hand, California has institutionalized deference to administrators who played a significant role in designing the physical structures and operational policies of SHUs like Pelican Bay and Corcoran. So they write the rules about when people get sent to isolation, how those hearings work – they make those determinations often in the absence, as I think this committee is hearing, of legislative or judicial oversight.

On the other hand, correctional administrators make these really tough decisions, manage these really tough populations, and face overcrowded prisons and often get blamed for things that go wrong. They're left alone to resolve hunger strikes, to resolve overcrowding. And so I think in working on these solutions, it's important to work with them to acknowledge that these are really tough problems that they're facing that they don't always have control over, and to figure out what would give them better resources.
There's that piece.

But that also has to be reconciled with the need for basic humane conditions of confinement in the state of California. I think it's helpful to remember that prior to the 1970s, California was looked to as a model of effective and humane incarceration throughout the U.S. and around the world. It was a nice position to have and it would be nice to gain that place of respect again in correctional policy and within the nation.

HANCOCK: Thank you very much. Are there any questions from members of the Committee?

AMMIANO: I did enjoy your comment about the – if you do get out of the SHU and become a productive member of society, then why the heck were you in the SHU in the first place? Just wondering if there are any statistics about suicides – the suicide rate amongst people who have been in solitary confinement?

REITER: So this is one of the challenges is that there are often snapshot statistics. We heard great statistics today in response to your questions, but that doesn't give us much of a sense of what happens over time. So as Ms. Winter mentioned, there was a report in California that showed I don't remember the exact year, but that 60% to 70% of suicides in the department were taking place in SHUs but that was a one-time report and that's the kind of data that it would be great to just collect every month, systematically over time and see.

AMMIANO: I think that's what Senator Hancock and Assemblywoman Skinner were talking about, COMPSTAT, having longitudinal …

REITER: Not just at Pelican Bay but was it in the SHU or general population at Pelican Bay.

AMMIANO: I loathe to refer to Mississippi but what can you do? [Audience laughter] Are there other jurisdictions where there is best practices that California could adopt? Because we're looking towards maybe legislation coming up.

WINTER: I think you should look at Maine. It's a small state. Mississippi is a more dramatic example because there was such a large population and there's a huge gang problem in Mississippi prisons. But Maine, I think, is certainly a state that you should look at. And again, it's a state where the Department of Corrections voluntarily adopted reforms, and there have been reports written on that and I think that'll be a very good place to look at.

AMMIANO: What would be some alternatives for individuals who are dangerous to themselves – an alternative to solitary confinement that – are there practices that have happened or situations where that's occurred?

HANCOCK: He's asking the answer to that very good question that comes up all the time, talking to members of the public, but what else is there to do, with …? [2h]

AMMIANO: If you truly are dangerous to yourself and maybe it's not a mental health issue and others, what would be some of the things that …

WINTER: All right, so let's leave aside mental health because with mental health, you should simply accept that isolation – social isolation – is the worst thing for most people with serious mental illness. For the rest, first of all, be sure by regular review and by looking at the right data that the person is in current and ongoing danger such that you have to protect others, that there has to be physical separation. Once you do that, what you need to do is to provide conditions that allow that person to have a life instead of going around the bend from total sensory deprivation, monotony, and isolation. There should be ways to be able to have congregate activities with others and it depends on the individual. But my goodness, I've seen situations where they have people who are considered the worst of the worst but they're playing checkers together but they're shackled to the floor. They're playing games. They are able to talk to each other. Sometimes people can be on the yard together, for example, in parallel yards so that they can communicate with each other. There should be as much as possible things to think about and things to accomplish rather than just having a dead brain by being alone with nobody to talk to, nothing to see. So you have to enhance those opportunities. And then you have to be willing to re-examine this individual's progress. He might not be the same person in 5 years that he was when he did something terrible that made him seem like a danger to others. You then can incrementally increase the amount of freedom, the amount of possibility for socializing with others.

What there really is no justification for is to say that the only way to be safe is to put this person in a blank room with a steel door, in a room that is the size of a small bathroom. That is not needed for safety.

REITER: One thing if I can add is in interviews, one of the things I've heard from former SHU prisoners is that one of the hardest parts is never seeing nature or living things. So people talk about going 10 years without seeing the moon. So really basic things that we take for granted. Like not seeing a bird or an insect. Those kinds of things don't require any safety compromises to make sure that we treat people more like the human beings everybody is no matter what they've done, making sure that they have access to living things and natural light, for instance.

AMMIANO: What I gathered from my visits, just for the sake of argument, is because those of situations for 10 years is just excessive – but "I'm going to punish you in such a way that when you are released, you'll know that that's what's going to happen to you again if you don't correct that behavior." But I think the misstep is that behavior is not going to be corrected by that action.
REITER: Well, also to be clear, legally, it shouldn't be punishment, right? The people that we might need some form of segregation from the rest of the population, the justification should legally be because they're too dangerous to be in the rest of the population. So it should be about safety of the institution and the community and not about "Can we take away all these rights to make you feel as punished as much as possible" because that's not what the corrections system – right? The judiciary does that. The corrections system is trying to manage.
AMMIANO: Yeah, yet the line gets blurred, I get it, from being a caretaker to an adjudicator. This is rhetorical – 30 years in solitary confinement? Does that happens in other states?
WINTER: Unfortunately, it does happen. It's extremely rare. We've all heard of the Angola Three. There are a few people around the country who are in solitary for decades.
REITER: California's 500.
WINTER: Yeah, there are still a few – a handful of people like that in Mississippi but the numbers are always reduced. You know, they are reduced. And it's – ideally, it should be no one; but I think what we can say positively is that there's nowhere where it should be in the hundreds, that it just means that there is rote thinking going on – there is not an individualized examination of this person as a human being and taking a look at evidence-based risk factors. When you're seeing these big numbers, there's something terribly wrong. It's extremely, extremely rare – the phenomenon of somebody who really needs to be isolated from other human beings or from nature for that matter.

I just want to underscore how very true that is in hundreds and hundreds of interviews I took with prisoners in solitary, to be in a sterile hell where it's not only that you are shut off from other people, that you are shut off from bird song, from a blade of grass. That's profoundly dehumanizing, and people don't recover from that.
AMMIANO: Could you see us here in California doing away with solitary confinement? Do you think that we would have the political will, the resources and the background? I'm interested in that. [audience]
REITER: To limit this indeterminate – I can see California doing away with indeterminate solitary confinement, certainly, and to drastically reduce the use of segregation to these very small possible numbers. And California's history demonstrates that's possible, right? Just to bring us back to …
AMMIANO: Well, the supermax and all that. I mean, that was a very good history for us. I don't want to steal my colleagues' thunder, but I'm also concerned about women in the SHU. Are there different studies around that, and in terms of gender issues around solitary confinement – women who are in solitary confinement?
WINTER: That's so rare in other jurisdictions. It's extremely rare.
REITER: It's another California outlier. I've only ever heard of one or two women in isolation in other states, so it's something people in California are interested in but it's not really …
WINTER: It seems to me that the potential is here. I mean, what I somehow think is possible is that California will go from being the outlier, from being, you know, dragging behind and bringing up the rear to take a big leap forward and go into the vanguard.

There's a developing nationwide movement. There's so much information out there. Having seen that these things *can* happen very quickly when an individual plays a leadership role and is willing to open up their mind and re-examine these beliefs that they have, that are just branded in their brain, open it up and, for example, realize: no, people shouldn't be in solitary simply because they're in a gang. That kind of thing. There could be a – not a slow evolutionary process even here but there could be a – it's possible, with a hearing like this being a good beginning, for there to be rapid change. And there should be because the problem is so staggering in California.
HANCOCK: Assemblywoman Skinner, and then Assemblyman Cooley.
SKINNER: I have tons of questions I could ask, but I think the materials we have in the briefing book and your oral testimony pretty much address a lot of the things. But I wanted to ask you, I asked the Department of Corrections around the women but I didn't really pursue it because they didn't give me the reasons why women are in the SHU. I've got to assume because I didn't get it, that it might be the same reasons the men are, so I wondered if you had any info on women in California, is it a gang issue, a violence issue, or what?
REITER: You know, one thing that would be good to know is what's the breakdown of indeterminate and determinate because if they're all serving determinate SHU terms, you could guess it's not gang. I don't know of gangs being the kind of problem in women's prisons in California than they are in men's prison. So my educated guess would be that that's not it. (2h12m) I have only anecdotally talked to a few women who've been in the SHU and usually they've talked about being there for determinate terms often for – they said - for retaliation for filing grievances or refusing to work, sort of, you know, getting in challenges with prison administrators.

SKINNER: Right. So potentially the issue of punishment versus because they are a danger to others. Yeah, we have to collect this data.
WINTER: You know, There is no substitute for bringing in independent outside expertise like from the NIC [National Institute of Corrections, http://nicic.gov/], to bring a fresh eye to this. I don't know if this is doable or not. If you ask the department if they would be willing to sit down with a member or couple members of this committee and, for example, take the women prisoners who are in SHU housing and say, "Let's go over their records. Let's explain to us why. And let's sit down with an independent, outside expert and let's review it. Let's see if this is really necessary." I don't know if they would accept an invitation like that. But it could be very enlightening and helpful.
HANCOCK: Assemblyman Cooley.
COOLEY: I think that question about outside experts is an interesting one. I wanted to comment, I don't sit on the Public Safety Committee but obviously this is an issue of great importance to the future of California and I just wanted to have the opportunity to sit in and listen today. … I think the general issue here, and it's a long-term issue for the State of California, is we don't really understand any phenomenon until we've measured it. That undergirths this conversation. Prisons themselves are remote, it isn't seen what goes on there, it's very hard for a lay person to sit on the sidelines and assess what's going on. I've heard, we've had the ACA invoked, mentioned, you mentioned some other associations, architectural groups, NIC – it might be interesting to take some of these groups that have a keen interest in this general area and try to get them in a conversation about what is the data we should be capturing? Try to get some outside groups, with this idea that until we measure it we can't come up with guidance. It is the legislature's job – you know, Winston Churchill used to say, "experts should be on tap, but never on top." I think we want to bring in experts, but think about from our own public policy perspective, our oath of office, the state budget and how we reconcile these divergent things, and I would think it would be interesting to get a variety of these groups to bring some expertise and ask them not just to defer to them, what should we be doing, but what is this sort of data that would shed light? And shed light in such a way but so that it would shed light not just on SHUs but on how those populations relate to the general prison population, issues of recidivism, and try to figure out an easier way that we can be more systematic saying, well this is what we need, and start gathering that. That's not to put off the day of progress, the national perspective vis a vis other jurisdictions and trends elsewhere is very relevant and important to try to assess what we might do. I appreciate the opportunity to be here.
HANCOCK: I would actually agree, I think that's an excellent suggestion, and possibly if either of you could elaborate on who besides, I assume it's the National Institute of Corrections, NIC, I know in my reading I've come across 3 or 4, the National Correctional Association, the CDCR may have some groups they may like to suggest as well. We can always learn from looking at what other people do, and I think that staff notice, this should be maybe the subject of another hearing, or put together a sit down and confer process that could lead to some changes.
AMMIANO: If I could jump in and speak about the next panel, people who have actually gone through the SHU, families, would be invaluable as to their input. [audience applause, light joking gavel] Another kind of expert.
HANCOCK: I think that's right. As I hand over the gavel, I want to mention … What are the other alternatives? Which we get asked a lot. And in my reading, there were a number that were mentioned, such as short-term cell confinement in the general population. A kind of – every parent knows – grounding essentially. Or short-term loss of work privileges or program privileges or visitors. But something that would not be as extreme as SHU and would allow people to earn back the places that they had been.

And then the other thing that was mentioned was better training of correctional officers [audience murmur] to defuse situations within prisons, again, in much the way that school teachers are now trained to recognize and defuse potentially violent incidents or bullying incidents in schools. And I wondered if you have any experience with that? And if there are other things we should be looking at as alternatives?
WINTER: I, couple of years ago, recently negotiated a consent decree with the Mississippi Department of Corrections concerning their treatment of youths who are sentenced as adults in Mississippi. And in Mississippi, youths from the age of 13 years old on can be – they're convicted as adults and were housed with adults. And as part of that decree, solitary confinement was simply prohibited. It was categorically prohibited.

But the sort of things that you suggest, like a brief time-out, is an alternative. An alternative is that these are kids who still are getting schooling so the teacher will come to their cell. They still have the punishment of not being with their classmates, but they're in-cell – the person coming to them.

In the adult context, when they were getting people out of solitary in the supermax, one important principle that they came up with was that it just can't be sticks. There has to be carrots. Because what the prisoners kept saying was, "All we can do is lose the little that we have." And that just throws people into total despair. They came up with a series of rewards, not just punishments but rewards, that people could achieve by being infraction-free. One of those, for example, and this is an extremely poor state, was these little MP3 players, and a prisoner who has been in – and this is a guy who has a really, really bad escape from a maximum security facility and he has been in solitary –

one of the few in Mississippi – for decades. I mean, for like 3 decades or something. And he said what an unbelievable difference that makes to, you know, to have music.
So the department actually gives them something – a special meal, additional visits from the family – not just once a week but "Hey, you can have an extra visit this week," "You can have an extra telephone call with your family." So there's all sorts of small rewards that in the context of prison are hugely meaningful. And you can use that system as an alternative to simply cutting everything off to control behavior.
HANCOCK: Thank you. I think we need to know more about what some of the alternatives are that others have come up with, I know we have a time issue, so I'm gonna hand the gavel back to Assemblyman Ammiano. Thank you so much.
AMMIANO: thank you so much. When you have hearings like this there's always things you're driving home and think why didn't I ask that … I think there will be a number of questions from all of us, and one thing I would be interested in is, for the non-mental health identified, what is the use of psychotropic drugs to modulate behavior, because that seems to be an easy way out and maybe practiced more than we think.
REITER: and that's certainly true.
AMMIANO: All right. Thank you very much. And our next panel is "observations and aftermath: the personal experience and lasting impact of segregated confinement in California prisons." (2h24m) Now we have a 30 minute limit on this particular panel, I don't want you to feel confined, that's about 10 minutes each because we also want an opportunity to hear from the public as much as we can.

FAMILY PANEL: Steven Cfizra, Dolores Canales, Dorsey Nunn
STEVEN CFIZRA, UC Berkeley student formerly incarcerated in SHU, Phoenix Scholars Project of Berkeley:
Before I talk a little bit about my personal experience, I would like to make two brief digressions, I promise they'll be brief. So I know the panel is filled with highly intelligent and observant people but I would like to suggest that Mr. [Robert] Barton, as providing an accountable and transparent observation of the California Department of Corrections, is – struck me as being somewhat conflict of interest. He was very apologetic and supportive of the CDCR and this is the organization that's supposed to be holding them accountable is somewhat like the fox guarding the hen house.
I want to make one comment about Professor [Keramet] Reiter's comment about the re-purposing of the security housing unit, that it was designed for one reason and it's being used for another today. So I read one of her articles recently, and in it she had interviewed numerous CDC – at the time CDC, there was no R, there was no rehabilitation in the CDC at the time – and she had interviewed numerous CDC officials who planned Pelican Bay and quoted them in her article "Parole, Snitch or Die" as the design and the purpose of Pelican Bay was to break people within 18 months. I would suggest that Pelican Bay is still being used for that purpose but it's failing in the way that they intended.
And so having said that on the record … I'm sorry I just couldn't help it [audience laughter].
So I went to – by the time I got to the security housing unit, I had already done 4 years in solitary confinement as a juvenile. And so I was a model inmate in the California Department of Corrections for about 4 years. I was days from parole, and I got in a fistfight with another inmate. And a committee who is responsible for classifying inmates determined that it was orchestrated and I was trying to incite a larger event – a larger race event because the two of us involved were of different races. He was black; I was white. I still am, actually. So I was given a year in the SHU for that. This was after about 4 years of being a model inmate. I was a teacher's assistant. I taught inmates how to do office work – things like that. It was a fistfight. You know, it happens. It's a tight, tense situation. "What are you looking at?" "What are you looking at?" We got into a fistfight. So, the very next day, I spit on an officer, who was taunting me in the administrative segregation. For those 2 incidents, I spent 4 years in the SHU and I was given a new felony charge – assault and battery on a peace officer – and another 4 years tacked onto my prison sentence, which I spent in the SHU.
The conditions of the SHU…[breaks up for a moment] Okay, look, I want to say this in the most professional and uh … So the SHU is torture, okay? The SHU is a torture chamber. Okay? It doesn't serve. When I walked into California's torture chamber, I was a whole human being. And when I left there, I was deeply fractured human being. Okay? So it's not helping. Let me put it that way.
My family's here today [laughs] and I kept my son out of school to come here today. And my son is – he's just a shining light of what humanity has to offer. And you know what? I don't attribute that to my time in the SHU. I don't attribute my presence at the Department of Corrections or at the University of [California at] Berkeley – You know, these things that have happened have happened *in spite* of the SHU. The California Department of Corrections, when I spit on that officer, they did everything in their power to take my life and to break me and to annihilate my spirit.

I would suggest that we stop asking the California Department of Corrections to govern themselves: that we hold them accountable. Pardon to go to officer [Assemblyman] Cooley … but we don't need to research anything. We already know – [Audience applause] – We already know without a doubt that long-term solitary confinement is torture.

Right now, somebody is on their way to the CDCR, and they're going to serve a life sentence. They're going to serve the rest of their life in prison, and they're maybe 18 or 19 years old. And right now, as the policy stands, they – heaven forbid they're Latino and they come from LA – they stand to spend the next 80 years in Pelican Bay. [emotional]

AMMIANO: Thank you sir, very much. Ms. Canales? (2h31m)

DOLORES CANALES, mother of son in Pelican Bay SHU, co-founder of CFASC:

First of all I would like to thank you for having this hearing and for taking the time out …

AMMIANO: I think your mike needs to be moved over toward you …

CANALES: Everybody usually tells me to quiet down, this is such a change [laughter] … OK first of all I would like to thank you for taking the time out and for having this hearing and for understanding our suffering in this struggle.

On August 23rd 2011, Mr. Charles Carbone, his opening statement (before this Assembly) was, "Here we are again, 10 years later" – and I do have to agree with what the gentleman [Mr. Czifra] just said, as far as investigating more data, because I feel that here we will be again, 20 years from now, still searching data, still doing research. That statement has always stayed with me because I think here we are year after year, decade after decade, hearing after hearing, as our loved ones sit in solitary confinement, as if we are still trying to figure out, if solitary confinement is detrimental to their physical and mental well being. We have seen the studies, and the research and suicides. And by the way the last suicide took place August 2013 in the Corcoran solitary confinement housing unit. Michael Billy Sells [audience applause]. We've seen the studies and research on suicides. We know that research chimpanzees are protected under federal government law from being housed in solitary confinement. We know that there was a bill passed to protect chickens from conditions of confinement. I have been to Sacramento on numerous occasions and even Washington, DC, in hopes of change, in hopes that my son and thousands of others will one day be exposed to natural sunlight, and in hopes that my son will not be one of the many that has succumb to suicide or insanity, in hopes that someone will listen and demand changes in conditions of confinement for human beings.

I became involved in these efforts to bring about change, after the July 1, 2011 hunger strike. And I honestly believe with all my heart that we would not even having these hearings today if it were not for the efforts of the prisoners in these hunger strikes. But yet they are being disciplined for their efforts. My son once wrote me and said," I have no doubt this place was designed with the sole intention of driving men mad or to suicide, he said , I know because I'm living it." [emotional] And as a mother it is a daily struggle to hold on to hope when you realize that CDC has went on for decades to defend their policies, and now even making a beautiful little book [hearing informational packet contained several color pictures of PBSP SHU cells and yard] with colored pictures to describe and to show how pretty the cells are.

So during the recent hunger strike [CDCR spokesperson] Terry Thornton said she does not like to refer to SHU as solitary confinement because they can "talk to one another" and they have a TV and they go out to visiting. Well, as to the prisoners being allowed to speak to one another: At any time a simple act of acknowledging another human being's existence is subject to disciplinary documentation. And I have here a 115, a Rules Violation Report (RVR) that my son and another prisoner received for simply saying "all right now" (a form of hello) to another prisoner. As for the television, first off, imagine a television being one of your sole sources of companions for 10 to 30 years. But then, and yet, another most recent study, on Health.com – a study followed 8,800 adults with no history of heart disease for more than six years and found: "Watching too much television can make you feel a bit brain-dead." According to a new study, it might also take years off your life. So, so much for watching television as their companion. And not only that, prisoners are not afforded a television unless the family member can purchase one for them. And as for the visiting, there's thousands of prisoners who have went decades without getting any visits at all. And I know this because our group, California Families to Abolish Solitary Confinement (CFASC), has assisted numerous families in getting up to visit (to Pelican Bay).

Since the July 1st 2011 hunger strike I have done extensive research as to how one ends up in solitary, and contrary to popular belief, there are thousands that spend decades in administrative segregation and SHU because of other prisoners' statements, and they receive rules violations reports simply on another prisoner's statement. I brought one example, if anybody would want a folder, I made up folders for examples.

They are being written, Serious Rules Violations Report 115s, for the "promotion of gang activity" with no other source evidence to corroborate with these statements. And what is troubling is that CDC claims these prisoners are housed in SHU because they are "the worst of the worst"; but why is it then, the minute that another prisoner begins making statements and allegations against another prisoner, then he is all of a sudden, credible and to be believed?

AMMIANO: The snitch …

CANALES: I have documentation here to show that the only source items are prisoners' statements and they are referred to as "confidential informants." You might be asking why I am bringing all this up, what does all this have to do with the effects of solitary confinement on families?

Because CDC, in severe contradictions when we were trying to put forth the media ban bill, they said they didn't want any prisoners rising to fame and notoriety. But yet, a verywell … debriefer has risen to fame and notoriety at the hands of CDC. Being allowed to write books. Being allowed to publish YouTube videos while serving a life sentence. Being allowed not only to slander the prisoners, but the family members, referring to females as "hood rats" and he is in state custody and these are YouTube videos. And we have to watch that. People read these books, where they're published, pictures of our loved ones with no shirt, because this is how he's reaching *his* fame and notoriety. He's allowed to travel the country to teach IGI (Investigative Gang Unit), to give them information, and he's reached fame and notoriety – and that is in contradiction to why CDC did not want to put forth the media [access] bill [which Gov. Brown vetoed in 2012].

So, because I read a letter from a young man I would like to just quote this, and let you know, he's quoted as saying, Daletha and other mothers here, her son wrote a letter and he said: "The worst part is the absolute state of nothingness, and without a vision the people perish." Sometimes I feel that same despair, sometimes that same hopelessness, and that same state of nothingness sets in, as nothing really changes. The use of confidential information still continues and the use of long term solitary *indefinite* confinement still exists.

I do want to say one thing really quick: CDC mentioned that they get two-hour visits in solitary confinement two days a week. (2h38m) Tehachapi only gets one hour, and it's Saturday or Sunday, so that's not consistent with the two hours two days a week. And also one more thing, as they were mentioning the prisoners' rights to the appeal process: They are only allowed to file one appeal every 14 days. And it is within a hierarchy that it's heard at different levels. So they're appealing to the same people who are writing them up. The only way to get out of that, after they've exhausted all appeal processes from within the system, then it could enter into the courts in litigation, which many prisoners do, but there's many prisoners that do not know how to follow this process through. There's many family members who don't know how to follow this process through. I've had *my* mail returned for promotion of gang activity; it has immediately been rectified, as I've called, complained, written letters, filed appeals myself. But if I did not know that, that would be in my son's file.

And so I just also want to let you know, with the 602 process, when it does reach court litigation, even after court rulings as in the Combrera case where they documented about drawings not being allowed as source items [for gang validation], I have documentation here showing Aztec culture, political forms of expression, are still being used. It's not the violent behavior that CDC continues to portray and proclaim. Thank you very much.

AMMIANO: Thank you very much. All right, Mr. Nunn.

DORSEY NUNN, Executive Director of Legal Services for Prisoners with Children, All of Us or None:

I hope I don't cry too; it's been a long life. The first thing I think I need to do is to thank you because this hearing is important. But what is more important to me is that it gave people an opportunity to do something different other than starve themselves to death. So, you've already accomplished one task. I don't know if it's a temporary delay, but I think it was up to day 60; Bobby Sands [Irish hunger striker] only lived up to 66 days on his hunger strike. So your intervention and your deciding to hold this hearing is probably more important than you can ever imagine. I generally speak without notes, but I think that this matter requires that I wrote it down.

My name is Dorsey Nunn and I am the Executive Director of Legal Services for Prisoners with Children and a proud member of All of Us or None. I could also be the first of my kind, a formerly incarcerated person who heads a public interest law office. I paroled on October 22, 1981, and I walked out of the gates of San Quentin committed to the struggle to secure the full restoration of civil and human rights of people like me. I have been engaged in this struggle approximately 34 years. It was something in that incarceration experience that has not allowed me to forget.

Pelican Bay, Corcoran, Calipatria, Tehachapi and other institutions practicing long term solitary confinement are mentally torturing people a little every day, for months, years and sometime decades. It is a place where people are consigned to have their spirits broken and sometime driven to suicide. We have too many prisons and institutions where human rights are being violated and then excused by claims that this severe treatment is reserved for the worst of the worst, as if these people are not human beings. (2h42m) However, the terror is not just for the people experiencing it directly but it has wider implications on prisoners, families and communities in general. Just imagine if they lined a few dozens of people up against the wall for being Black, Women, Gay or membership in a club in San Francisco and law enforcement shot, or even worse, disappeared them. This would be of great concern and this act would be emotionally and mentally torturous if you were a member of the group being needlessly shot or disappeared. It would be hard to imagine the Bay Area and possibly the country not being outraged.

The injustice of long term solitary confinement has had this impact on people incarcerated throughout the state of California. In July 2011, the first day of the hunger strike, there were approximately 6,700 people involve. The next time, in September 2011, there were 12,000 people involved the first day. The first day of the last hunger strike in July of 2013, there were 30,000 people who knew the truth and ---refused to take food. [emotional] CDCR attribute this to people being pressure by gangs as opposed to this being a matter of choice, conscience or justice.
CDCR can frame this anyway they want since the media is not being granted open access. However, what CDCR can't state is that this matter has been resolved satisfactorily. Subjecting people to disciplinary write-ups for peaceful dissent will not stop them from trying to end their torture or from attempting to secure justice. The bottom line is that this generation of prisoners has elected to pursue social change through peaceful means and as a society we should not punish them into choosing other methods to address their grievances.
It is difficult to accept the notion for anyone raised in this country that you could be subject to solitary confinement for decades for mere association or membership in anything. Particularly if you have not been able to determine the people you are forced to live with and determine who makes up your community. It is almost impossible to accept the practice of punishment or having a sentence negatively impacted for no overt act of misbehavior or crime. The notion of earning a sentence reduction is usually considered by anyone accepting [except in?] a plea bargain. To have that contract sanctioned in a state court and later violated by the state prison system is problematic at the least.
I would like to take this opportunity to demand the end to long term solitary confinement.
Visiting prisoners in Pelican Bay made me realize what it meant to be deprived of natural sunlight. I don't know if you ever watched people skin change color over the course winter months. Now imagine the change in skin tone after decades of being denied sunlight. I do not believe that you can tell that people lose their skin color gradually. However, I must state it was shocking to visit an old friend in Pelican Bay and knew he appeared many shades lighter, and I immediately started wonder about health and the food implications. What seemed like such a frivolous demand for food became much more after the visit. It was in that moment of consciousness that what appeared to be such a trivial pursuit on the part of prisoners became so much more. I forgot what it meant to endure the cold without heat or appropriate clothing, or of earlier demands for a beanie cap was not a matter of a fashion statement but a matter of survival.

As I mentioned earlier I am the Executive Director of Legal Services for Prisoners with Children and I was reluctant to involve myself and my organization in this struggle. I was afraid as a person and I was afraid that my organization would be collapsed. As a formerly incarcerated person I couldn't pretend that CDCR was anything less than bullies and monsters. I knew based on the books I had read, and having a backbone and my writings, that if I were under the control of CDCR I would be in long term solitary confinement and slated to have my spirits broken. Damn, someone gave me a actual program from George Jackson's funeral as a wedding present. Such a gift could have resulted in decades of torture if I was still being held as a captive. I am not a gang member, but I feel I need to say this, because I do not want to be put on the secret black list like the witch hunt they conducted looking for communists in earlier periods of time.
In 2011 I had the opportunity to talk to a number of hunger strike representatives and other prisoners in Pelican Bay. I was at the time trying to assess in spite of my fears why should I allow my agency to explore the possibility of litigation. There was one question that I asked that the answer resonated more than any other answer. I asked a number of them, what would they tell young people on the streets of Los Angeles and other places. They told me that they would tell the young people not to follow them there. They talked about false enemies. [emotional] They told me that they were engaged in this undertaking because they didn't want the other younger people who had the misfortune of being in prison in the future not to be forced to undergo what they are going through. Some of them didn't expect to ever see the streets again or to mainline but they want to do something better for other people.
It was with a great joy that I lived long enough I see the Agreement to End Hostilities. This document drafted by prisoners in Pelican Bay spoke to the larger goal of ending hostilities between prisoners of different races. Since that time I have spoken to many older formerly incarcerated people -- and it is in this document we see something different. We see them recognizing each others' humanity. We see them playing a different role in encouraging their families to organize across all kind of different lines. I was present in a park in Oakland and saw family members from Southern California there speaking to the need to end long term solitary confinement. I saw people from Northern California at a rally in Southern California. I saw brown family members speaking to black family members and black family members speaking to white family members. I noticed the political landscape changing. I stood with family members and others in front of Corcoran Prison earlier this year. We stood in over 100 degree weather to demand an end to long term solitary confinement. And I witnessed some of the family members fall out in the heat [emotional].
I see the potential that documents like The Agreement to End Hostilities could lend itself to making communities safer throughout the state of California. Such documents like this should be nurtured but if we can't get past the

rhetoric that the people in solitary confinement are the worst of the worst, we may not be able to see any of the positive policies that agreement like this could have for marginalized communities outside of the prison.
Another bottom line, after living under the worst of conditions and circumstances, I was incarcerated throughout the '70s, I know at the core that man is good and everybody is worthy of redemption. I was a life prisoner. I am now the executive director of Legal Services for Prisoners with Children, and I have experienced solitary confinement. And I know what it means not to be touched in any other way but violently or suspiciously for years at a time. At a certain point, we need to do something. So, some of the things that the guys have demanded: they demanded an end to long term solitary confinement. They demanded programs. They demanded access to their families. They demanded some things that just *humanly* should be available to them. And when I call it torture, and a violation of human rights, under international law you're not allowed to extract information like that. So debriefing is part of a torturous process recognized in international law.
So if it's anything that I want to leave this committee with, is I think the guys in Pelican Bay have showed us an example that we should follow in terms of recognizing each other's humanity. I'm hoping and I'm praying that somebody will recognize *their* humanity, before they make different choices, because during the 1970s we were making different choices about this stuff.
AMMIANO: Thank you very much. You know, before you step down, you know, the burning question for us, because we want to do the right thing and that means for us working with CDCR too, is: What thought have you given to alternatives to solitary confinement? If you have any thoughts, I'd …
CANALES: Well, one of the thoughts – and I would love to speak with CDC too with some of my thoughts …
AMMIANO: That would be fine, we can arrange all that …
CANALES: OK, some of the thoughts, you know there's the severe sensory deprivation, the dehumanization. Bringing the aspect of humanity back. I took my grandbabies to go see my son, and they were 3 and 2 years old. And the 3 year-old, JJ, the second day we were being driven in the van, and he kept saying, "Why is he in a box?" And so the second day, he was looking at the tubes behind the prison, and he said, "They put my uncle Johnny in the pipes and they put him in the box." And I said, "Well, how did they get him in the pipes?" He goes, "They fold him." Just in that 3 year-old mind, you know, of the cartoon-like, trying to figure this out. But one of the things is, why should he not be able to hug his uncle? The family members, who we represent – why should we not be able to hug our loved ones?
The special needs yard? Visiting is closed once a month for the special needs yard, and that's where they house the debriefers and the child rapists and pedophiles. And on this yard, they get visiting contact all day – 8 hours – for this yard. So if you can close it down once a weekend for *this* yard, why can't you close visiting so that only those in administrative segregation and special housing unit can begin to have some form of implementing contact visits. Implementing human contact. That's not dealing with the thousands that do not get visits, though, but that's just like one suggestion that I've envisioned because CDC themselves has said that visiting is sacred ground – nothing happens in there. They don't fight or anything.
CZIFRA: I just wanted to say as a solution that an emergency legislative dictate, or whatever they're called, that anybody in long-term solitary confinement immediately be granted physical access to their families. So I went all those years without touching anybody, and I've been with my partner for over 7 years and it took 5 years before she could touch me without it hurting my skin. So that's …
And then oversight. A person or a small team of people to work out of Pelican Bay and report to this committee that has nothing to do with the CDC or the Inspector General's office, that interviews allegations in a responsible and in an accountable way.
Because I wrote 602s when I was in prison. You could write one a week. I wrote one a week for 2 years about the food, and it was laughable. There's this joke in CDC – it's called "602 it",and it's usually perpetrated by the guards. So if something happens that's unjust, the guards just say "602 it." It's a joke, and this is their administrative remedy, this is their … so … except to say,
Phone calls for anybody in solitary confinement. Phone calls to family members, immediately. And visits.
And get these human beings – we are defined by this idea of human beings. We are a group, and we need people and the one thing that makes us people is other people. So saying that a person is not confined because they're in a cell with another person who is being confined but they can't see their child – like this program is ripping communities apart; it's tearing families apart.
[Audience applause]
NUNN: My suggestion would be that absolutely do away with long-term solitary confinement. And if you've got to place people in that situation, then set a limit – an identifiable limit – 30 days at the max – that they could serve in there. Even when he was designing Pelican Bay, I think the architect only imagined people being there for 18 months let alone decades. And I think probably the longest held person in solitary confinement in California is Hugo Pinell. He's been there, I think, 42 years and he doesn't have a murder.

So at a certain point, when I say I know them [CDC] to be the bullies, is once you've spit on a guard or you crossed that line, they will wreck havoc in such a way that they terrorize whole populations of people, and I think that it leaves them scarred when they come home.
In addition to everything that's been suggested, I suggest that the oversight not rest within again, CDCR or the Inspector General. I think that somebody that's responsible to the Legislature should have oversight of the California Department of Corrections.
And probably here's one of the strangest requests: is that you all do some reform about who gets to contribute to campaigns. [audience laughter] You know, I don't mean to step on y'all toes, because some of this stuff is driven by – my inhumanity the way people look at me in part is shaped by probably parallels, the contributions they make to candidates in a real way. So unless you stop the correctional guard association [CCPOA] from making massive donations to a whole bunch of people, I don't know if I have any salvation. And I suggest that you actually look when you in this crisis and Jerry Brown is getting ready to actually send people out of state and actually introduce private prisons to the state, to see if he's getting any of that money from private prison makers. So like at a certain point, where y'all are allowed to feed for money could have a lot to do with them not recognizing my humanity. [Audience applause]
AMMIANO: OK, I'm going to turn this over to my co-chair now.
HANCOCK: I actually have some questions …
NUNN: I'm still here!
HANCOCK: [laughter] not so fast … you guys are actually talking to some of the public financing crowd here. We've tried to do that [laughter] Mr. Cooley hasn't been here long enough, we'll talk to you too … I do have a couple of questions, and comments.
Ms. Canales, I would be very interested in your research. You said that you've looked at some things and had some incidences and case histories? I learn a lot through talking to people and getting case histories.
CANALES: Yes I do. I have actual chronos and documentation showing that these individuals were going to their committee reviews and it was being said, you know, inactive gang status, but yet they continue to be detained because their only way out was if they chose to make statements against another prisoners.
A lot of these prisoners, if they've been in there over a decade and if they don't have phone calls – a lot of them don't even get visits and their mail is scrutinized -- a lot of their argument is "What information could I possibly have to tell you? That, you know, there's nothing to provide. I've been isolated."
So we have built up quite a collection of these type of documents. I didn't want to overburden you and bring it all but I would love to fax it to you … [3h]
HANCOCK: We're committed to this discussion for the long haul at this point. The more data we can have …
CANALES: And even the documentation most recent, they're still getting the 115 for the drawings. You know, the Aztec art or the books – the political expression and things like that. But these are allowable items into the prison, probably because if they tried to stop it and these prisoners put forth litigation, they would be defeated. So they allow it into the prison, then once it's in the prison, they do write them up – serious documentation.
HANCOCK: Thank you. I would also like to know how to access the YouTube that you referred to. [audience applause]
CANALES: I think that's been one of the most .. hardest things, is to see those videos of these prisoners, and making these statements, blanket statements, that he guarantees that all the money on their account is from organized crime … I showed my church group because they help my son a lot. I guaranteed him he could audit my son's account. And they don't give us that voice back to him …
NUNN: I have one question before I leave …I don't think that – there are some of us that meet success. Nobody ever asked us upon the completion of all the torture what made us successful. It was like nobody cared that we somehow endured the gauntlet and came out the other end. They report every piece of failure that they can find to talk about us but nobody pointed to – nobody ever interviewed me at the end of parole and asked for an exit strategy. They didn't even think about that I was going anywhere. I guess they didn't have any faith.
The other thing that I would suggest is that in *all* of these institutions that they introduce ethnic studies, because these people are going to return back to their communities and actually need to live with other folks. And I think that right there could be helpful if they would just introduce something simple like that to make them appreciate other human beings and appreciate their culture and their history.
HANCOCK: Thank you for that. Actually you anticipated a question I was going to have for you and Mr. Czifra. What I ask many of the people that are formerly incarcerated that I talk with is: What made you decide you were going to survive in another way? Was it a person, a book, an experience, whatever? What was it? And what program supported and mattered to you when you got out? Because those are the things that we need to replicate and we need to understand better. You're exactly right. How do you build on the resilience that some of you had in spite of

everything that you had to deal with? So that we can find another path. So I hope very much that we'll have more conversations and that we can share some of that. I do have a kind of hard question that I do want to ask you.
And that is -- I believe I'm stating it accurately but I may not be but I believe I am --That CDCR would say: that there are violent prison gangs and that a number of people in the SHU – possibly 10%, which would be about 250 individuals – are in fact smuggling drugs, hit lists and other things in and out of prison in their body cavities, in code that they may talk with on the phone or whatever. And I am interested in what your experience of that is because if there is – because that is some subset of people that do have to be dealt with seriously if they're going to hurt other people on the outside.
NUNN: For me, I would care to venture probably a cell phone costs about $500 in prison right now. That's something that you can't stick up your rectum. So maybe when you get to the point of really having oversight of the monster, maybe we can actually look at how much contraband is being introduced by staff. Because at a certain point – [audience applause] – it comes across as insulting that a lot of stuff that happen in prison, they immediately look to our family members as if they actually dictate that, and they very seldom look among their own ranks. And I think that the cell phone situation in prison is the clearest example where it's almost impossible to get it through a metal detector, it's almost impossible to shove it up your keester,to get it introduced into a prison setting. So I would suggest that you look among the staff in terms of contraband and them controlling markets inside the institutions, for one, and their involvement in that stuff.
For two, when they say that there are violent prison gangs, make them prove it. Because like the statistics that you just heard tonight, a lot of people are in the hole for simply being labeled as a member of the gang. Most people in the hole, they probably haven't had a behavior infraction in years, but yet they label you in such a way … the first time I ever heard them use the term "the worst of the worst" was associated with the Madrid case. Out of that case, and what was the center of that case I think it was about 20 years ago, was a person who had been driven insane and began to smear feces on himself, and they scalded him damn near to death, his name was Von Durch [emotional] and he was a car thief. So when ya'll sling the term around, or when they sling the term around – the worst of the worst – somehow you all got to debunk that we're not human, and they're not saying that stuff to generate profit and a whole bunch of other stuff. Because the worst of the worst possibly could be people who are profiting on a daily basis off of my misery.
[Audience applause]
CZIFRA: I wanted to talk about, you talked about what worked. Well, first of all, I had a date. So I had hope. I knew I was getting out. I knew I was going to get out so I had something to work towards. I was – I have done things in my life that are worse than the things the people who are doing life today. A friend of mine … is serving 20 years on a life sentence for stealing a car and so I was getting out and I knew that I was working towards something. But many of these people aren't getting out – most or many. So, you know, the absence of hope is despair. So what does a person in despair do for themselves, to care for themselves, you know? And how long can you keep that up?
So I think we need to give these people hope. Give them light at the end of the tunnel. Put an absolute cap – 5 years. Fine. Let's say 5 years. Right? Okay, devil's advocate, right?, that these people are gang members and they're doing everything we're saying they're doing, right? Pull yourself up by your bootstraps, right wing, you know, nut case rhetoric. Let's say that's true. [Audience laughter] We know that it's not working. It's still not working. So I mean, what's happening is indefensible, we're speaking to stuff that's indefensible.
And even if everything they're saying is not true, the CDC admitted recently that they believe that the hunger strike was orchestrated by the people in Pelican Bay as a gang action. How does that support the presence of Pelican Bay? That means we're spinning our wheels and we're hurting people in the process. It's not working and we're harming people and this program is enfolding many thousands and thousands and thousands of people. Every single one of California's 30 plus prisons has over 200 people in solitary confinement plus the 4,000 plus thousands we talked about. They're in the tens of thousands. Every single one of California's 30
– every one of these facilities has a long-term solitary confinement and it doesn't work. Sorry.
CANALES: Another thing I'd like to address – if these prisoners before entering the prison, they had a drug problem, maybe they go in for a carjacking or burglary or whatever theft charges, and they enter our prison system. And then the prison system says these are gang affiliates, gang members involved in gang activity and this is all going within the prison. Isn't it time to start asking ourselves – are so many jails and prisons really the solution if this all seems to be taking place within the prison system? I know it's such a bigger picture, and I know it's way past the solitary confinement issue, but there's a lot that goes on inside just with the automatic labeling of what city they go into the prison from. If they get off of a bus from the Orange County jail, they will immediately be labeled a Southern Hispanic. The same thing if they get off of a bus from Visalia, they will immediately be labeled a northern. You know, that's the whole system and the way it goes.
I did a presentation with one guy and he said he kept telling them, "I'm just a white guy from the beach with a drug problem." [Audience laughter] So they intentionally said, "Go in that cell" and it was full of blacks. This was before

the end all hostilities. So then he did go in the white cell. But a lot of it has to go – it starts from the minute you enter the prison system.
NUNN: I got to tell you one other thing. My daughter – I made a couple of promises when I was in prison. One day I would walk my daughter down the aisle when she got ready to get married. So I guess the thing I think is the most under-utilized resource that you have is probably all those people out there. [family] My family pulled me through. When I didn't have any hope, my family pulled me through. [Audience applause]
So I need to say if there's anything that I can actually have to offer – it was like, I used to tell my daughter that I was in San Quentin that I was in Disneyland because y'all painted it all those weird colors. [Laughter] And one day she came and told me after she learned how to read, that I was in prison. Then I started promising her and that promise right there took me through from being an illiterate through college and it took me out the gates until I was able to walk my daughter down the aisle. So I guess the strongest remedy to a lot of stuff they did to me was love, because that got me through. The hatred, the tear gas, the beatings, getting shot, and being poisoned didn't do anything but piss me off.
HANCOCK: Well, thank you for that [laughter] – no, really, really, we appreciate the candid comments from everybody. I would like from CDCR some more information about having disciplinary actions for the hunger strikers. That appears – it's something, I think, legislators are going to want to know more about because it's an odd thing. And it usually – in other instances where I've seen things like that, it has led to increased hostilities, not to better understanding. And also the business of debriefing. It seems to me that's a strange concept. We need to really – if it becomes a condition for getting out of the SHU, there's so many opportunities for corruption in that kind of testimony – that we need to look at it [applause] … one of our rules is silence in the courtroom [laughter] One thing is,
I do think we need to look at the authority and training of our correctional staff because one of the things that's most – we didn't ever talk about the impact on the guards – the absolute power they may have over incarcerated people. And the, unfortunate – when the lack of an outside advisor when you're going through these hearings that put you in SHU. And I think our experience throughout history with many, many populations in many, many places is that absolute power over other people tends to corrupt. And it corrupts some legislators – they get arrogant. It corrupts people in bureaucracies sometimes that don't give people a fair hearing. It corrupts people in many, many ways. And how do we train and work with the correctional staff and how we make sure there are many checks and balances that our Constitution gives people other ways.
It seems to me that we could work together to do this, and that all of this, I want to assure you is going to be on the agenda for the coming months. We have just begun to do our work. And we want to end up, as many people have said, with a prison system that is the best and most rehabilitative in the nation. And we're going to have quite a way to go to get there and we're gonna need all of us working together to get there.
We are going to have a period for public comment for people who have anything they want to add. We would ask you to come up to the microphone, please not to speak for more than a minute…try not to repeat what other people have said.
SKINNER: I may have to leave before the public comment and I apologize. We had heard some testimony that some other states have made changes, and in the material I just looked at briefly, I know that Illinois made some changes, Mississippi did, so some states have made changes, and we could certainly learn from them to make some revisions ourselves. And in addition to our public Safety Committee doing these hearings, clearly the Budget Committees of our two houses will in addition to that. The Speaker of the State Assembly [Perez] , just announced the formation of a committee in the Assembly to deal with the recidivism issue. But clearly if we want to have the proper funds to properly fund programs and activities that are going to fund recidivism, we need to cut down our Corrections costs, and it was clearly noted to me that there is quite a larger cost to [house] prisoners in the SHU than to people in the other non-SHU facility. And it is certainly something we should be striving to reduce, and to be able to free up additional funds to be able to address these recidivism issues.
HANCOCK: Please tell us who you are …

PUBLIC COMMENTS [abridged]: [3h19m]
Commenter #1 (male, Los Angeles): My name is Keith James and I'm from Revolution Books in LA and the Stop Mass Incarceration Network … It took about an hour and 50 minutes for the word 'torture' to come out in this hearing … These torture chambers are meant to drive people crazy, so this is not a debate whether there is solitary confinement, which was brought up by Jeffrey Beard … no, this is torture, and torture is illegal. It's immoral, and it is unequivocally unacceptable under any conditions. And in California there are 10,000 people being tortured right now. This has got to be over … Another thing revealed in this hunger strike is actually who are the actual criminals, OK? This system is a criminal system. It's totally illegitimate and it needs to be swept off the face of the Earth. Any system that relies upon torture has no reason and has no right to exist.

AMMIANO: Well said sir, I'm gonna interrupt you, we got a long line [of families behind you] … [speaker continues, Ammiano asks twice more to close] … the gentleman was very eloquent but could I ask the rest of you, we've all been here a long time, and we do want to have further conversations with everyone, so if you could just keep it brief, please, thank you.
Commenter #2 (female): My name is Amber and my brother is in the Pelican Bay SHU…I beg of you to please don't fall for what CDC and the Inspector General have said. Go by their actions. In their actions, no real significant change has been made. I read a few days ago that Pelican Bay SHU is now allowed cake with icing and cinnamon buns. I haven't been fighting this fight for my brother and human rights for the past two years for my brother to receive a cupcake.
Commenter #3 (female): I'll keep it brief, I'd like to thank you as well, the Committee. I just want to mention two things, one about the debriefer: In a court of law when an inmate is used to testify against someone else, they don't – one of the questions a prosecutor will ask is "Have you been paid or given anything for this testimony?" And they usually respond by saying, "No. I haven't." That's because it would be considered tainted – his testimony. But as a debriefer, they can tell or say whatever they want without anything substantial to back that up, and they will take it and run with that and keep somebody in solitary confinement for 7 years.
Commenter #4 (female): Thank you Committee for having this hearing today. I just wanted to say that my brother has been in Pelican Bay for 23 years in the SHU. In solitary confinement for 23 years. And I don't know how long more he can take it. He is at the end of his rope [crying]. He's not nmy brother anymore, and I just wish, Senator, if you could just meet with Dolores she could give you the papers so you could see, back up our loved ones so you could see the lies they [CDC] are telling about our loved ones … thank you.
Commenter #5 (female): My name is Lupe, I have a son and he just went into the SHU. They gave him a 3-year sentence, and you know, he was always like very uplifting because I was able to visit him in a closer prison like Tehachapi. I'm from Los Angeles. And now it's like – it's impossible to go to Pelican Bay. And the last letter he wrote to me, it seems like he's breaking down. You know how they say that it's like the SHU is made to break them down, but I have faith, but I know because of [CFASC] there are programs that can help me go up there. Just please do what you can to humanize my son.
Commenter #6 (female): My brother told me: "You asked me to draw my dreams. My dreams. I think dreams right now is not a good idea. I know you will say not to do that but it's hard in this place. CDC is not only stealing our life but they even steal the color of life." I was gonna ask CDC to stay so they can hear our feelings that we have for our brothers or sons or families, but for CDC once again proved they don't care about our loved ones. Solitary confinement is torture.
Commenter #7 (female): I want to thank you for giving us hope because most of the time we don't have any. My husband has been in Pelican Bay SHU for 19 years, and if something isn't done right away – even though he's a youngster compared to my other friends – he could be there for a lot longer.

He asked me to ask you "Who benefits from the status quo? Who benefits from the lack of education and rehabilitation? Who benefits from the fact that it doesn't matter how much these men have improved themselves, how much they've changed, it doesn't matter in their review? That's just eliminated." Senator Hancock, I want to tell you that I have a lot of research, everyone who knows me knows that I'm a research diva, I will provide any and everything that you want to know, the reps already prepared a document last March [2012] with all their alternatives. Secretary Beard in his confirmation hearing said that there was $25 million surplus in rehabilitation funds. We'd like to see that money going the SHUs. The Inmate Welfare Fund is also available. There's an $11 million discrepancy in the last state audit and I'd like you to look at that. And thank you so much.
Commenter #8 (male): … The extent to which the SHU does exist, to the extent that one cannot show a nexus between its existence and a good outcome, it should be eliminated…
Commenter #9 (female): My name is Marie Levin, and my brother is housed in the security housing unit…Sen. Hancock asked about how did they survive? My brother has survived in the SHU because of his hopes to get out and be with his family, his hopes to be free. He's incarcerated for a crime he did not commit. First crime, going into prison. Second crime is being labeled a gang member by reading a George Jackson book.
Commenter #10 (male): My name is Randy Levin. My brother-in-law – this is my wife – Sitawa – he's been in Pelican Bay SHU for 29 years. And I guess what's really in my heart is I would really challenge you folks to go up there and make time with some of these guys, like my brother-in-law, that have been in there for a long time and they're so – well, I'll say this: The first time I talked with my brother-in-law was in 2011, and the first words out of my mouth was "I'm so proud of you for keeping your sanity." Not only has he kept his sanity, he's thought through things. He has compassion. He's thoughtful. And I would really just challenge you to go up and meet with some of these guys.
Commenter #11 (female): …I have a son who is in the SHU. He has been in the SHU for 16 years. My son has never committed a violent crime in his life and up to this day he still hasn't. He was affiliated with a gang member only by a

cousin who was validated, and because they exchanged a birthday card, he was validated that time and put in the SHU. But he was on the hunger strike this time and he told me that if he had to die, he would die for the cause of human dignity and rightness…

Commenter #12 (male): …I served SHU time myself. You know, it's – the validation for one – you know, you're put in the SHU. I was there for AG charge. And just being – up above me was a validated gang member, and just for associating with him, they wanted to validate me. I mean, come on, CDC puts us together and they wanted to validate me because I'm talking to him. You know? We've got to communicate with somebody, you know, and it's just wrong. And another thing too about – you guys need to really look into the COs. They've got a big black market going on there. Big, big time.

Commenter #13 (female): …I'm with the California Statewide Coalition Against Police Brutality and care very much about this issue. And I'm also a voter. What I want to say is that what is happening inside of these prisons with the correctional officers is police brutality, and it's state-sanctioned police brutality.

And the people in the state of California aren't going to put up with it anymore. I think it's very disrespectful that many CDCR representatives left when the families started to talk, and I think that it goes to show their unwillingness to really come up with a solution and sit at the table with us who are being affected by this.

Like that gentleman said, correctional officers – where this is going to end is when we start holding people accountable, including correctional and peace officers for committing crimes such as bringing contraband and doing illegal acts such as setting people up for fights or all the other illegal things that are happening in there. When we hold these people accountable, then and only then will we see change. The last thing I want to say is that CDCR has, first of all, no rehabilitation whatsoever and so I don't know why we changed the name…CDCR they will continue to do this and they will continue to use these excuses of gangs until you stop them.

[Audience applause]

Commenter #14 (female): …My son is in Tehachapi in solitary confinement. And the one thing I would like to say – thank you, for one, for having this. But I really want to see some true – not more meetings, meetings, and meetings – but meetings with some substance of getting these people out of solitary confinement and making true changes. …We don't have to re-invent the wheel. There's a lot of stuff that's really already out there…Give these guys some hope. They're smart people. They've made mistakes and they want to do better. So we just need to recognize that.

Commenter #15 (female): …A lot of people are in prison for crimes of poverty and because of the war on gangs and the war on crimes and the war on drugs. And then a lot of people go into the SHU because of their political beliefs or they're jailhouse lawyers or prison rights activists. These guys have been studying freedom fighters like Bobby Sands, like Nelson Mandela and they model their hunger strike after people the world considers the greatest fighters for human rights. So I think that their agreement to end hostilities is something we need to learn from on the outside and they can teach us. They can teach us a lot. We need to give them the access to their families, access to their communities.

Commenter #16 (female): I'm Carol Strickman. I'm staff attorney at Legal Services for Prisoners with Children and a member of the Hunger Strike Solidarity Coalition. And we have a number of legislative ideas to share with you, and I just want to bring up one right now and that has to do with reinstating good time credit for prisoners who are in the SHU not for committing an offense but for gang validation reasons. We've brought that up for 2 years now; it's been very difficult although it will save money, it will get people out of the SHU. It should be endorsed and we'd love to see some help with that.

Commenter #17 (female): My name is Nancy, and I'm a psychologist and do prison visits for California Prison Focus and the coalition. And I've asked the men, "How do you maintain your humanity under inhumane conditions?" And they consistently say, "I keep myself impeccable and my cell impeccable. I work out. I read, write, teach others, speak. I do some sort of practice – a meditative or religious practice – or I pray. And if I'm lucky, I have family and friends that visit me, that keeps me whole that they love me." And they have meaning in their lives. Many of them say, "I don't expect to ever get out. I'm doing this for my younger brothers. I don't want them to be here."

Commenter #18 (female): My name is Kim and I do legal visits on behalf of California Prison Focus and the coalition. And just to address a few things: Mr. Cooley, I don't think we need more studies. I'm going to agree with Steve on that. The information is here. To echo some of the things I've heard from people inside that we're even having this discussion is insane.

Standards are meaningless within the CDC from what I can tell. And yes, the rules do change and they change mid-game and the people inside are the last to know about it. It's quite frequently. For example, around family visits, all of a sudden people are having family members come up – after making an appointment, come 500 miles and then be turned away on the basis of they don't have an appointment or their family member sends a form to their loved one, the loved one gives that to the visiting area, which was done for a long time. Suddenly, that doesn't fly either.

Commenter #19 (female): My name is Gloria and I have a brother in the SHU…I've traveled the 4 hours – thank God it's not 8 or 9 – and I went for my appointment with even a confirmation number and they have turned me away

– me and my mother, who is disabled. And I have to drive back home without seeing my brother. On the first panel, Mr. Michael Stainer was saying that they report on how they discipline their inmates. My brother was caught with a cell phone. You know, like most of them get them from the staff there. The Sergeant was so upset with him that after he gave him a 6-month SHU term and he finished that, he threw him out with guards, emptied two cans of pepper spray to the floor – wet, burning, soaking, could not breathe – he's asthmatic – and handcuffed on the floor. They do not report everything about how they discipline them.

Commenter #20 (female): …I have a statement from [SHU inmate] from a letter. He said, "The health care department could actually end the torture tomorrow. The people who run the health care system absolutely know of the significant contribution that isolation makes to the physical and psychological deterioration of people who are subjected to it. All it takes is for the health care policymakers to have courage and to stop allowing itself to be subordinate to custody. It really is shameful politics and money. Each body in each cell represents a lot of money. Each body in each cell that is prescribed medication even more. There is no incentive to heal when you are rewarded for doing nothing." Thank you.

Commenter #21 (male): I'm J.P. I think this entire discussion is insane. I'm confident that 150 years from now, we will look back – the people who are living will look back and they will shake their heads and go, "How on Earth could they ever have treated human beings like this? How could they possibly have allowed this?" So I simply ask you to think about that and whether you want to be part of the solution to the problem or whether you want to have people look back and say, "Yes, you allowed this to continue. You allowed this torture, this horrible horrible treatment of human beings to continue."

Commenter #22 (female): …My son is in High Desert prison and it's taken me almost 11 hours to drive over there. You know, I depend on a ride. And that prison is always in lockdown. Lockdown, you know? Not for a month. More than a year. And sometimes I have to ask for a ride to see him through the glass for one hour. It costs me sometimes almost $200 or $300 to go there.

CANALES [3h52m]: I'd like to close with this letter from Lisa…she has two brothers in the SHU. Their mother would be here today but she passed away last year. "I take at least 6 trips a year. I lose about $200 per day off, plus the kids have to take at least Friday off of school and be super tired from the long drive on Monday. I also have several physical problems which prevents me from driving more than 2 hours but even sitting in the car for the whole trip makes me be in so much pain. I'm not supposed to sit for more than a half hour so it really takes its toll on my body. With that being said, I have to beg someone to come with me to help drive, which is a pain every time. I hate bothering people to come with me and waste their weekend. But the fact is I won't see them if I don't. They sure knew what they were doing when they built Pelican Bay all the way in such a remote location. If they were closer, doing time would be so much easier for them and for us family members. We could visit every weekend or every other weekend, and friends would visit too if it wasn't an 8-hour drive. Right now, no friends or other relatives visit because of the long distance. They are even more in solitary being all the way out there, especially with no phone. It breaks my heart that nieces and nephews say they don't really know their fathers. It shouldn't have to be like this for so many families. I have two brothers in SHU so most of this is doubled. To make it easier, the amounts below are for one inmate – estimated total of $8,000 a year per each inmate in visiting costs." Thank you.

CLOSING REMARKS FROM AMMIANO: Thank you. I want to thank everyone for your patience, for your edification. As Senator Hancock said, we're in this for the long haul. We do want solutions, and we do also want to reach out to other people who have some decision-making power here, and let them know what you conveyed to us today. This meeting was televised, so it would be possible for us to secure a tape if that's what's needed, if you wanted to show this to other people, particularly the public testimony. I know it's a little frustrating because we don't want to be rude and cut you off etc., we do have time constraints.

But again, this won't be the only time we'll be talking to you. And definitely we would hope to get some legislation out of the facts that we've heard today. [3h54m]

App #8 A

MEMORANDUM

Date: March 26, 2012

To: George Giurbino, Director (R), Adult Institutions, CDCR

From: The Mediation Team:
Ron Ahnen, California Prison Focus
Barbara Becnel, Campaign to End the Death Penalty
Laura Magnani, American Friends Service Committee
Marilyn McMahon, California Prison Focus, *staff attorney to the MT*
Dorsey Nunn, Legal Services for Prisoners with Children
Carol Strickman, Legal Services for Prisoners with Children, *staff attorney to the MT*
Azadeh Zohrabi, Hastings Race & Poverty Law Journal

Re: Stakeholder review of CDCR's "Security Threat Group Prevention, Identification and Management Strategy" proposal

We welcome the opportunity to review and offer our input on the new policy proposal, "Security Threat Group Prevention, Identification and Management Strategy."

As you may know, the genesis of the Mediation Team was a request from hunger striking prisoners for an intermediary to enable negotiations between the Pelican Bay SHU hunger strikers' representatives and CDCR officials. The current team was pulled together, and we met several times by phone and in person with Scott Kernan and other CDCR officials to advocate for the prisoners' five core demands and to suggest ways that CDCR's goals and the prisoners' concerns could be concurrently met. We have had and continue to have close communications with—and the trust of—SHU prisoners. It is from this experience that we offer the following response to the STG policy proposal.

Preliminary Remarks

The primary stakeholders are left out of the review process—the prisoners. All prisoners who have been or might in the future be validated are stakeholders. In addition, evaluating the STG proposal definitively is not possible because its real meaning and ramifications will become clear only after implementation. Currently, the disparity between the validation/segregation criteria on paper and their implementation in practice is enormous. The proposal offers nothing to give us confidence that the new policy will fare better, except a cursory reference to staff training.

Potential Positives

1. The proposal of a step down process is welcome conceptually in that it creates a path out of SHU that does not require debriefing.
2. The Department has signaled its intent to change from a strictly "intervention and suppression" approach to a more behavior-based strategy. The change is not clear in this proposal, however, because many provisions are inconsistent with a behavior-based approach.

3. The Department will be reviewing everyone currently in the SHU according to the new criteria and potentially moving a large number to general population.

Five Principal Areas of Concern (summary)

1. The Step Down Program as proposed is not a true alternative to debriefing.
2. The proposal provides for no independent review of decisions regarding validation and segregation. In other ways, too, it fails to assure the accuracy, objectivity, and fairness of these decisions.
3. The distinction between association and behavior is not clearly drawn.
4. The reach of the validation net is greatly expanded.
5. The proposal establishes no time limit on SHU confinement and fails to lessen the extreme isolation and sensory deprivation.

Five Principal Areas of Concern (analysis)

1. The Step Down Program (SDP) as proposed is not a true alternative to debriefing.

One of our biggest disappointments with this proposal is in the general outline of the Step Down Program. We had truly hoped that CDCR was going to present a viable alternative for people who want to demonstrate that they are not gang involved, or would like to move out of past gang involvement.

We fully understand that CDCR must maintain safe conditions for all within prison walls, but other states (e.g., Mississippi and Connecticut) have clearly demonstrated how severely reducing the population in solitary confinement is possible while simultaneously reducing violence in the prison, prison costs, and recidivism.

A) **Length of time and number of phases**
Simply put, four years does not represent an incentive program; rather, it represents a punishment program under a different name. Moving from Stage 1 to Stage 2 yields the prisoner $11/month additional canteen, one annual phone call, and a deck of cards. Such a minimalist incentive structure is unwarranted.

B) **Unclear criteria for moving through stages**
Although some programming incentives are provided very slowly, the Department retains total discretion over what constitutes “criminal gang behavior,” a term which is vaguely defined and could include entirely innocuous behavior, such as greeting someone or possessing literature. Does this term delineate behavior that indicates affiliation with a "criminal gang" or "gang behavior" that is, of its nature, criminal?

C) **Example of Alternative SDP**
We strongly recommend a program like the one instituted in Connecticut in 1999, which Dr. Terry Kupers cited in meetings with Department officials. The program starts with two weeks of communication training videos, and proceeds through three phases that take a total of five and a half months. By 2003, 1,184 prisoners had finished the program with

recidivism rate of just 4.8%.[1] Several other states provide possible models that dramatically reduce solitary confinement populations, including Mississippi.[2]

D) **Setting potential participants of SDP up for failure**
We must recognize that prisoners who have been locked down for long periods of time will not usually have the capacity to begin a meaningful process of "study" in their cell in a focused way using videos or written materials. They will also definitely need human interaction in order to be successful. Continuing to isolate people for two full years and allowing them contact with others thereafter (at some points limited to cages) is not a model for re-socialization or rehabilitation.

2. The proposal fails to assure the accuracy, objectivity, and fairness of Department decisions regarding validation and segregation.

A) **No independent review of decisions**
Decisions to gang validate a prisoner and whether to give him or her a SHU term begin and end with CDCR employees. There is no review by anyone outside the Department. This is especially problematic because as then Undersecretary Scott Kernan candidly admitted in a media interview, CDCR over-validates prisoners without proper documentation, yet these validations are still rubber-stamped and approved.[3] Additionally as former Warden McGrath testified in the *Lira* case, once prisoners are isolated in the SHU based on a gang validation, there is little chance that the validation can be successfully appealed because at every level of appeal, the reviewing officer will "assume the truth of whatever is written in the chrono," and only look for procedural errors.[4] Since the CDCR clearly is aware of the serious problem of proper gang validation review, some level of review must be established that is separate from IGI and OCS.

B) **"Evidence" of unreliable quality is allowed**
IGI officers apparently boast to prisoners, "I can validate anyone" and the validation packages we have seen bear this out. Standards of evidence (source items) are notoriously loose. Currently, prisoners are validated as gang affiliates based on behavior as innocuous as speaking to or exercising with someone (whether the prisoner knows of that person's status or not). And a prisoner can be retained in the SHU on the basis of a single source item as trivial as a piece of artwork. This problem is unaddressed by the STG proposal. Problems related to evidence include:

- Confidential informants and debriefing reports hold as high a position in the proposed strategy as currently. Because the accused will never be able to challenge this information, it is inherently unreliable.

[1] http://www.corrections.com/articles/11234-connecticut- program-turns -gang-members-around
[2] Goode, Erica. "Rethinking Solitary Confinement." *New York Times*. March 11, 2012 Available at http://www.nytimes.com.
[3] http://californiawatch.org/dailyreport/reform-could-transfer-hundreds-inmates-out-isolation-units-13285
[4] Lira v. Cate 2009 U.S. District Lexis 91292, 87. Quoting former Warder McGrath's deposition on the gang management policy.

- Although a point system has been introduced, the highest number of points is awarded for "legal documents," a category which does not distinguish between court decisions or findings and mere "arrest reports," "crime reports," and so on.
- Mere possession of an article with a symbol on it, appearance in a photograph in which another person displayed some sort of gang insignia or symbol, or in which a gang affiliate appeared—even if not known as such to the accused—is sufficient for points toward validation.
- This problem is worsened by the fact that the prisoners receive no notice of what items are viewed by the IGI as gang-related. Many items that have been used as source points to validate prisoners are not gang related, but cultural or political in nature. [5] If IGI is going to use literature and cultural symbols to validate prisoners, then prisoners should have notice of what those materials are.
- There are numerous other examples. Overall, there are no protections to assure that only reliable information is used to validate prisoners and send them to the SHU.

C) **Fails to require sufficient due process protections.**
The proposal gives prisoners accused of gang affiliation or of "criminal gang behavior" no additional due process over what they current have, which is woefully insufficient to protect against false validations. It does not allow accused prisoners legal assistance, establish more meaningful hearings, or give any greater attention to issues raised by the prisoner in his defense.

Nothing in the proposal articulates a rejection of CDCR's current approach of maximizing SHU confinement through the absence of independent review, use of junk evidence, and lack of due process.

3. The distinction between association and behavior is not clearly drawn.
Unless this fundamental problem is fixed, the apparent change to a behavior-based model will be illusory.

A) **Validation as a gang member does not require allegations of any behavior.**
One can be validated as a gang member without any evidence of illegal gang-related conduct. In fact, validation requires no "conduct" in the usual sense of the word.

B) **STG-1 members can be indefinitely housed in SHU without allegations of any "conduct"!**
Merely for being validated as an STG-1 member, a prisoner can be confined in SHU—perhaps indefinitely, as there is no duration limit to SHU housing for "administrative" segregation. Since validation does not require conduct, this means that for STG-1 members, SHU consignment is still not behavior-based.

[5] In a case recently before the Northern District Court, the Court expressed concern about "the possibility that defendants [IGI] may have taken a race based short cut and assumed that anything having to do with African American culture could be banned under the guise of controlling the BGF." Harrison v. IGI, No. 07-CV-3824(SI), 2010 U.S. Dist. LEXIS 14944, at *3 (N.D. Cal. Feb. 22, 2010).

C) **For others, "serious criminal gang behavior" is required for SHU assignment, but this is so vaguely defined as to be no requirement at all.**
For validated STG affiliates other than STG-1 members, consignment in SHU happens only if they "choose to engage in serious criminal gang behavior or a pattern of violent behavior." However, the definition of "criminal gang behavior" is unclear. The definition has two parts: are both required? (That is, are they connected by "and" or "or"?) Also, both parts are so broad and vague as to be meaningless.

If only one part of the definition must be met, then it is sufficient that the behavior "promotes, furthers, or assists a criminal gang." What behavior does this include? This needs to be spelled out, and it should include a requirement of illegality or violence. Specifically, no prisoner's participation in a past or future hunger strike or other non-violent expression of protest should be used against him or her as evidence for gang validation purposes. Rather, it should be treated as protected speech.

Alternatively, if the second part of the definition is sufficient by itself, someone can be sent to SHU indefinitely for "conduct that leads to and includes the commission of a violation of policy demonstrating a nexus to a criminal gang." Again, this is too vague and broad to exclude innocuous behavior. There should be a requirement, at the least, of illegality or violence. Flashing gang signs or having tattoos should not get one an indefinite SHU term, but apparently it will be sufficient to do so.

D) **Other examples**

- Currently, prisoners can be and are validated as gang affiliates based on "behavior" as innocuous as speaking to or exercising with a gang member, regardless whether they know of that person's status. The proposal does not appear to preclude the use of such innocuous behavior as a source item.
- In the "visitor" section (page 22), any person saying "hello," could be considered a visitor – even a family member. This section appears to again imply that association is the same as behavior. Like the "association" section itself, no distinction is made about whether the prisoner welcomed the contact, leaving people open to receiving points through no action on their part.
- The current regulations require that a validated prison gang member or associate be designated as "Current Active" prior to being isolated in the SHU for an indefinite term. The "Current Active" and "Inactive" classifications, which indicate behavior-based intentions, were completely removed and replaced with "Member," "Associate," "Suspect," and "Monitored"–all status-based classifications. Removing the behavior-based classification all together is a step in the wrong direction.
- Family relationships lead to assumptions about gang affiliation. In addition, items that have nothing to do with criminal gang activity such as birthday cards or having the address of a family member is taken as evidence of gang affiliation.
- Tattoos or body markings carry 6 points toward validation though these are not, in and of themselves, indicative of criminal gang behavior.

4. The reach of the validation net is greatly expanded.

By switching from a "gang validation" process to an STG process, and increasing the levels to STG I and STG II, the Department is expanding the net very widely with respect to potential prisoners that will be sent to SHU. The STG II database will reach well into the community and these designations have been used very pervasively and discriminatorily in other states. Such action is already happening in California, but this proposal formalizes and strengthens the process. The new policies also create two new categories beyond the present prison gang categories: "suspects" and those being "monitored." This move also further expands the net and has the significant potential to enlarge the SHU population.

The STG II list is labeled "examples" and could be expanded easily. No instructions are given about how this category can be expanded.

A memo attached to the new strategy proposal immediately begins a process of re-assessing Administrative Segregation prisoners who may be "example STG-I associates," and placing them in the SDP, thereby consigning them to SHU status. Therefore, the policies take away with one hand what they appear to give with the other.

5. The proposal establishes no time limit on SHU confinement and fails to lessen the extreme isolation and deprivation.

Under the proposed strategy, a prisoner can still spend an unlimited number of years in the SHU. Nothing in the new strategy in any way limits or caps the length of stay in solitary. There should be a maximum duration for SHU confinement and deprivation.

The proposal also leaves intact the basic conditions of extreme isolation and deprivation for all prisoners housed in SHU except those in the latter half of Step 4. Extreme conditions are unnecessary and counterproductive. The literature on the so-called "SHU Syndrome" is abundant.

Conditions of extreme isolation and deprivation violate the recommendations of the 2006 bipartisan Commission on Safety and Abuse in America's Prisons, which included ending conditions of isolation even for those who must be segregated as a last resort.[6] It also violates human rights law. For all SHU prisoners for whom it is appropriate, and to the extent consistent with everyone's safety, some normal human contact and great physical comfort should be restored.

We have received numerous reports that adequate medical care and pain management are withheld for SHU prisoners. Adequate medical care was one of the five core demands of the hunger strike. The withholding of adequate medical care and pain management is not an appropriate tool for eliciting behavioral change, and is barred by legal and moral principles. Such practice is purely punitive and runs counter to the purported administrative nature of SHU confinement for gang affiliates.

[6]Gibbons, John J. and Nicholas de B. Katzenbach. 2006. Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons, p. 52. Available at http://www.vera.org/download?file=2845/Confronting_Confinement.pdf.

Conclusion:

Thank you for the opportunity to provide this input as you modify your approach in this area. We encourage you to significantly redraft your proposal in line with our five principal concerns. Far too many prisoners are currently housed in SHU for lengthy periods: hundreds have been in the SHU for five years or more. We appreciate that each current SHU prisoner's status will be reviewed on a case-by-case basis and hope that this review will result in a significant reduction in SHU population.

Finally, we encourage CDCR to explore and adopt other non-punishment administrative strategies to address the negative impacts of gangs as noted in the "Background" section of the proposal. Hopefully, reducing prisoner crowding (now underway) will help. Other strategies could include increasing meaningful programming (education, job-training, self-help groups, family visits, exercise opportunities, etc.) throughout all institutions. These programs have been woefully reduced in recent years. Another strategy would be to reduce the influx of drugs into the prisons by searching CDCR staff, widely considered to be their primary source. While not a definitive list, we find the focus of the proposed "prevention, identification and management strategy" still rather limited to the current interdiction and suppression approach.

cc: Jerry Brown, Governor
Matthew Cate, Secretary, CDCR
Terri McDonald, Undersecretary (A), Operations, CDCR
Sen. Darrell Steinberg, President Pro Tem of the Senate
Rep. John Perez, Speaker of the Assembly
Sen. Loni Hancock, Chair, Senate Public Safety Committee
Rep. Tom Ammiano, Chair, Assembly Public Safety Committee

App
#8 B

Notes from March 15, 2013 meeting of Mediation Team with CDCR officials

Present: *From CDCR* – Mike Stainer (Deputy Director for all adult facilities), Kelly Harrington (Associate Director over High Security Prisons), Katherine Tebrock (Chief Deputy General Counsel). *Mediation team* – Laura Magnani (Amer. Friends Service Committee), Azadeh Zohrabi (Legal Services for Prisoners with Children), Marilyn McMahon (California Prison Focus), Ron Ahnen (CPF), Carol Strickman (LSPC)

We met for two hours in a conference room at CDCR's office in Sacramento. Stainer did most of the talking for CDCR. Ms. Tebrock stated that she was present because she is managing the *Ruiz v. Brown* litigation. During the meeting, she intervened occasionally to steer us away from discussions about living conditions/8th Amendment issues.

We started off with an overview of how we saw the meeting. After brief introductions and a description of how the MT sees its role, Stainer asked whether the MT saw as its role to report positive efforts on CDCR's part to the prisoners. We said yes , if we see evidence of positive efforts. We later said, "We tell it like we see it."

Stainer then said they wanted to clarify any questions we have. It took them a year to develop the pilot program. He said it is "not an easy read." It represents a "huge change" in both policy and culture. He volunteered that they had all read the document regarding the 40 "bullet points"/ demands. He stated that he did not want to call them "demands." Harrington noted that his staff was carefully reviewing each of the 40 points, noting that some were reasonable and they were going to see what they can do.

We asked what he thought the differences were with the old regulations and the pilot program. He emphasized that the current policy was 25 to 30 years old and that the only real change had been the addition of the 6-year review. He stated that "no behavior was associated with the old policy." He emphasized that they fully intend to turn the pilot program into regulations. "We are not turning back." He stated that some people think that CDCR rolled this out as a pilot program only with the intention of later making the program "go away" but that is not the case. He admitted that the program is "not all perfect" and that he anticipated "adjustments." He is not sure when the pilot program would be ready to be put into regulations (supposedly after making further adjustments), but he said the two year time limit to do so is a limit and not a goal. He anticipated this happening much earlier than October 2014.

Stainer said that the pilot program has to be implemented incrementally. CDCR has done training sessions with IGI. He mentioned the weighted point system is an additional requirement--not just any three source items constitute a validation. They must add up to 10 points. He noted that now newly validated associates are not going to the SHU automatically. He also stated that they have not "rolled out" the disciplinary part yet. Trainings on that will start next month.

We brought up how people are being written up for simple communication. He stated that for it to be used as evidence to support validation or used against someone in the Step Down Program (SDP), the communication would have to have a "nexus to gang behavior" and be proven as a rules violation by a preponderance of the evidence. He emphasized that "we are trying to be *real* about what is truly gang association."

We asked if they anticipated more or fewer gang validations in the future. They said they did not know. It could be more, or fewer. They thought there would be fewer SHU placements, due to the added elements.

Stainer described that this was a "cultural shift" for staff and prisoners. He seemed generally to be referring to the idea that a gang-validated affiliate can get out of the SHU without disowning the gang or debriefing, and that gang validation will not automatically mean SHU.

We discussed our objections to the "journals." They asked us, "Aren't the prisoners interested in rehabilitation?" We said yes, they would be interested in self-help groups, education, job skills, etc., but the workbooks are counter-productive in tone. They said the journals are now being used in steps 1-3, not just in step 3 as stated in the policies. They don't have programs up and running for all of the steps yet.

We asked who would review or "grade" the workbooks. Stainer said it would not be IGI; instead, it would be the correctional counselor 2 on the ICC committee. Harrington said they may hire licensed clinical social workers for the SDP for this purpose.

Stainer said, the prisoners wanted individual accountability and that is what is required by the contract. He asked us why prisoners are unwilling to sign the contracts. We said: the expectation of having to report on others, and concern about the workbook reviews. We related that many prisoners worry the SDP requires them to essentially debrief (snitch). He said he'd scoured the pilot program text and the contracts to see where it required that, and could not find it. We handed him the STG pamphlet that says prisoners in the SDP must report gang activity that they become aware of. He said he had not seen it before. After reading the section we pointed out, called "Reporting STG Involvement," he stated, "That is not our policy."

To our inquiry about what exactly is required to progress to the next step in the SDP, he said "the details are still being worked out."

We got into a discussion about whether CDCR could "stack" multiple items found at the same time. Stainer said that for purposes of 115s, they cannot – it is all one rules violation, but for gang validation purposes they can.

Regarding the 40 demands document, Stainer said they had read and understood them all. They are still reviewing them; they have done preliminary work to respond. He said there was "some reasonableness" to the demands. He thought that, as to a few, there might be some confusion or misunderstanding on the prisoners' part. As an example, he stated that no lifer can get family or conjugal visits now, not even if they debrief. As to items purchased from PIA, Harrington stated "PIA is way out of our authority." Their staff is researching whether typewriters were ever allowed in SHU. He stated that he expected individual wardens to authorize or support certain prisoner requests. He has asked the wardens to take a look at the mattresses issue. We asked if he was going to provide a response to the prisoners. He said yes, he would respond to the four reps about each of the 40 points, but didn't know whether it would be written or face-to-face. He expected to respond within a month, and definitely "plenty before July 8th."

Stainer brought up contraband watch (CSW). He said he had read the article about it in "The Rock," which was somewhat inaccurate, in that PVC tube is no longer permitted. He claimed that CDCR does not permit CSW to be used arbitrarily or punitively. He said CSW is closely

monitored by OIG and the state senate: it is the "most audited process we do". It is the "nastiest job," implying that they don't want or like to do it. He thinks there are fewer being done since last May when new rules went into effect. Under the new rules, Stainer has to authorize every extension beyond 6 days. He stated that they cannot give the prisoner the option of an x-ray, because only the Receiver can authorize x-rays, and they only do it for medical reasons. If there is probable cause, CDCR can seek a search warrant for an x-ray or laxative after 3 days. To keep someone on CSW, they only need reasonable suspicion.

We stressed the unreliability and un-challengeability of information from confidential informants (CIs). Stainer said "we're not revising" the policy on CIs. But he admitted that they can do a better job at filling out 1030 forms, in that currently they give prisoners very little information. He said that providing more details on the 1030 will not compromise safety, so they are working on better 1030s that will give more information about the intelligence from CIs. He said debriefers' accusations are investigated for corroboration, though currently the results are not indicated on 1030s. Stainer said that they should be giving prisoners all the evidence they have at the outset (rather than saving it for later in order to keep someone in the SHU longer). If this isn't happening, we should send instances to him for fixing.

We brought up the prisoner's counterproposal/Max B. However, K. Tebrock intervened, saying that goes to living conditions, which they couldn't discuss due to the lawsuit. We also mentioned the idea of simply putting tables in the pods, and allow those who have been in SHU for a long time to interact with each other outside their cells for a few hours a day. Again, Tebrock stopped any discussion of this, but Stainer replied that he doesn't rule it out.

We pointed out that the old policy (current regulations) has been said by CDCR officials to be behavior-based, but they are not. So how can the prisoners believe that the new policy will truly be behavior-based?

Statistics re reviews To date, 144 have been reviewed: 45 at Pelican Bay, 37 at Corcoran, 31 at CCI (Tehachapi), and 25 at SAC. All 6 gang-validated women in SHU have been reviewed, and all were endorsed for transfer . There are currently no women in indeterminate SHU.

There is a moratorium on transferring AdSeg associates to SHU since Oct. 2012. Reviews of associates in AdSeg have started. Six-year (inactive) reviews are being done as prisoners come due for them, so even STG *members* can get reviewed in the pilot, if their 6-year date comes up.

Prisoners with a serious rules violations (e.g., weapon) will be taken out of the SDP.

Stainer said that he doesn't look forward to a repeat hunger strike. He said, "let them hunger strike for *real* reasons, not because they don't understand something or because they don't believe us." He said, "I can understand not trusting, I don't trust them either. But we want a chance to implement this program and show what it really is and that we are sincere with the changes."

We asked if the prisons were quieter because of the agreement to end hostilities. Stainer admitted that they were quieter, although there still were racial incidents, such as a serious one the day before. But they don' t know why the prisons are quieter. It could be because crowding has been reduced, because of the agreement, or some other reason.

We asked for some specific followup: the STG UCC staff training materials; all 12 of the work-books; a better mechanism for access to the representatives, specifically phone calls with the four reps on a regular basis; more frequent statistics on the reviews and actual transfers out of SHU; and statistics on contraband watch, including how often contraband is found. He promised to get back to us about these requests.

Laura will send a thank you to Stainer for the meeting. We will feed them specific issues in the regs that concern us on a selected basis over the coming weeks. We don't want to overwhelm them, but we do want to facilitate some concrete changes.

_____

Post-meeting update:

Laura did follow up with a "thank you" and specific questions about education and proctors. Stainer responded quickly saying there were a number of education programs already in place, although he didn't know if these were ones prisoners paid for themselves. He said proctoring was happening, and we have heard some reports that confirm this.

App #8 C

Minutes of Mediation Team Meeting with CDCR
February 20, 2015

Present:

CDCR: Kelly Harrington, Director of Adult Institutions (Acting)
Ralph Diaz, Deputy Director for High Security Institutions (Acting)
Katherine Tebrock, Chief Deputy General Counsel
Xavier Cano, Assistant to Mr. Harrington
Jean Weiss, Ombudsman office (representing Sarah Malone)
Clint Donaldson, Office of Inspector General

Mediation Team:
Ronald Ahnen, California Prison Focus (CPF)
Dolores Canales, Family Unity Network
Irene Huerta, California Families Against Solitary Confinement (CFASC)
Laura Magnani, American Friends Service Committee (AFSC)

DRB Reviews
Harrington reported that they are committed to getting the case by case reviews done as soon as possible. They plan to continue the course set out in 2012 by Mike Stainer, noting his retirement will have no impact on that course. Two teams are in place led by Susan Hubbard and George Giurbino respectively. In addition, two other teams are currently being trained and will be led by Wasco Warden Katavich and CCWF Warden Johnson. When these additional teams get in place, the rate of the reviews is expected to increase. They will be working at Tehachapi and Corcoran. Their goal is to finish all initial DRBs by December 2015.

To date, they have completed 1,070 reviews and estimate that they have about 1600 more cases to review. Of these, 294 men have been placed in steps 1 to 4. The rest are in step five. [Note: Generally speaking Step 5 is placement in general population, but there are also an unknown number of individuals who qualify and officially are in step 5 but have been retained in SHU due to security concerns]. The numbers for each step is as follows:

Step 1: 116
Step 2: 81
Step 3: 55
Step 4: 42

In addition, some men have been moved forward steps. So far the numbers are as follows:
Step 1 → 2: 59
Step 2 → 3: 45
Step 3 → 4: 55
Step 4 → 5: 7

The Mediation Team expressed concern about the men who qualify for Step 5 but are being retained in SHU due to Security Concerns. We noted that in some cases, suddenly men who had no security concerns previously are being written up for security concerns. We believe this "loophole" will be abused against specific men as a form of retaliation. Harrington noted that they must take security of

the men into account, even if the person feels that he is under no threat.
ICC will review those men who are retained to see if the security concern can get "cleared up" so that they would be released to General Population.

The numbers in the SHU have not been reduced due to the large backlog in the Ad Segs. Due to the hundreds of men who have been shifted out of SHU, one Ad Seg unit has been shut down (Ironwood) and another one is about to be shut down (Avenal).

Slow transfers
As far as transferring from the SHU, they realize at the moment that there are problems with keeping up with transfers to different Step yards or to GP. Part of the problem, they report, is the installation of a new software program that is slowing the transfers down.

Step privileges
They noted that the men start to begin to receive the privileges of the new step they have acquired even before they are moved if possible. This generally includes such things as expanded canteen and phone calls. However, steps that provide for more direct interaction with others and other privileges may not be possible at some institutions. Harrington confirmed that the time that one spends in a particular step begins when the step change has been approved and is independent from the date of housing transfer.

STG I vs. II and members vs. associates
STG I groups continue to be the original seven prison gangs and there is a protocol to have those changed. One STG I is currently under review for de-certification (later revealed as BGF). STG IIs are in the thousands as these include any type of street or neighborhood gang that could crop up at any time. The Office of Correctional Safety (OCS) would be better able to answer questions specifically on how STGs are certified and how they make decisions about who is a member and who is an associate. Harrington said that generally speaking, men are validated as associates and then, when they are in the SHU, they rise to the level of members. STG behavior must be specific gang related behavior and not just symbols, letters, tattoos, etc. The Mediation Team complained that we are still hearing/know of validations based on such evidence.

Role of IGI
Harrington noted that where practice does not appear to follow policy, the new process of appeals and the new roles should help to overcome errors. He noted that IGI's finding were previously pretty much the last word since OCS did not question these findings and went with the IGI finding. Today in the DRB reviews, however, the warden or the Director's substitute (Hubbard or Giurbino) can and have made decisions contrary to IGI recommendations. Jean Weiss noted that she has been in meetings where she has seen wardens overrule IGI.

Lack of Programming
The Mediation Team expressed concern about the lack of programming in the Steps, especially as particular programs offered by outside groups have not been put in place. With respect to programming, they were using retired annuitants to run these programs, but they have now recently hired regular, full time employees in the last few weeks. They are currently being trained and thus programming should expand in the near future.

The Mediation Team shared our concern about the lack of programming generally in the design of the Step Down program. Mr. Diaz noted that Step 3 is limited, but men do start reintegrative activities from the outset of Step 4. These include unrestrained movement of 14-15 inmates from different STGs.

He noted that we seem to be going back to the 1990s in that regard, but now for different reasons. Part of the difficulty to achieving interaction is building design. They ordered windows which are now being installed that will allow oversight over dayroom activities. In addition, interactive programming rotates different inmates.

The Mediation Team again pushed to include interactive activities in Step 3 instead of waiting to Step 4. Mr. Harrington noted that they barely have the Step Down program all rolled out, so they want to wait and see how things go with the present model before reconsidering Step 3.

The Mediation Team noted while the administration in Sacramento is supportive of the new policy, the guards and other staff at the prison and floor level are often not supportive and do not implement the programming as planned. Mr. Harrington noted that what is at stake is a change of culture and that is difficult to manage. He said he beats the drum of the new message to the people below him, and they, in turn, to the Wardens, who in turn should oversee their staff.

The Mediation Team also asked about the Agreement to End Hostilities. CPF will publish the AEH in their newsletter indefinitely. We asked if any inmate could get in trouble for promoting peace among racial or geographical groups. Mr. Harrington said no, but the Mediation Team pointed to at least one case where a person promoting the agreement had that fact used against them in a disciplinary fashion. Mr. Harrington noted that it has always been CDCR policy to have everyone programming and no hostilities among prisoners or prison groups, and that there is no reason for CDCR to promote this particular agreement.

The Mediation Team asked for quarterly meetings, but Mr. Harrington was not willing to set a date. We expressed our satisfaction with the meetings and the fact that the men welcome any avenue by which the administration hears and addresses their concerns. They noted that the periodical meetings between the Warden and the reps at Pelican Bay continue. They also seemed satisfied with the meeting with us, but weren't willing to commit to a regular time frame.

App #9 A

PRISONERS HUMAN RIGHTS MOVEMENT PRESENTS...

LEARN TO PROTECT YOUR RIGHTS

YOU HAVE A RIGHT TO

- Adequate medical care
- Protection from assault
- Humane living conditions
- Safety from officer abuse

Most of all, YOU HAVE A RIGHT TO BE HUMAN! AND TO BE TREATED WITH DIGNITY AND RESPECT.

This Human Right is re - cognized and guaranteed by International, State, and Federal laws: (Read United Nation's DECLARATION OF HUMAN RIGHTS: & CONVENTION AGAINST TORTURE; U.S. CONSTITUION'S "PREAMBLE": CALIFORNIA'S CONSTITUTION, Article 1, Section 1)

STOP THE TORTURE...

END LONG TERM SOLITARY CONFINEMENT...

Support our Class Lawsuit at the up-coming Trial (For more info go to: prisonerhungerstrikesolidarity.wordpress.com

Why I care about prisoner rights

Posted By David L. Hudson Jr. On May 25, 2011 @ 10:43 am In First Amendment Commentary | 1 Comment

A friend recently asked: "Why do you care and write so much about prisoner rights? After all, they're convicted criminals." The question came after the U.S. Supreme Court's ruling this week in *Brown v. Plata* that dealt with overcrowded prisons and terrible medical and mental care in California prisons.

I've fielded similar queries in the past. The questions reflect a mentality shared by many: Why care about the rights of those who didn't care about the rights of their victims?

The question deserves a response.

First, prisoners file an inordinate amount of litigation alleging deprivation of their constitutional rights. Some studies have shown that prisoner litigation makes up more than 20% of the federal court docket. It would be negligent not to report on at least some of these pleadings — even if many prisoner complaints leave much to be desired in terms of form and validity.

Second, much deprivation of constitutional rights occurs in prisons. One attorney described prisons to me years ago as "constitutional black holes." Think about it. Prisoners are under the control of government officials 24/7 — there are bound to be many rights violations.

Third, principles from prisoner free-expression cases often seep out and affect other areas of First Amendment law. The classic example occurred with two U.S. Supreme Court cases that arose out of Missouri. In *Turner v. Safley* (1987), the Court rejected inmate Leonard Safley's claim that he had a First Amendment right to send letters to his girlfriend — later his wife — who was an inmate at another prison (though the Court did uphold his right to marry her). The Court created a standard for prisoner constitutional claims — that prison officials do not violate inmates' constitutional rights if their actions are "reasonably related to legitimate penological concerns."

Just a year later, the Supreme Court rejected the First Amendment claims of three young female student journalists in *Hazelwood School District v. Kuhlmeier.* In that decision, the Court ruled that school officials could censor student speech if their actions were "reasonably related to legitimate pedagogical concerns." The Court simply substituted the word "pedagogical" for "penological." When I lecture on this substitution to student groups, there normally is a collective gasp.

Fourth, prisoners — whatever they have done — are still human beings worthy of some level of respect. I've quoted many times the words of Justice Thurgood Marshall from his concurring opinion in *Procunier v. Martinez* (1974):

"When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor is his quest for self-realization concluded."

Justice Anthony Kennedy said it even more succinctly in *Brown v. Plata*: "Prisoners retain the essence of human dignity inherent in all persons."

Finally, we all know the First Amendment and its free-exercise clause protects our right to religious belief and some religiously motivated conduct. As a Christian, I believe strongly in the Bible verse Hebrews 13:3 "Remember the prisoners as if chained with them."

******INTRODUCTION TO HUMAN RIGHTS******
RE: PHRM EDUCATION MATERIAL ON HUMAN RIGHTS

Universal Declaration of Human Rights

Human Rights

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.
All human beings are born free and equal in dignity and rights.They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.
Everyone has the right to life, liberty and security of person.

Article 4.
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.
Everyone has the right to recognition everywhere as a person before the law.

Article 7.
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.
No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.
(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.
(1) Everyone has the right to freedom of movement and residence within the borders of each state.
(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.
(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.
(1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.
(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
(2) Marriage shall be entered into only with the free and full consent of the intending spouses.
(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.
(1) Everyone has the right to own property alone as well as in association with others.
(2) No one shall be arbitrarily deprived of his property.

Article 18.
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.
Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.
(1) Everyone has the right to freedom of peaceful assembly and association.
(2) No one may be compelled to belong to an association.

Article 21.
(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
(2) Everyone has the right of equal access to public service in his country.
(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.
Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.
(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.
Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.
(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.
(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.
(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.
Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.
(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.
Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

A Sources of Legal Support

Sources of Legal Support

Below is a short list of other organizations working on prison issues, mainly with a legal focus. When writing to these groups, please remember a few things:

- Write simply and specifically, but don't try and write like you think a lawyer would. Be direct in explaining yourself and what you are looking for.
- It is best not to send any legal documents unless they are requested. If or when you do send legal documents, **only send copies**. Hold on to your original paperwork.
- Because of rulings like the PLRA and limited funding, many organizations are small, have limited resources and volunteer staff. It may take some time for them to answer your letters. But always keep writing.

Please note: The contact information for these resources is current as of the printing of this Handbook in 2011.

Do not send money for publications unless you have verified the address of the organization first.

Aid to Children of Imprisoned Mothers, Inc.
906 Ralph David Abernathy Blvd. SW
Atlanta, GA 30310
Information for incarcerated mothers.

American Civil Liberties Union National Office
125 Broad Street, 18th Floor, New York, NY 10004
The biggest civil liberties organization in the country. They have a National Prison Project and a Reproductive Freedom Project, which might be helpful to women prisoners. Write them for information about individual chapters. See Appendix J for some of their publications for people in prison.

American Friends Service Committee Criminal Justice Program – National
1501 Cherry Street, Philadelphia PA, 19102
Human and civil rights issues, research/analysis, women prisoners, prisoner support.

California Prison Focus
1904 Franklin St., Suite 507, Oakland, CA 94612
Publish a quarterly magazine, *Prison Focus*, and other publications. Focuses organizing efforts on CA and on SHU conditions.

Center for Constitutional Rights
666 Broadway, 7th floor, New York, NY 10012
Legal organization that brings impact cases around prison conditions, co-publisher of this handbook.

Criminal Justice Policy Coalition
15 Barbara St., Jamaica Plain, MA 02130
Involved in policy work around numerous prison issues.

Critical Resistance, National Office
1904 Franklin St., Suite 504, Oakland, CA 94612
Uniting people in prison, former prisoners, and family members to lead a movement to abolish prisons, policing, surveillance, and other forms of control.

Family and Corrections Network
32 Oak Grove Road, Palmyra, VA 22963

Federal Resource Center for Children of Prisoners
Child Welfare League of America
1726 M St. NW, Suite 500, Washington, DC, 20036

Friends and Families of Incarcerated Persons
PO Box 93601, Las Vegas, NV, 89193
Legal resources for friends and families of prisoners.

Human Rights Watch Prison Project
350 5th Ave. 34th Floor New York NY 10118-3299
National organization dedicated to research, analysis, and publicizing human rights violations, and working towards stopping them.

Immigration Equality, Inc. *(only for lesbian, gay, bisexual, transgender, and HIV + immigrants)*
40 Exchange Place, 17th Floor, New York, NY 10005

Lambda Legal (only for gay, lesbian, bisexual, transgender, & HIV+ people)
120 Wall Street, Suite 1500, New York, NY 10005-3904
English, Spanish

Legal Publications in Spanish, Inc.
Publicaciones Legales en Espanol, Inc.
PO Box 623, Palisades Park, NJ 07650
Legal resources in Spanish, focusing mostly on criminal defense and federal courts.

Legal Services for Prisoners with Children
1540 Market St., Suite 490, San Francisco, CA 94102
Legal resources and issues around women in prison, including guides and manuals for people in prison with children.

National Center for Lesbian Rights *(only for gay, lesbian, bisexual, and transgender people)*
870 Market St. Ste. 370, San Francisco, CA 94102
English, Spanish

National Clearinghouse for the Defense of Battered Women
125 South 9th Street #302, Philadelphia PA 19107
Legal and other assistance for battered women.

The below is the introductory section from the website of Charles Carbone: Parole and Prison Rights Attorney.

UNDERSTANDING PRISON LAW AND THE RIGHTS OF PRISONERS

I believe firmly in the right of prisoners and their families to know the law. All too often, lawyers, judges and prosecutors mystify the law to preserve their privilege and status. This shielding of the law is particularly obnoxious given that the impact of the law is most felt by those who are shut out from knowing the law.

In the classic example of this mystifying of the law, I hear countless stories first hand of young men who have accepted life sentences from lawyers who gave little or no legal advice, or even worse have lied to secure a plea agreement and conviction.

I believe that those most impacted by the law have the greatest right to understanding how it works. Here is my attempt to help prisoners, their families, and their supporters know the legal rights of prisoners.

I. Overall Rights of Prisoners:

The last 30 years in prisoner and constitutional law has been the erosion, rather than an expansion, of legal, civil, and political freedoms for inmates. Prisoners have lost more rights than they have gained. Despite this, prisoners have retained some rights in the courts which can be defended and advanced. The most basic prisoner rights can be divided into two categories:

1. the right to challenge a criminal conviction and
2. the rights which affect the conditions of a prisoner's confinement

Let's deal with the first - namely, the right to challenge a criminal conviction.

(a) The right to challenge a criminal conviction

Here's the truth on how criminal appeals work: A person is convicted in state court by either a plea agreement or by a jury. If a plea is accepted, the prisoner has fewer recourses for challenging the conviction. There is no right to appeal a plea agreement, and accordingly, prisoners who accept a plea are not given appointed counsel to appeal the plea in the California Court of Appeals. All too often, prisoners who accept a plea based on faulty, inaccurate, or misleading information realize after arriving in prison that they made a terrible mistake. Undoing the plea, however, is no easy task.

When a prisoner petitions the court to reverse or undue a plea agreement, courts will generally examine whether the plea was made in a "knowing" and "intelligent" manner. The evidentiary standard for reviewing the legality of a plea agreement is to assess whether the plea was made in a "voluntary and intelligent" manner. On the topic of "voluntary," an appellate court may review whether the accused entered into the contract freely. In other words, was the accused threatened, coerced, or under undue duress in entering his plea? Obviously, being scared of going of trial does not constitute sufficient duress. A plea becomes involuntary when an accused is threatened or abused or a confession or plea is coerced, Unless those characteristics are present, an appellate court will assume that the plea was voluntary.

An appellate court will review whether a plea was intelligent by gauging whether the accused was properly informed of the rights he waived; knows the consequences of the plea (time to be served); and knows that

the government is otherwise prepared to proceed to trial, etc. There is an equally difficult bar to establish that a plea was not made in an intelligent manner.

If a prisoner has been convicted by a jury, it is easier -- although it's still hard -- to challenge the conviction. Here's how this appeals process works: A person is convicted in the trial court or what is called the "California Superior Court for the County of ____." Once the jury convicts, the convicted is given one appeal as a matter of right. This means that the convicted is given a free-of-charge appellate attorney to file an appeal in the California Court of Appeals. These attorneys handle too many appeals and consequently have limited time to investigate and attack the conviction in a thorough manner. Many appellate attorneys don't even visit their clients in prison. If the Court of Appeals affirms the conviction, the prisoner must on their own or through a hired lawyer bring their appeal before the California Supreme Court. It is critical for a prisoner to bring their appeal before the California Supreme Court because according to a federal law passed in 1996 called the Antiterrorism and Effective Death Penalty Act, prisoners must have the California Supreme Court hear an appeal before one is reviewed by the federal courts. This means that prisoners may never get into federal court unless they file an appeal before the California Supreme Court. All too often, prisoners who want their convictions heard in federal court are precluded from doing so because they haven't filed a timely appeal in the California Supreme Court. This bad outcome underscores the absolute importance of having, if available, a good and knowledgeable appeals attorney who can file a thorough appeal in the California Supreme Court which will provide the foundation for an appeal in federal court.

Some common pitfalls and traps of prisoners occur when prisoners fail to file a timely appeal in the California Supreme Court. In this instance, the prisoner is forced to file what is known as "Collateral Attack" or "Collateral Appeal." This legal instrument is an appeal filed when the statute of limitations (amount of time to file) has expired on a direct appeal. Courts are leery to accept Collateral Attacks because they consider such appeals to be late. Prying open the court house door is only allowed on two grounds. A prisoner must first prove to the court the existence of either:

1. new court precedence which due to its retroactive application would render the conviction unlawful; and/or
2. that newly discovered evidence exists which could not have been reasonably discovered earlier and upon which the prisoner did not delay in presenting the court.

Let me try to make sense of these two requirements for you. On the first, a prisoner would have to show that a new controlling court decision has been issued that would call into question the legitimacy or legality of the conviction. Moreover, this new court decision(s) must apply on a retroactive basis -- meaning that the decision applies to criminal cases which were decided in the past as well as to new cases. This retroactive requirement is difficult to meet because while new cases are decided all the time it is rare that the court decides that a new case has retroactive application because the court system hates to unravel old decisions. The court system frowns on such retroactive application because it makes more work for judges and brings uncertainty into the law.

Often the sole ability to get back into court once the statute of limitations has expired rests on the grounds of establishing newly discovered evidence. This requirement can be tricky so it's important to understand how it works. The newly discovered evidence requirement has several components. One, that the evidence could not have been discovered without a reasonable degree of diligence (effort); two, that the evidence is not cumulative (meaning merely echoing other evidence which was already heard); three, that the convicted brought such evidence to the court's attention within a reasonable period of time; and four,

that if the evidence is assumed true that such evidence would serious undermine the conviction. Now be careful because many prisoners and their families mistake this requirement as a license to raise issues that were known at trial (like a particular fact wasn't raised by the defense attorney). Newly discovered evidence means just that -- it was not known at trial and was recently discovered.

(b) The Rights of Prisoners In Their Conditions of Confinement

Almost all rights of prisoners is judged against what is called the "Turner" test. This "Turner" test refers to a 1987 U.S. Supreme Court case where the high court established a four part test for deciding whether a prison rule or regulation is constitutional. There are 4 criteria that any court will apply when reviewing the constitutionality of a prison regulation. The court will consider:

1. whether there is a valid and rational connection between the prison regulation or practice and the legitimate governmental interest that justifies it;
2. whether there are alternative means of exercising the right that remain open to prison inmates;
3. the impact accommodation of the constitutional right in question will have on guards and other prisoners, and on the allocation of prison resources generally;
4. whether there are readily available alternatives that fully accommodate the prisoner's rights at de minimis cost to valid penological interests.

Once known, it becomes clear how easy it is for prison administrators to meet the low threshold in the "Turner" test for constitutionality, and we begin to see why prison wardens and other correctional staff exude such great confidence in enacting any rule or regulation regardless of its intelligence or harm to prisoners because the courts are not likely to overturn or declare the rule unconstitutional.

Apart from prison rules and regulations, courts are even more deferential to the decisions of prison staff under a different standard known as the "some evidence" standard. Under this criteria -- established in another U.S. Supreme Court case known as Superintendent v. Hill -- the "some evidence" standard only requires that prison staff refer to minimal evidence to support their conclusion or decisions. For example, when deciding whether a prisoner has broken the prison's rules (e.g. attacking another inmate or having contraband), the prison staff has to merely refer to "some evidence" or proof that the prisoner has broken the rules. As long as the prison staff can refer to some evidence or proof, courts of law are precluded from looking further into whether the evidence actually supports the claims of the prison's staff. This highly deferential standards basically allows prison staff a "free-ride" to make any decision regardless of its merit as long as they can offer some proof or evidence that they considered.

Chapter How to Protect Your Freedom to Take Legal Action

Just like people on the outside, prisoners have a fundamental constitutional right to use the court system. This right is based on the First, Fifth and Fourteenth Amendments to the Constitution. Under the First Amendment, you have the right to "petition the government for a redress of grievances," and under the Fifth and Fourteenth Amendments, you have a right to "due process of law." Put together, these provisions mean that you must have the opportunity to go to court if you think your rights have been violated. Unfortunately, doing legal work in prison can be dangerous, as well as difficult, so it is important to **KNOW YOUR RIGHTS**!

A terrible but common consequence of prisoner activism is harassment by prison officials. Officials have been known to block the preparation and filing of lawsuits, refuse to mail legal papers, take away legal research materials, and deny access to law books, all in an attempt to stop the public from knowing about prisoner issues and complaints. Officials in these situations are worried about any actions that threaten to change conditions within the prison walls or limit their power. In particular, officials may seek to punish those who have gained legal skills and try to help their fellow prisoners with legal matters. Prisoners with legal skills can be particularly threatening to prison management who would like to limit the education and political training of prisoners. Some jailhouse lawyers report that officials have taken away their possessions, put them in solitary confinement on false charges, denied them parole, or transferred them to other facilities where they were no longer able to communicate with the prisoners they had been helping.

With this in mind, it is very important for those of you who are interested in both legal and political activism to keep in contact with people in the outside world. One way to do this is by making contact with people and organizations in the outside community who do prisoners' rights or other civil rights work. You can also try to find and contact reporters who may be sensitive to, and interested in, prison issues. These can include print newspapers and newsletters, broadcast television and radio shows, and online sites. It is always possible that organizing from the outside aimed at the correct pressure points within prison management can have a dramatic effect on conditions for you on the inside.

Certain court decisions that have established a standard for prisoner legal rights can be powerful weapons in your activism efforts. These decisions can act as strong evidence to persuade others that your complaints are legitimate and reasonable, and most of all, can win in a court of law. It is sometimes possible to use favorable court rulings to support your position in non-legal challenges, such as negotiations with prison officials or in administrative requests for protective orders, as well as providing a basis for a lawsuit when other methods may not achieve your desired goals.

This Chapter explains your rights regarding access to the courts. This includes your right to:

(1) File legal papers, and to communicate freely about legal matters with courts, lawyers, and media;

(2) Reasonable access to law books;

(3) Obtain legal help from other prisoners or help other prisoners; and

(4) Be free from retaliation based on legal activity.

A. THE RIGHT TO FILE PAPERS AND COMMUNICATE WITH COURTS, LAWYERS, LEGAL WORKERS, AND THE MEDIA

In 1977, the Supreme Court held in a case called *Bounds v. Smith*, 430 U.S. 817 (1977), that prisoners have a fundamental constitutional right of access to the courts. This right of access requires prison authorities to help prisoners prepare and file meaningful legal papers in one of two ways. They can give you access to a decent law library **OR** they can hire people to help you with your cases. The prison gets to choose which way they want to do it. However, that ruling was changed by a later Supreme Court case, *Lewis v. Casey*, 518 US. 343 (1996), which held that prisoners have to show an "actual injury" and the existence of a "non-frivolous legal claim" to win an access to the courts case. In other words, even if your prison isn't allowing you to use the law library and isn't giving you legal help, you still can't necessarily win a lawsuit about it. To win, you would also have to show that you have a real case that you lost or had problems with because of your lack of access to the law library or legal assistance. Courts do not agree on exactly what constitutes "actual injury" and it is not yet clear whether you need to show actual injury if prison officials have actively interfered with your right of access, like by stopping you from mailing a complaint.

For a few different takes on these questions, compare *Benjamin v. Fraser*, 264 F.3d 175 (2d Cir. 2001) and *Tourscher v. McCollough*, 184 F.3d 236, 242 (3d Cir. 1999).

The "actual injury" requirement in *Lewis v. Casey* also applies if you are seeking damages for a past injury. In another recent Supreme Court case, *Christopher v. Harbury*, 536 U.S. 403 (2002), a woman who wasn't a prisoner claimed that she had been denied access to the court because the U.S. government had withheld information from her about her husband's torture by Guatemalan military officers in the pay of the CIA. The Court dismissed her claim because she still had a way to get damages. The Court explained that to get damages for a past denial of court access the plaintiff must identify a remedy that is presently unavailable.

- **IMPORTANT:** Keep the *Lewis v. Casey* "actual injury" requirement in mind as you read the rest of this chapter. It may or may not apply to *all* of the following rights related to access to the courts, and it means that many of the cases cited in this chapter from before 1996 are of somewhat limited usefulness. For this reason, it is very important for you to find out how the courts in your circuit interpret *Lewis v. Casey*.

1. Attorney and Legal Worker Visits

Your right of access to the courts includes the right to try to get an attorney and then to meet with him or her. For pretrial detainees, the Sixth Amendment right to counsel protects your right to see your attorney. However, even prisoners without pending criminal cases have a due process right to meet with a lawyer. In a case called *Procunier v. Martinez*, 416 U.S. 396 (1974), the Supreme Court explained that not only do you have a right to meet with your attorney, but you also have a right to meet with law students or legal paraprofessionals who work for your attorney.

However, you should be aware that prisons can impose reasonable restrictions on timing, length, and conditions of attorney visits. For example, the right to meet with legal workers and lawyers does not necessarily mean that you have a right to meet them in a contact visit. Most courts have held that you do have the right to a contact visit with your attorney. On the other hand, other courts have held that a prison may be able to keep you from getting a contact visit if there is a legitimate security reason. For more about contact visits with attorneys, compare: *Ching v. Lewis*, 895 F.2d 608 (9th Cir. 1990) and *Casey v. Lewis*, 4 F.3d 1516 (9th Cir. 1993).

2. Legal Mail

Mail that is sent to you from attorneys, courts, and government officials is protected by the First and Sixth Amendments. This means that prison officials are not allowed to read or censor this type of incoming mail. However, they can open it and inspect it for contraband as long as they do it in front of you. *Wolff v. McDonnell*, 418 U.S. 539 (1974).

Mail you send to attorneys and courts is also privileged and may not be opened unless prison officials have a special security interest that must meet certain Fourth Amendment requirements. *Washington v. James,* 782 F.2d 1134 (2d Cir. 1986); *Taylor v. Sterrett*, 532 F.2d 462 (5th Cir. 1976).

3. Media Mail

Mail to and from reporters is treated much the same way. Mail you send to reporters usually may not be opened or read. Incoming mail from the press can be inspected for contraband, but only in front of you. *Taylor v. Sterrett*, 532 F.2d 462 (5th Cir. 1976). However, requests from news media for face-to-face interviews can be denied, since the press does not have a special constitutional right of access to jails and prisons any more than the average person does. *Pell v. Procunier,* 417 U.S. 817 (1974).

4. The Prison Law Library

If your prison decides to have a law library to fulfill their requirements under *Bounds*, you can then ask the question: Is the law library adequate? A law library should have the books that prisoners are likely to need, but remember, under *Lewis v. Casey*, you probably can't sue over an inadequate law library unless it has hurt your non-frivolous lawsuit. The lower courts have established some guidelines as to what books should be in the library.

Books Required to be Available in Law Libraries:

- Relevant state and federal statutes
- State and federal law reporters from the past few decades
- **Shepards** citations
- Basic treatises on habeas corpus, prisoners' civil rights, and criminal law

For more detailed information on what must be available, you may want to read some of the following cases: *Johnson v. Moore*, 948 F.2d 517 (9th Cir. 1991); *Corgain v. Miller,* 708 F.2d 1241 (7th Cir. 1983); *Cruz v. Hauck*, 627 F.2d 710 (5th Cir. 1980) or take a look at the American Association of Law Libraries list of recommended books for prison libraries. This list is reprinted in the *Columbia Human Rights Law Review Jailhouse Lawyers' Manual*. Ordering information for the Columbia Manual is in Appendix E. However, you need to keep in mind the fact that these cases and lists have limited value today, and must be understood in connection to *Lewis v. Casey*.

Federal courts have also required that prisons libraries provide tables and chairs, be of adequate size, and be open for inmates to use for a reasonable amount of time. This does not mean that inmates get immediate access, or unlimited research time. Some cases that explore these issues are: *Shango v. Jurich*, 965 F.2d 289 (7th Cir. 1992); *Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851 (9th Cir. 1985); *Cepulonis v. Fair*, 732 F.2d 1 (1st Cir. 1984).

Inmates who cannot visit the law library because they are in disciplinary segregation or other extra-restrictive conditions must have meaningful access some other way. Some prisons use a system where prisoners request a specific book and that book is delivered to the prisoner's cell. This system makes research very hard and time-consuming, and some courts have held that, without additional measures, such systems violate a prisoner's right to access the courts. See, for example, *Marange v. Fontenot*, 879 F. Supp. 679 (E.D. Tex. 1995).

What if I don't have a law library?

Many prisons have either closed their law library or not re-stocked it with new material in years. If this is the case in your law library and you or someone you know on the outside has access to a lawyer, you can try and bring suit against the prison for not complying with *Bounds*. If not, you could try publicizing the fact that your prison is failing to comply with a Supreme Court ruling by sending press releases to various media outlets, like newspapers, television, and the internet.

5. Getting Help from a Jailhouse Lawyer

You have a limited constitutional right to talk with other prisoners about legal concerns. You have a right to get legal help from other prisoners unless the prison "provides some reasonable alternative to assist inmates in the preparation of petitions." *Johnson v. Avery*, 393 U.S. 483, 490 (1969). This means that if you have no other way to work on your lawsuit, you can insist on getting help from another prisoner. In *Johnson,* the Supreme Court held that the prison could not stop prisoners from helping each other write legal documents because no other legal resources were available.

If you have other ways to access the court, like a law library or a paralegal program, the state can restrict communications between prisoners under the *Turner* test if "the regulation… is reasonably related to legitimate penological interests." *Turner v. Safley,* 482 U.S. 78, 89 (1987). The Supreme Court has held that jailhouse lawyers do not receive any additional First Amendment protection, and the *Turner* test applies even for legal communications. Therefore, if prison officials have a "legitimate penological interest," they can regulate communications between jailhouse lawyers and other prisoners. *Shaw v. Murphy*, 532 U.S. 223, 228 (2001).

Courts vary in what they consider a "reasonable" regulation. *Johnson* itself states that "limitations on the time and location" of jailhouse lawyers' activities are permissible. The Sixth Circuit Court of Appeals said that it was OK to ban meetings in a prisoner's cell and require a jailhouse lawyer to only meet with prisoner-clients in the library. *Bellamy v. Bradley,* 729 F.2d 417 (6th Cir. 1984). The Eighth Circuit Court of Appeals upheld a ban on communication when, due to a transfer, a jailhouse lawyer is separated from his prisoner-client. *Goff v. Nix*, 113 F.3d 887 (8th Cir. 1997). However, the *Goff* court did require state officials to allow jailhouse lawyers to return a prisoner's legal documents after the transfer. *Id.* at 892.

6. Your Right to Be a Jailhouse Lawyer

The right to counsel is a right that belongs to the person in need of legal services. It does not mean that you have a right to be a jailhouse lawyer or **provide** legal services. *Gibbs v. Hopkins*, 10 F.3d 373 (6th Cir. 1993); *Tighe v. Wall*, 100 F.3d 41, 43 (5th Cir. 1996). Since jailhouse lawyers are usually not licensed lawyers they *generally* do not have the right to represent prisoners in court or file legal documents with the court, and the conversations between jailhouse lawyers and the prisoner-clients are not usually privileged. *Bonacci v. Kindt,* 868 F.2d 1442 (5th Cir. 1989); *Storseth v. Spellman* 654 F.2d 1349, 1355-56 (9th Cir. 1981). Furthermore, the right to counsel does not give a prisoner the right to choose whom he wants

as a lawyer. *Gometz v. Henman*, 807 F.2d 113, 116 (7th Cir. 1986).

Some courts require a jailhouse lawyer to get permission from prison officials before helping another prisoner. For example, a New York state court held that the prison could punish a prisoner for helping another prisoner by writing to the FBI without first getting permission. *Rivera v. Coughlin,* 620 N.Y.S.2d 505, 210 A.D. 2d 543 (App. Div. 1994).

Nor will being a jailhouse lawyer protect you from transfer, although the transfer may be unconstitutional if it hurts the case of the prisoner you are helping. For more on this, compare *Buise v. Hudkins*, 584 F.2d 223 (7th Cir. 1978) with *Adams v. James*, 784 F.2d 1077, 1086 (11th Cir. 1986). The prison may reasonably limit the number of law books you are allowed to have in your cell. Finally, jailhouse lawyers have no right to receive payment for their assistance. *Johnson v. Avery*, 393 U.S. 483, 490 (1969).

Do Other Prisoners Have a Right to Have You as Their Jailhouse Lawyer?

In some parts of the country, jailhouse lawyers do not have a "right" to help others. However, if the other prisoner can't possibly file a claim without you, the **he or she may have a right to your assistance**, *Gibbs v. Hopkins*, 10 F.3d 373, 378 (6th Cir. 1993). Prisoners are guaranteed "meaningful" access to the courts, so if the person you are helping can't file their claim because he or she doesn't speak English or is locked in administrative segregation without access to the law library, their rights may be being violated.

B. DEALING WITH RETALIATION

If you file a civil rights claim against the warden, a particular guard, or some other prison official, there is a chance that they will try to threaten you or scare you away from continuing with your suit. Retaliation can take many forms. In the past, prisoners have been placed in administrative segregation without cause, denied proper food or hygiene materials, transferred to another prison, and had their legal papers intercepted. Some have been physically assaulted. Most forms of retaliation are illegal, and you may be able to sue to get relief.

In many states, you may be transferred to another correctional facility for any or no reason at all. *Olim v. Wakinekona*, 103 S.Ct. 1741 (1983). However, <u>you cannot be put into administrative segregation solely to punish you for filing suit</u>, *Cleggett v. Pate*, 229 F. Supp. 818 (N.D. Ill. 1964). Nor can you be transferred to punish you for filing a lawsuit. Of course, there are other, more subtle things that officers can do to harass you. Perhaps your mail will be lost, your food served cold, or your turn in the exercise yard forgotten. One of these small events may not be enough to make a claim of retaliation, but if it keeps happening, it may be enough to make a claim of a "campaign of harassment." *Bart v. Telford*, 677 F.2d 622 (7th Cir. 1982).

To prove that the warden or a correctional officer has illegally retaliated against you for filing a lawsuit, you must show three things:

(1) You were doing something you had a constitutional right to do, which is called "protected conduct." Filing a Section 1983 claim is an example of "protected conduct."

(2) What the prison official(s) did to you, which is called an "adverse action," was so bad that it would stop an "average person" from continuing with their suit, and

(3) There is a "causal connection." That means the officer did what he did because of what you were doing. Or, in legal terms: The prison official's **adverse action** was directly related to your **protected conduct**.

If you show these three things, the officer will have to show that he would have taken the same action against you regardless of your lawsuit.

- **<u>Example:</u>** An officer learns that you have filed suit against the warden and throws you into administrative segregation to keep you away from law books or other prisoners who might help you in your suit. The "protected action" is you filing a lawsuit against the warden; the "adverse action" is you being placed in the hole. You would have a valid claim of retaliation unless the officer had some other reason for putting you in the hole, like you had just gotten into a fight with another prisoner.

It is possible -- but not easy -- to get a preliminary injunction to keep correctional officers from threatening or harming you or any of your witnesses in an upcoming trial, *Valvano v. McGrath,* 325 F. Supp. 408 (E.D.N.Y. 1970).

Here are some of the most common Eighth Amendment challenges to prison conditions:

- **Food:** Prisons are required to serve food that is nutritious and prepared under clean conditions. *Robles v. Coughlin*, 725 F.2d 12 (2d Cir. 1983). As long as the prison diet meets nutritional standards, prisons can serve pretty much whatever they want. They must, however, provide a special diet for prisoners whose health requires it and for prisoners whose religion requires it. See Part 2 of this section, on religious freedom.

- **Exercise:** Prisons must provide prisoners with opportunities for exercise outside of their cells. *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996); *Delaney v. DeTella*, 256 F.3d 679 (7th Cir. 2001). Courts have not agreed upon the minimum amount of time for exercise required, and it may be different depending on whether you are in the general population or segregation. One court has considered three hours per week adequate, *Hosna v. Groose*, 80 F.3d 298, 306 (8th Cir. 1996), while another has approved of just one hour per week for a maximum security prisoner. *Bailey v. Shillinger*, 828 F.2d 651 (10th Cir. 1987). Some circuits have determined that prisoners cannot be deprived of *outdoor* exercise for long periods of time. *LeMaire v. Maass*, 12 F.3d 1444 (9th Cir. 1993). Prisons must provide adequate space and equipment for exercise, but again, there is not clear standard for this. It is generally acceptable to limit exercise opportunities for a short time or during emergencies.

- **Air Quality and Temperature:** Prisoners have successfully challenged air quality when it posed a serious danger to their health, particularly in cases of secondhand smoke, *Reilly v. Grayson*, 310 F.3d 519 (6th Cir. 2002), *Alvarado v. Litscher*, 267 F.3d 648 (7th Cir. 2001) and asbestos, *LaBounty v. Coughlin*, 137 F.3d 68 (2d Cir. 1998). While you are not entitled to a specific air temperature, you should not be subjected to extreme hot or cold, and should be given bedding and clothing appropriate for the temperature. *Gaston v. Coughlin*, 249 F.3d 156 (2d Cir. 2001).

- **Sanitation and Personal Hygiene:** Prisoners are entitled to sanitary toilet facilities, *DeSpain v. Uphoff*, 264 F.3d 965 (10th Cir. 2001), proper trash procedures, and basic supplies such as toothbrushes, toothpaste, soap, sanitary napkins, razors, and cleaning products.

- **Overcrowding:** Although overcrowding is one of the most common problems in U.S. prisons, it is not considered unconstitutional on its own. *Rhodes v. Chapman*, 452 U.S. 337 (1981); *C.H. v. Sullivan*, 920 F.2d 483 (8th Cir. 1990). If you wish to challenge overcrowding, you must show that it has caused a serious deprivation of basic human needs such as food, safety, or sanitation. *French v. Owens*, 777 F.2d 1250 (7th Cir. 1985); *Toussaint v. Yockey*, 722 F.2d 1490 (9th Cir. 1984).

- **Rehabilitative Programs:** In general, prisons are not required to provide counseling services like drug or alcohol rehabilitation to prisoners unless they are juveniles, mentally ill, or received rehabilitative services as part of their sentence. *Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia*, 93 F.3d 910, 927. (D.C. Cir. 1996).

- **Other Conditions:** Prisoners have also successfully challenged problems with lighting, *Hoptowit v. Spellman*, 753 F.2d 779, 783 (9th Cir. 1985), fire safety, *Id.* at 784, furnishings, *Brown v. Bargery*, 207 F.3d 863 (6th Cir. 2000), accommodation of physical disabilities, *Bradley v. Puckett*, 157 F.3d 1022, (5th Cir. 1998), and unsafe work requirements. *Fruit v. Norris*, 905 F.2d 1147 (8th Cir. 1990), as well as other inadequate or inhumane conditions.

Instead of challenging a particular condition, you may also bring an Eighth Amendment suit on a "totality of the conditions" theory, either on your own or as part of a class action lawsuit. Using this theory, you can argue that even though certain conditions might not be unconstitutional on their own, they add up to create an overall effect that is unconstitutional. *Palmer v. Johnson*, 193 F.3d 346, (5th Cir. 1999). The Supreme Court has limited this argument to cases where multiple conditions add up to create a single, identifiable harm. *Wilson*, 501 U.S. at 305, but the courts are in disagreement as to what exactly that means.

9. Your Right to Medical Care

The Basics: The prison must provide you with medical care if you need it, but the Eighth Amendment does not protect you from medical malpractice.

The Eighth Amendment also protects your right to medical care. The Constitution guarantees prisoners this right, even though it does not guarantee medical care to individuals outside of prison because, as one court explained, "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met." *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

If you feel that your right to adequate medical care has been violated, the Constitution is not the only source of your legal rights. You can bring claims under your state constitution or state statutes relating to medical care or the treatment of prisoners or bring a medical malpractice suit in state courts. You might also bring a claim in federal court under the Federal Tort Claims Act or a federal statute such as the Americans With Disabilities Act. This section, however, will focus exclusively on your rights to medical care under the U.S. Constitution.

Unfortunately, the Eighth Amendment does not guarantee you the same level of medical care you might choose if you were not in prison. To succeed in an Eighth Amendment challenge to the medical care in your prison, you must show that:

(a) You had a serious medical need;

(b) Prison officials showed "deliberate indifference" to your serious medical need; and

(c) This deliberate indifference caused your injury.

Estelle v. Gamble, 429 U.S. 97 (1976). These requirements are described in more detail below.

(a) Serious Medical Need

Under the Eighth Amendment, you are only entitled to medical care for "serious medical needs." Courts do not all agree on what is or isn't a serious medical need; you should research the standard for a serious medical need in your circuit before filing a suit.

Some courts have held that a serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Hill v. Dekalb Reg'l Youth Det. Ctr.,* 40 F.3d 1176, 1187 (11th Cir. 1994). Courts usually agree that the medical need must be "one that, if left unattended, 'pos[es] a substantial risk of serious harm.'" *Taylor v. Adams,* 221 F.3d 1254, 1258 (11th Cir. 2000). In other words, if a doctor says you need treatment, or your need is obvious, than it is probably "serious."

SUMMARY OF DISCIPLINARY PROCEDURES AND INMATE RIGHTS
(See Title 15, California Code of Regulations, for details)

A. **HEARING** — A serious rule violation may result in the loss of credits. A hearing will normally be held within thirty (30) days but not less than 24 hours, from the date you receive a copy of the Rules Violation Report. An exception is provided in the Californiant Code of Regulations when a case has been referred for possible prosecution and you have requested, in writing, and been granted, a postponement pending the outcome of such referral. Failure of staff to meet time constraints will usually act as a bar against denial or forfeiture of time credits, but will not bar against other authorized disciplinary actions. *(CCR 3320)*

B. **INVESTIGATIVE EMPLOYEE/STAFF ASSISTANCE** —

1. *General Information* — You may request to have an investigative employee and/or a staff assistant assigned to assist you in the investigation, preparation, or presentation of your defense at the disciplinary hearing if it is determined by staff that (1) you are illiterate, or (2) the complexity of the issues, or (3) your confinement status makes it unlikely that you will be able to collect and present the evidence necessary for an adequate comprehension of your case. *(CCR 3315–3318)*

2. *Staff Assistant* — A staff member will be assigned to assist you in the disciplinary process if you are deemed to be incapable of representing yourself. The assigned staff will assist you in preparing for the hearing and assist you at the hearing. The staff assistant will maintain any confidence you request about your past conduct. *(CCR 3318)*

3. *Investigative Employee* — An investigative employee, if assigned, will gather information, question staff and inmates, screen witnesses, and complete and submit a written, non-confidential report to the disciplinary hearing officer. You have the right to receive a copy of the investigative employee's report 24 hours before a hearing is held. *(CCR 3315)*

4. *Witnesses* — You may request the presence of witnesses at the hearing who can present facts related to the charges against you. You may also request the presence of the reporting employee and the investigative employee. You may, under the direction of the hearing officer, question any witness present at the hearing. The hearing officer may deny the presence of witnesses when specific reasons exist. *(CCR 3315)*

5. *Personal Appearance* — A hearing of the charges will not normally be held without your presence, unless you refuse to attend. *(CCR 3320)*

C. **REFERRAL FOR PROSECUTION** — Referrals for prosecution will not delay a disciplinary hearing unless you submit a request in writing for postponement of the hearing pending the outcome of such referral. You may revoke such request in writing at any time prior to the filing of accusatory pleadings by the prosecuting authority. A disciplinary hearing will be held within 30 days of staff receiving your written revocation of your request to postpone the hearing or within 30 days of receiving a response from the prosecuting authority. *(CCR 3316–3320)*

You have the right to remain silent at a disciplinary hearing and no inference of guilt or innocence will be drawn from your silence. Any statements you do make may be used against you in criminal proceedings.

D. **DISPOSITION** — At the end of the hearing, you will be advised of the findings and disposition of the charge. Within five working days, following review of the CDC 115 and CDC 115-A by the Chief Disciplinary Officer, you will be given a copy of the completed rule violation report, which will contain a statement of the findings and disposition and the evidence relied upon to support the conclusions reached. *(CCR 3320)*

E. **APPEAL** — If you are dissatisfied with the process, findings or disposition, you may submit an inmate appeal, form CDC 602, within fifteen days following receipt of the finalized copy of the CDC 115/CDC 115-A. When filing your appeal, be sure to attach a copy of the finalized CDC 115/CDC 115-A, if applicable; and any other pertinent documentation. *(CCR 3003)*

F. **ABBREVIATIONS** — HO-Hearing Officer; SC Sub Committee; FC-Full Committee; SHO-Senior Hearing Officer; BPT-Board of Prison Terms.

The Right of Legal Access

Just because the Prison Gates slam on you doesn't mean that you forfeit numerous substantive rights as guaranteed by the Constitution. Some of these are: the right to receive political publications, to engage in political writing including writings which are critical of the Gulag Administration, right to correspond with press, attorneys and other officers of the court, right to engage in political discussions with other prisoners. These are but a few of many rights you should be aware of. The one area of "Prisoners Rights" this article will focus on is access to the courts. The right of access to the courts is based upon the First and Fourteenth Amendments (right to petition all branches of the government for redress). Fifth and Fourteenth Amendments (guarantee of due process). Sixth and Fourteenth Amendments (right to counsel). This right of access to the courts is probably the most violated and or curtailed.

NUTS AND BOLTS

Let's examine a little more carefully this substantive right of "access". In *Bounds v Smith* 430 U .S. 817. 97 S.Ct 1491 (1977), the Supreme Court firmly established your Constitutional right to access to the courts and that access has to be adequate, effective, and meaningful. Any regulation or policy that obstructs any aspect of that right to access is held invalid. Basically the Gulag overseers can create all the rules they want regarding the law library, but under careful examination they may be held invalid. Before running OK to kite the Warden there are a few other things you should know. Right of access involves access to a law library, necessary materials (postage, paper, pens). legal assistance either provided by the State or other prisoners. Confidential communication with the courts, attorneys, and public officials. Finally the right to exercise any of these without fear of retaliation.

THE PIT FALLS

Now at this point you may be thinking about suing the Warden. Because of the fact that claims of denial of access have been brought as both individual claims and as class action suits. Without citing a lot of case law, you should know that generally individual cases require you suffered actual harm i.e. having a case dismissed. In class actions you have the burden to prove that the system can't provide access to all without having to establish harm to an individual(s). *see Williams V Leeke,* 584 F. 2nd 1336 (4th Cir.1975).

LAW LIBRARY

So lets say you want to find out if the Warden can shut off the T.V. 15 minutes early, or if he can AD-SEG you for no reason You should start your research by reviewing the regs and then paying a visit to the Law Library. Prisoners have a right of access to an adequate law library or adequate assistance from persons trained in the law so that you may have an adequate opportunity to present claimed violations of your right to a court. But its an either or situation. Courts have held that if the state provides adequate legal assistance it doesn't have to provide you with a law library. Basically if there's a legal assistance program serving your prison, a court may decide that you have no right to a law library unless:

* You've been rejected by the program.
* The program doesn't cover full range or prisoner's legal needs.
* Programs resources are inadequate to serve the population

ADEQUATE

So far we've thrown the term adequate around quite a bit but what doesn't it mean? We could find out by looking in Webster Dictionary for a neat definition. but it wouldn't give us a factual basis on which to present a case. Courts have issued various conclusions about what a law library should contain. For example some courts have said the American Association of Law Libraries Services for Prisoner's List is what they should contain. Basically it just takes a bit of common sense to know that once law dictionary for a population of 100 just isn't adequate. But of course the courts may rule differently. It'll take some research on you part to see if there exists any case law that is similar in fact to yours. Access to law libraries likewise must be adequate. While prison authorities can restrict reasonable access in terms of time, manner, and place, the courts have condemned schedules that didn't provide enough time for meaningful research, actual physical access to the library, and other types of restrictions. If you're in segregation the courts have approved a cell delivery system. *Wajtczak v Cuyler* 180 F.Supp. 1288 (E.D. PA 1979), held that a protective custody prisoner must have at least the equivalent of the opportunity [to do legal research] that is available to an inmate who is permitted to go personally to the prison library. By looking at the end of this article you will find legal cites concerning how courts have interpreted what is adequate vs. inadequate. Always remember to Shepardize each cite fully and to its very end. Not doing so will jeopardize your case.

SUMMARY

Everybody wants to get out of the cage. By limiting your legal work to this long term goal, you won't get jacked by the Warden. Oh the T.V. may get turned off 15 minutes early, dinner might be a bit cold. but other than that you'll be left alone. It's only when you demand that your rights be respected will they play you close. Remember it is illegal for them to retaliate against you for exercising your rights. It doesn't matter if its official policy or not if you

if you can prove retaliation, you have several remedies available to you including suing for monetary damages. If you're serious about exercising your rights and helping others to do the same, expect to get harassed. One of the things you should be considering now is "How do I protect myself from getting thrown in the hole:'" defending yourself from petty prisoncrats is handled best by organizing on two levels. On the inside by hooking up with other "Rights Conscious" prisoners and forming a club or organization. You can call it Gulag Committee to Safeguard Prisoner's Rights or whatever. Parallel to this is to organize a second level that of an outside support group. There are many such groups already in place doing prisoner support work. Hooking up with "Free World" allies is an excellent point of leverage arbitrary harassment.

The role of the support group is just that, to support your efforts through publicizing your issues, research, material support, etc. Your outside supporters can be considered your lifeline. No matter what happens, they're there. If you happen to find yourself in an uncomfortable relationship with support people, express your concerns in an open, honest, and fair manner. Resolve the situation as quickly as possible. If resolution isn't happening then cut these folks loose quickly. I hope this has helped you at least think about what your rights are. There are a lot of additional resources to help you along and some are listed after the case cite. Take care, good luck.
THE STRUGGLE DOES NOT STOP AT THE PRISON GATES.

NOTE: *This article was written by a lay person. The reference used is Prisoner's Self-Help Litigation Manual copyright 1983 Daniel E. Manville. Special thanks for Prison Legal News for their invaluable assistance and Prison Law Office for sending us all their material.*

CASE CITES

Law Library

Cruz v Hauk, 627 F.2d 710. 720 (5th Cir. 1978), two or three hours a week might be inadequate.

Walker v Johnson, 544 F. Supp.345 (E.D. Mich. 1982), four and a half hours a week required.

Ramos v Lamm, 485 E Supp. 122,I66 (D. Colo.1979) aff'd in part and rev'd in part 639 F.2d 559 (10th Cir. 1980). cert denied S. Ct 1759 (1981), three hours every four to six weeks inadequate.

Retaliation/Interference

Millhouse v Carlson, 652 F 2nd 371 (3rd Cir. 1981), conspiratorially planned disciplinary actions.

Ferrari v Moran, 618 F 2nd 888 (1st Cir. 1980), denial of transfer and medical care.

Cruz v Beto, 603 F.2d 1178 (5th Cir. 1979), placement of attorney's clients in segregated unit.

Hudspeth v Figgins, 584 F.2d 1345 (4th Cir. 1978), death threat. Carter v Newburg Police Dept., 523 F Supp.16 (S.D.N.Y. 1980), threats and beatings.

McDaniel v Rhodes, 512 F. Supp 117 (S.D. Ohio l98l), threats of adverse parole action.

LEGAL RESOURCES

ACLU HANDBOOK: THE RIGHTS OF PRISONERS
ACLU 132 W. 43rd St. New York, NY 10036
A guide to the legal rights of prisoners, parolees, and pre-trial detainees. Contains citations. $5 to prisoners.

BLACKSTONE SCHOOL OF LAW
P.O. Box 790906 Dallas, TX 75379-0906 Low cost paralegal course by mail. Covers principles of civil and criminal law.

CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE
660 J Street, #200, Sacramento, CA 95814
Attn: Melissa Nappan

CRIMINAL PROCEDURE PROJECT
Georgetown Law Journal 600 New Jersey Ave. NW, Washington D.C. 20001 Information on criminal procedure, habeus corpus relief, and prisoners rights. $5 Ask about free copies of their special issue of the Georgetown Law Journal.

D.C. PRISONERS LEGAL SERVICES PROJECT
1400 20th NW Suite 117 Washington, D.C. 20036

EQUAL JUSTICE U.S.A.
P.O. Box 5206 Hyattsville, MD 20782
Legal support. Involved heavily in Mumia's case.

FREEDOM
P.O. Box 819 Winnie, TX 77665
Legal information, self-help project.

HENRY GEORGE INSTITUTE
121 East 30th St. New York, NY 10016 Check it out, they may have legal stuff. Definitely has a home study course in economics. Small charge for materials. No tuition cost.

JAILHOUSE LAWYER'S MANUAL
Colombia Human Right Law Review, West 116th Street, Box 25, NY, NY 10027 With such a cool and nifty name how can you go wrong. What a shame the thing costs $13 for prisoners.

LEGAL BULLETINS
Lewisburg Prison Project, Box 128, Lewisburg, PA 17837
Write for FREE catalog of federal prisoner's rights.

App #9 B

UNCONSTITUTIONALITY of CDCR'S STG/SDP

TABLE OF CONTENTS

INTRODUCTION

Since completing my last article entitled, "Dismantling CDCR's STG Step-Down Program," I have done extensive research on the applicable law and standards we would have to meet in order to prevail. I am happy to report with confidence that the law is firmly on our side and with you assistance we can improve one of the most objectionable parts of the Step-Down Program (SDP).

While class counsel has just filed a Supplemental Complaint, we are not precluded from following tat up with another directed at challenging the constitutionality of the SDP (adopted October 17, 2014). In fact, it is clear from the language in the recent filings that class counsel is preparing to do just that. I begin this article by addressing this procedural hurdle that we must overcome.

What follows is a detailed application of the law to the facts of this case. I had hoped to obtain, and attach as exhibits, the "Reports, Studies, and Documents Relied Upon" by CDCR in the adoption of the SDP, but unfortunately I have been unable to obtain them. If you have these documents or related materials, please send me a copy as my work on these issues and my goal to have them presented in both the state and federal court will continue.

It is my hope that class counsel will utilize this article to oppose any attempt by CDCR to have the due process claims dismissed as moot in light of the implementation of the SDP. As set forth in both of my articles, the SDP itself contains due process violations.

1.

AN AMENDED OR SUPPLEMENTED COMPLAINT SHOULD BE CONSIDERED IN ORDER TO ENSURE THAT THE MERITS OF THE CHALLENGES TO THE STEP DOWN PROGRAM ARE HEARD

I found it pretty bold for the deputy attorney general to write, "The reality that Plaintiffs' due process claim soon will become moot does not render it ripe for early resolution." Def's. Opp'n Pls' Admin. Mot. at Page 2 (COURT DOCKET No. 337)

The attorney general seems to be operating on the false presumption that the new SDP is constitutional, but the "reality" is that it is not. Therefore, there is nothing moot about our due process claims. Fortunately, the

procedural posture of the case makes a supplemental complaint challenging the constitutionality of the SDP ripe for submission.

CDCR'S SDP HAS BEEN CONSTANTLY CHANGING AND HAS ONLY RECENTLY BEEN PERMANENTLY ADOPTED

The attorney general will surely mount a strong opposition to any proposed amendments or supplements to the complaint, but the fact is CDCR's SDP has been a "moving target" since its inception. It began with the 2007 study "Security Threat Group Identification and Management"[1] In March 2012, CDCR made more changes and distributed the "CDCR STG Prevention, Identification and Management Strategy," March 1, 2012 (3/01-version 5.5) [2] Then in October 2012, CDCR made more changes and implemented the "STG Pilot Program (see Cal. Code of Regs. Title 15 §3999.13):

> "This pilot program will remain in effect for a 24-month period from the date it is filed with the Secretary of State, at which time it will lapse by operation of law or will promulgated through the Administrative Procedure Act." at p.4

The pilot program was enacted in accordance with Cal. Penal Code §5058.1 (a) which states:

> "(a) For the purpose of this section, 'pilot program' means a program implemented on a temporary and limited basis in order to test and evaluate the effectiveness of the program, develop new techniques, or gather information." (emphasis added)

As expected from the above language two more sets of amendments were made to the pilot program followed by CDCR's formal Notice of Change to Regulations No.14-02 (January 31, 2014), the final text incorporated yet more changes and were adopted on October 17, 2014 which are available at: http://www.cdcr.ca.gov/Regulations/AdultOperations/docs/NCDR/2014NCR/14-02/Final_Text_of_Adopted_Regulations_STG.pdf .

It is also worth noting that while all these changes were taking place, the California State Legislature held hearings on CDCR's use of long-term solitary confinement. I believe class counsel Anne Butterfield Weills and Charles Carbone took part in these hearings wherein the Security Threat Group (STG) Step-Down Program (SDP) was discussed. These hearings led to California Assembly Bill 1652 and California Senate Bill 892, both of which proposed substantive changes to the STG SDP and created a reasonable expectation that yet more changes to the STG SDP would occur.

1 The 2007 study is available at: http://s3.documentcloud.org/documents/240261/final-draft-policy-statements-14-2.pdf

2 Available at: https://www.prisonlegalnews.org/media/publications/cdcr_gang_management_report_2012.pdf

Clearly, any meaningful challenge to the SDP prior to this point would have been premature as the STG SDP has been a "moving target." Surely the attorney general would have argued that until the regulations were promulgated, they are temporary and just a pilot program.

The language in class counsel's recent filings only supports a motion for leave to amend or supplement the complaint and operates as notice to the defendants' that a challenge to the STG SDP was forthcoming. For example:

> "According to CDCR regulations, progression from step-to-step requires 'participation in program activities' including 'completion of all required components/curriculums SC ¶190. Yet the various programs, components and curriculums required for successful completion of the Step Down Program are not enumerated in the regulations nor listed in any public CDCR policy statements, and many do not yet exist. *Id.* ¶191."

Pltfs' Motion for Leave to File Supp. Compl. at p.17 lines 14-18 (Court Docket No. 345), see also *Id*. at p.11 lines 2-3; pp.15-16 lines 23-24; Pltfs' Supp. Compl. at ¶¶177, 190, 191, 192, and 221 (c).

As noted in the motion for leave "Although newly alleged matters 'need not arise out of the same transaction or occurrence as the allegations contained in the original complaint,' they must bear 'some relationship' to the subject matter of the complaint to be supplemented." Pltfs' Motion for Leave at p.12 lines 23-26 (Court Docket No.345) (citations omitted).

For all the reasons cited about, class counsel should consider filing an amended or supplemented complaint to ensure that the merits of the challenges to the SDP are fully heard by the court and not subject to exclusion in the event of an appeal on some technical grounds.

2.

MEMORANDUM OF POINTS & AUTHORITIES ON THE UNCONSTITUTIONALITY OF CDCR'S SECURITY THREAT GROUP STEP-DOWN PROGRAM

A. Applicable Law

The liberty inquiry here is controlled by the Supreme Court's decision in Vitek v Jones, 665 U.S. 480 (1980), in which the court held that Nebraska prison officials violated a state prisoner's due process rights by classifying him mentally ill and transferring him to a mental hospital for mandatory behavior modification treatment without having provided the prisoner with a prior hearing. *Id.* at 491-94. These actions by prison officials implicated both a state-created liberty interest as well as a liberty arising from the Due Process Clause itself. 445 U.S. at 490-91.

The Due Process Clause protects certain fundamental rights, one of which is the right to be free from unjustified bodily and mental intrusions. Washington v. Harper, 494 U.S. 210, 221 (1990) (prisoner possesses a significant liberty interest in avoiding unwanted administration of psychotropic drugs); Youngberg v. Romeo, 457 U.S. 307 (1982)(freedom from bodily restraint recognized as "core" of liberty interest protected by the due process clause); Vitek, 445 U.S. at 492-93 (involuntary transfer of inmate to mental institution where he would receive compelled behavior modification treatment implicates liberty interest). Based on the combination of stigma and compelled behavior modification treatment, the Vitek court held the inmate had been deprived of a protected liberty interest. Id. at 494.

As recognized by the Fifth Circuit, the principles of Vitek apply to different contexts that involve "materially indistinguishable fact." Coleman v. Dretke, 409 F.3d 665, 669 (5th Cir. 2005)("Vitek imposed an obligation on the states to provide process before imposing stigmatizing classifications and concomitant behavior modification therapy on individuals in their custody."); Coleman v. Dretke, 395 F.3d 216, 223 fn.30 ("Certain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt." (quoting Yarborough v. Alvarado, 124 S.Ct. 2140, 2151 (2004)); Michael C. v. Gresback, 526 F.3d 1008, 1017 (7th Cir. 2008)("[A] general constitutional rule already identified may apply wit obvious clarity to the specific conduct in question, even though the very action in question has not previously been held unlawful.").

The federal District and Circuit Courts of Appeals have since applied Vitek to a number of different contexts that involve materially indistinguishable facts as those present in Vitek v. Jones, including STG Gang Classifications. S*ee* e.g. Farr v. Rodriguez, 255 Fed. Appx. 925, 926 (5th Cir. 2007) (STG Classification); Jiminez v. Cox, 2008 U.S. Dist. LEXIS 88079 *28-29 (D. Nev. Feb. 15, 2008) (STG Validation); Knowlin v. Wurl-Koth, 2010 U.S. Dist. LEXIS 102495 *12-13 (W.D. Wis. Sept. 9, 2010) (Substance Abuse Programs), affn' 420 Fed. Appx. 593 (7th Cir. 2011); Canterino v. Wilson, 546 F. Supp. 174, 208 (W.D.Ky. 1982), vacated and remanded on other grounds, 869 F. 2d 948 (6th Cir. 1989) (inmate classification).

By far the most instructive cases on applying the framework of Vitek to new contexts comes from the arena of sex-offender treatment programs. *See* Neal v. Shimoda, 131 F. 3d 818 (9th Cir. 1997); Renchenski v. Williams, 622 F. 3d315, 325-331 (3d. Cir. 2010) (collecting cases on whether stigma of sex-offender label affects a liberty interest and concluding that the label, coupled with compelled therapy, does affect such an interest); Coleman v. Dretke, 395 F. 3d 216 (5th Cir. 2004), reh'g en banc denied, 409 F. 3d 665 (5th Cir. 2005)(per curiam); Kirby v. Siegelman, 195 F. 3d 1237 (10th Cir. 2000) (relying in part on Vitek v. Jones).

In the Ninth Circuit, Neal v. Shimoda is the precedential case on the application of the Vitek framework. *See* Cooper v. Garcia, 55 F. Supp. 2D 1090, 1100-1102 (S.D. Cal. 1999) (following Neal v. Shimoda's framework for applying Vitek); Putzer v. Whorton, 2010 U.S. Dist. LEXIS 100264 *18-21 (D. Nev. Aug. 9, 2010) (same).

Just as in the cases cited above, the class members/STG SDP inmates meet the Vitek framework based n the SDP's combination of stigma and compelled behavior modification treatment.

B. THE STIGMA REQUIREMENT

Vitek does not require publication to establish stigma. In fact, the plaintiff in Vitek had not been required to register the fact of his classification as mentally ill, and the Court nowhere indicated that his treatment providers would not keep his records confidential. *See* Vitek, 445 U.S. at 483-86 & 492. The Court nevertheless found it "indisputable" that commitment to the mental hospital alone could cause "adverse social consequences to the individual" and stated that "whether we level this phenomena 'stigma' or choose to call it something else[,] we recognize that it can occur and that it can have a very significant impact on the individual." *Id.* at 492 (internal quotation marks omitted).

"Disclosure of one's designation as a person in need of sex offender treatment – even to other persons similarly situated – casts stigma on the prisoner or parolee. "Chandler v. U.S. Parole Comm'n, 2014 U.S. Dist. LEXIS 109395 *35; Renchenski, 622 F. 3d at 328 n.9 (rejecting state's argument that prisoner's "claim of stigmatization falls short," and relying on the fact that because the prisoner's "weekly therapy sessions, are group therapy sessions, which comprise as many as fifteen inmates...his categorization as a sex offender would surely be known to the prison population"); *see* also Doe v. U.S. Parole Comm'n, 958 F. Supp. 2D 254, 267 (D.D.C. 2013) ("Even if [Doe's classification as a sex offender] is not made public...Doe himself is fully aware of it and may well feel a stigma because of it.").

In Neal v. Shimoda, the Ninth Circuit reasoned that because Hawaii's "regulations render the inmate *completely ineligible for parole* if the [sex offender treatment program] is not satisfactorily completed, the attachment of the 'sex offender' label to the targeted inmate has a practical and inevitable coercive effect on the inmate's conduct." Neal, 131 F. 3d at 829 (emphasis added). The Neal court concluded that the "coercive competent" of the [SOTP] was "functionally equivalent to the psychiatric treatment required by the statute at issue in Vitek that followed inexorably from the inmate being labelled as mentally ill." *Id.* At 829.

In this case, the stigma or "stigmatizing consequences" comes from being labeled both mentally ill and a STG member or associate.

Obviously, we are afforded procedural due process prior to being labeled STG members or associates and while those procedures may be sufficient to classify an inmate as STG, they in no way address CDCR's authority to force of compel STG inmates to undergo at least 3 years of psychotherapy as a pre-condition to release from solitary confinement, credit earning, and the long list of other deprivations. (I've compiled the list below). As the Supreme Court in Vitek concluded, an inmate's criminal conviction and sentence:

> "...do not authorize the State to classify him mentally ill and to subject him to involuntary psychiatric treatment without affording him additional due process protections." (emphasis added)

Vitek, 445 U.S. at 494; Neal, 131 F. 3D at 828.

Nor do they address the other constitutional issues such as the State's interest in forcing psychotherapy over the inmates' right to refuse such treatment (see PART 3-B-2), or the fact that the mandated psychotherapy bears virtually no "reasonable relation" to suppressing STG activity but instead is designed to instill (by "evidence-based psychotherapeutic treatment") government prescribed morals, values, and social skills through "an integrated, cognitive behavior change program that will include cognitive restructuring, social skills development, and development of problem solving skills. This program [is] designed fro small groups and [will] address the cognitive, social, and emotional needs of the inmate population." (Cal. Code of Regs. Title 15 §3999.13 at section 700.2 "Step Down Program Components"); see attached EXHIBIT 1. That is a very troubling description of the SDP, it is unconstitutional. While I fully address this issue in PART 4. I cannot help but quote Justice STEVENS dissenting opinion in Beard v. Banks:

> "What is perhaps most troubling about the prison regulation at issue in this case is that the rule comes perilously close to a state-sponsored effort at mind control. The State may not 'invade the sphere of intellect and spirit which is the purpose of the First Amendment to out Constitution to reserve from all official control.'"

Beard v. Banks, 548 U.S. 521, 552 (2006) (Stevens, J., dissenting) (citing cases).

In this case we indeed have a 'state-sponsored effort at mind control' and we must invoke the protection of the Constitution or we will be doing a great disservice to all those thousands of inmates who will find themselves stuck in the SDP.

These are all valid constitutional questions that are in no way addressed through the current STG process. To assume that any inmate labeled STG automatically requires mental health treatment in the form of at least 3 years of involuntary psychotherapy without a prior hearing to determine whether there is a need for such treatment is as clear a constitutional violation as will ever be seen.

Later in this article, I address the Matthew v. Eldridge factors that clearly call for more procedural protections prior to compelling STG inmates to complete behavior modification therapy. See PART 3.

The stigma of mental illness attaches to STG inmates as a result of in effect being classified mentally ill and being subjected to at least 3 years of intrusive psychotherapy that includes intensive cognitive behavioral therapy such as progressively enhanced cognitive instruction and weekly group therapy sessions just as the inmates in Renchenski cited above. *See* CDCR Form 128-B SDP4 (Rev.06/14); C.C.R. Title 15 §3999.13 section 700.

CDCR does not deny that STG inmates are required to undergo enhanced psychotherapy, nor can they. *See* attached EXHIBIT 1. Just as in the cases cited about, STG inmates are stigmatized mentally ill by virtue of being required to submit to the therapy. That STG inmates are not required to register as mentally ill or be formally enrolled in CDCR's Mental Health Delivery System does not lessen or diminish the stigma of mental illness. In Chandler v. U.S. Parole Comm'n, 2014 U.S. Dist. LEXIS 109395 *32-33 (D.D.C. Aug. 8, 2014) analyzed this exact situation and held:

> "Whether or not the parolee must now list his name on an official sex offender roster, by requiring him to attend sex offender therapy, the state labelled him a sex offender – a label that strongly implies that he has been convicted of a sex offense and which can undoubtedly cause adverse social consequences... "Even if Doe's classification as sex offender is not made public...Doe himself is fully aware of it and may well feel a stigma because of it.'
>
> Likewise, Chandler's assignment to supervision by CSOSA's sex Offender Unit v. Colorado D.O.C., 205 F. 3D at 1242, regardless of whether he was formally 'labeled' as such, or required to register as a sex offender, or forced to disclose his status as a supervisee of the Unit [citation]; see also Wills v. U.S. Parole Comm'n, 882 F. Supp. 2D 60, 76 (D.D.C. 2012 (concluding, in case involving imposition of Special Sex Offender Aftercare Condition on D.C. Supervised releasee, that 'USPC essentially classified the plaintiff as a sex offender and CSOSA complied with that classification,' although release was not required to register as a sex offender.)"

See also Knowlin, 2010 U.S. Dist. LEXIS 10249523; Doe, 958 F. Supp. 2D at 267 & 272 (citing Jennings v. Owens, 602 F. 652, 659 (5th Cir. 2010)).

The following is a list of the "stigmatizing consequence" which attach to an inmate who is classified as an STG member or associate:

* Placement on non-credit earning status. C.C.R. Title 15 §3042.4(b), 3044(b)(7);
* Placement in a Behavioral Management Unit. C.C.R. Title 15 §3334(b)(3);
* Placement in Security Housing Unit for indeterminate term. C.C.R. Title 15 §3341.5(c)(5) (includes long list of restricted conditions already recognized as constituting a "significant and atypical hardship");

* Placement on "High Control" parole conditions (very restrictive). C.C.R. Title 15 §3504(a)(1) (includes Parole Officer engaging in "collateral contacts" i.e. speaking to family, friend, neighbors, job contacts. *See* §3504(a)(5));

* Exclusion from numerous parole programs. C.C.R. Title 15 §§3505(a)(6), 3521.1(c)(8), 3521.2(d)(8);

* Placement on "Continuous Electronic Monitoring Technology." C.C.R. Title 15 §§3540, 3545(c)(5);

* Placement on "Global Positioning System (GPS) technology. C.C.R. Title 15 §§3560, 3561(b)(2);

* Requirement to Register as a Gang Offender with attendant restrictions. Cal. Penal Code §186.30, C.C.R. Title 15 §36519b)(2).

All of these stigmatizing consequences are also recognized as "collateral consequences" relevant to any due process claim. *See* Wolff v. McDonnell, 418 U.S. 539, 565 (1974) (recognizing "collateral consequences" as relevant to due process analysis).

C. THE BEHAVIOR MODIFICATION REQUIREMENT

The second element to the Vitek standard is proving that the stigma is "coupled with the subjection of the prisoner to mandatory behavior modification as a treatment." Vitek, 445 U.S. At 494; Neal, 131 F.3D at 1101-02; Chandler, 2014 U.S. Dist. LEXIS 109395*37 ("whether Chandler actually began receiving the treatment to which he was assigned is immaterial to resolution of his procedural due process claim.").

The courts have consistently recognized that an inmate satisfies the behavior modification requirement when prison officials require successful completion of behavior modification as a precondition to parole eligibility or credits. In Neal v. Shimoda, the Ninth Circuit reasoned that because Hawaii's "regulations render the inmate completely ineligible for parole if the [SOTP] is not satisfactorily completed, the attachment of the 'sex offender' label to the targeted inmate has a practical and inevitable coercive effect on the inmate's conduct." *Id.* at 829. The Neal court concluded that the "coercive component" of the SOTP was "functionally equivalent to the psychiatric treatment required by the statute at issue in Vitek..." Id. at 829; *See* also Cooper, 55 F. Supp. 2D at 1102; Knowlin, 2010 U.S. Dist. LEXIS 102495 *26-27; Chandler at *37; Kirby, 195 F.3D at 1288; Coleman, 395 F. 3D at 223.

In this case, once placed in the SDP it is mandatory that an inmate successfully complete long-term cognitive behavioral therapy. *See* C.C.R. Tiltle 15 §3378.3(a)(3) (2014); attached EXHIBIT 1 (collecting CDCR references to cognitive behavioral therapy as part of SDP). Failure to participate results in, inter alia, non-credit earning status and indeterminate SHU confinement. These preconditions alone are materially indistinguishable from those present in Neal v. Shimoda wherein the Ninth Circuit held that similar preconditions has "a practical

and inevitable coercive effect" which was "functionally equivalent to the psychiatric treatment required [in Vitek]. Neal at 829; Knowlin as *26 ("Whether a prisoner has a 'right' to something does not necessarily affect its power to coerce. To the extent withholding parole compels a prisoner to accept treatment, it would likely make little difference to the prisoner whether he was being denied 'discretionary' or 'mandatory' parole.").

With regard to establishing behavior modification "treatment" or "therapy," the relevant cases, beginning with Vitek itself, all involved situations where the complaining prisoner or parolee had been assigned to undergo treatment whose aim was behavior modification. *See* e.g. Chandler at *42 ("...[the] [] treatment program to which a [parolee] would be assigned has as its primary aim the modification of the offender's sexual thinking and behavior."); Doe, 958 F. Supp. 2D at 266-67 ("'Treatment' connotes an active step -- doing something to 'treat' or remedy an identified problem"... "the assessment condition here does not require Doe to admit his need for treatment, undergo any treatment or therapy, or otherwise change his behavior in anyway.").

In this case, it is clear that the cognitive behavioral therapy component of the SDP has "as its primary aim the modification of the offender's [STG] thinking and behavior." *See* e.g. C.C.R. Title 15 §§3000 ("Step Down Program" definition), 3378.3; STG Notice of Change of Regulations, No. 14-02 ("Initial Statement of Reasons"), §3000 ("Step Down Program" definitions), see also the section of this document entitled "SPECIFIC PURPOSE OF EACH SECTION PER GOVERNMENT CODE 11346.2(B)(1)" sections: 3000, 3044(g)(1), 3341.5(c)(5), 3376.1(d)(3), 3378.3(b)(2), 3378.3(b)(3); STG Pilot Program C.C. R. Title 15 §3999.13 section 700.2 (Step Down Program Components).

Likewise, the requirement that STG inmates successfully complete the SDP "connotes an active stop -- to 'treat' or remedy an identified problem." *See all the authorities cited Id.*

3.

STG SDP INMATES ARE CLEARLY ENTITLED TO ADDITIONAL PROCEDURAL PROTECTIONS UNDER THE MATTHEW V. ELDRIDGE BALANCING TEST

A. APPLICABLE LAW

In addressing a procedural due process challenge, the Court must first determine whether the plaintiff(s) has been deprived of a protected liberty interest. See Gen. Elec. Co. V. Jackson, 610 F.3d 110, 117 (D.C. Cir. 2010). Only after finding the deprivation of a protected interest does the Court apply the Matthew v. Eldridge balancing test to determine whether the government's procedures satisfied due process. "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. "Matthew v. Eldridge,

424 U.S. 319, 333 (internal quotation marks omitted). Due process, however, is not "a technical conception with a fixed content unrelated to time, place and circumstances," but rather is "flexible" and will call for different procedural protections depending on the particular situation at hand. Id. at 334 (internal quotation marks omitted). To determine the kind of notice and hearing required in this case, the Court must balance (1) the significance of the private party's protected interest; (2) the government's interest; and (3) the risk of erroneous deprivation and the probable value, if any, of additional or substitute procedural safeguards. Matthews, 424 U.S. 319, 335 (1976).

B. THE PROTECTED LIBERTY INTERESTS

In this case, the private interests at stake are of great substance. CDCR's actions infringe on significant liberty interest held by STG inmates including (1) avoiding the stigma of being labeled mentally ill or an STG member or associate; and (2) the right to refuse unwanted mental health treatment.

Protected liberty interest can be created by (1) the Due Process Clause of its own force; (2) a court order; or (3) state statutes or regulations. Sandin v. Connor, 515 U.S. 472, 484 (1995) (Liberty interest from Due Process Clause); Smith v. Sumner, 944 F.2d 1401, 1406 (9th Cir. 1993) (Liberty interest created from consent decree); Sandin 515 U.S. at 483-84; *See* also Wilkinson v. Austin, 545 U.S. 209, 223-224 (2005) (Liberty interest in state laws and regulations).

1. AVOIDING THE STIGMA OF BEING LABELLED STG OR MENTALLY ILL

This liberty interest has been fully briefed above. *See* PART 2 of this Article.

2. THE RIGHT TO REFUSE MENTAL HEALTH TREATMENT

In this case, STG SDP inmates have a significant liberty interest in the right to refuse treatment under both federal and state law.

(a) FEDERAL RIGHT TO REFUSE TREATMENT

A mentally competent adult has a right under both the common law and the Fourteenth Amendment to refuse medical treatment. Cruzan by Cruzan v. Director Mo. Dep't. Of Health, 497 U.S. 261, 277-78 (1990). The right to refuse treatment extends to prisoners. The Supreme Court, in finding that there is a right to refuse treatment in the Cruzan case, 497 U.S. at 277, relied on two prison cases: Washington v. Harper, 494 U.S. 210, 221 (1989) (holding that prisoners have "a significant liberty interest in avoiding the unwanted administration of anti psychotic drugs") and Vitek v. Jones, 445 U.S. at 494 (holding that transfer to a mental hospital coupled with mandatory behavior modification treatment implicated a constitutional liberty interest); See also Youngberg v. Romero, 457 U.S. 307, 316 (1982) (freedom from bodily restraint recognized as "core" of liberty interest protected by the Due Process clause); Ingraham v. Wright, 430 U.S. 651, 673 (1977) ("The due process clause of the Fourteenth Amendment substantively protects certain fundamental rights. Among these are the right to be free

from unjustified intrusions into the body"); White v. Napoleon, 897 F.2d 103, 113 (3d Cir. 1990) (prisoners retain limited right to refuse treatment); Runnels v. Rosendale, 499 F.2d 733, 735 (9th Cir. 1974) (allegation of surgery without consent stated a constitutional claim); Clarkson v. Coughlin, 898 F. Supp. 1019, 1049 (S.D.N.Y. 1995) (lack of sign language interpreters denied deaf prisoner the right to refuse treatment); Rennie v. Klein, 653 F. 2d 836, 844 (3d Cir., 1981); Russell v. Richards, 384 F.3d 444, 447 (7th Cor. 2004) (the court framed the right as one to "refus[e] unwanted medical treatment" and "assume[d] without deciding" that "instructing new inmates to use a delousing shampoo amounts to involuntary medical treatment.").

(b) STATE-CREATED LIBERTY INTEREST IN RIGHT TO REFUSE TREATMENT

A prisoner claiming deprivation of a state-created liberty interest must specify which regulation of statue created the interest. *See* Sandin v. Connor, 515 U.S. 472, 48-485; *See* also Cruz V. Gomez, 202 F. 3d 593, 597 (2d Cir. 2000) (due process claim failed because prisoner did not identify state law creating liberty interest). The alleged state-created liberty interest should be afforded due process protection only if its restriction or deprivation either (1) creates an "atypical and significant hardship" by subjecting the prisoner to conditions much different from those ordinarily experienced by large numbers of inmates serving their sentences in the customary fashion. Sandin, 515 U.S. at 484; Hydrick v. Hunter, 499 F.3d 978, 999 (9th Cir. 2006) (atypical and significant hardships in forced medication in nonemergency situations and in reducing inmates' privileges or altering classifications without hearing) (emphasis added); See also Richardson v. Rumnels, 594 F.3d 666, 672 (9th Cir. 2010). Or (2) inevitably effects the duration of the prisoner's sentence. Sandin, 515 U.S. at 487; Myron v. Terhune, 476 F. 3d 716, 718 (9th Cir. 2007); *See* also Wilson v. Jones, 430 F.3d 1113, 1121 (10th Cir. 2005) (duration of sentence inevitable affected by misconduct conviction resulting in prisoner's demotion to non-credit earning status).

In this case, the policy, regulation, and statues which create the interest are (1) PBSP Health Care Services, Mental Health Policies and Procedures, Volume 1-Chapter 28 ("Refusal of Mental Health Evaluation And/Or Treatment"); (2) C.C.R. Title 15 §3363; and (3) California Probate Code §4650 (a) and California Penal Code §3508:

* PBSP HCS MHP&P, Vol.1 Chapter 28 states in part:

I. POLICY

Mental Health evaluation and/or treatment shall not be forced over the objections of a mentally competent Inmate/Patient (I/P) unless; the I/P ha current Involuntary Medication court order (Penal Code 2602), the I/P is under Medical Conservatorship pursuant to Probate Code 3200, or the I/P is unable to make an informed decision due to a medical emergency. In cases of a medical emergency, all immediate necessary actions shall be taken.

An emergency exists when there is a sudden, marked change in the I/P's condition so action is immediately necessary for the preservation of life or the prevention of seriouly bodily harm to the I/P or others, and it is impractical to first obtain consent.

II. PURPOSE

To ensure and I/P's right to refuse mental health treatment is observed and appropriate documentation and clinical follow up is completed by mental health clinicians.

III. PROCEDURES

Any I/P who is mentally competent may refuse mental health clinical contacts, including group therapy. Such refusals shall be documented on a CDCR 7225, Refusal of Examination and/or Treatment, and in the treating clinician's CDC 7230-A, Mental Health Progress Notes, pertaining to the attempted clinician contact.

* California Code of Regs. Title 15 §3363 states in part:

Right to Refuse Treatment

Inmates/Parolees shall be informed any time they are the object of particular mental health diagnosis or treatment procedures. Such persons shall have the right to assignment to such a program of diagnosis or treatment without being subject to discipline or other deprivation...

(emphasis added)

* California Probate Code §4650 states in part:

THE LEGISLATURE FINDS THE FOLLOWING:

(a) In recognition of the dignity and privacy a person has a right to expect , the law recognizes that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn.

* California Penal Code §3508 states in part:

BEHAVIORAL MODIFICATION TECHNIQUES

Behavioral Modification Techniques

Behavioral modification techniques shall be used only if such techniques are medically and socially acceptable means by which to modify behavior and if such techniques do not inflict permanent physical or psychological injury.

Depriving an inmate of his right to refuse unwanted mental health treatment and requiring him to undergo long-term cognitive behavioral therapy creates an “atypical and significant hardship” that is much different from that ordinarily experienced by the rest of California state prisoners who enjoy these rights. I think the Ninth

Circuit case Hydrick v. Hunter, cited above, may on point although I have not read it yet.

The mandatory language in the sourced of liberty interests cited about "grants a prisoner a right or expectation that adverse action will not be taken against him except upon the occurrence of specified behavior[.]" Vitek , 445 U.S. at 493-94. As such the above sources of liberty interests meet the criteria to quality as liberty interests under both the Due Process Clause and the standards for state-created liberty interests.

Finally, it is worth quoting the California Supreme Court who, in In re Conservatorship of Wendland, 26 Cal. 4th 519, 530-32 (Cal. 2001), held:

> " One relatively certain principle is that a competent adult has the right to refuse medical treatment, even treatment necessary to sustain life. The Legislature has cited this principle to justify legislation governing medical care decisions ([Probate Code] §4650), and courts have invoked it as a starting point for analysis...That a competent person has the right to refuse treatment is a statement both of common law and of state constitutional law.
>
> In Thor v. Superior Court, 5 Cal. 4th 725 (1993), as mentioned, we based our conclusion that a prisoner had a right to refuse life-sustaining treatment solely on the common law without also considering whether the state Constitution provided similar protection. But Thor does not reject the state Constitution as a basis for the right. More importantly, we have since Thor determined that the privacy clause does protect the fundamental interest in personal autonomy. "
>
> (citing cases).

C. THE GOVERNMENT'S INTEREST

CDCR will surely claim that their actions serve their interest in suppressing STG related activity, which is legitimate. That is not in question.

The real question is what legitimate interest does CDCR have in subjecting SDP inmates to long-term psychotherapy, specifically Cognitive Behavioral Therapy (see attached EXHIBIT 1), against their will? Moreover, why does the mandated psychotherapy bear virtually no reasonable relation to suppressing STG activity? Instead, it is designed to instill (by "evidence-based psychotherapeutic treatment") government prescribed morals, values and social skills through

> "an integrated, cognitive behavior change program that will include cognitive restructuring, social skills development, and development of problem solving skills. This program [is] designed for small groups and [will] address the cognitive, social, and emotional needs of the inmate population." C.C.R. Title 15 §3999.13 at section 700.2; *See* also EXHIBIT 1.

In order to establish a legitimate" interest in imposing this specific 3-4 year treatment plan of progressively intense cognitive behavioral therapy, that is unrelated to suppressing STG related activity, CDCR must first demonstrate an individual need for treatment that outweighs the inmates; "significant liberty interest."

It has been held that subjection of all prisoners to a behavior modification program without a showing of individual need was an arbitrary action that denied due process. Canterino v. Wilson, 546 F. Supp. 174, 208-09 (W.D.Ky. 1982), *vacated and remanded on other grounds,* 869 F. 2d 948 (6th Cir. 1989); *See* also Doe, 958 F. Supp. 2D at 263 ("The nature of any special condition imposed is certainly relevant to whether that condition is reasonably related to a defendant's history and characteristics... it would be unreasonable to mandate treatment without any determination that there is a current need for it. To require such a determination be made, on the other hand, is not inherently unreasonable."); U.S. v. Thomas, 212 Fed. Appx at 487-88 (finding "a greater deprivation of liberty than we reasonably necessary"); Knowlin, 2010 U.S. Dist. LEXIS at *17-18 (finding that prison officials' "documents do not demonstrate the reasonable of treatment because none of them explain why Knowlin needed treatment." (emphasis added)).

D. THE RISK OF ERRONEOUS DEPRIVATION AND THE VALUE OF ADDITIONAL PROCEDURAL SAFEGUARDS

1. THE RISK OF ERRONEOUS DEPRIVATION IS GREAT

Currently, inmates who have absolutely no diagnosis of mental health issues or need for psychotherapy are being forced to participate in long-term cognitive behavioral therapy against their will, without "informed consent." and without any showing of individual need.

In light of the "significant liberty interest[s]" at stake, this "one size fits all" approach to mandatory behavior modification involves too great a risk of erroneous deprivation to comport with even the flexible demands of due process.

While the current STG procedural due process may be sufficient to classify an inmate an an STG member or associate that requires segregation, they in no way protect the inmate's liberty interest in avoiding erroneous deprivation of their right to refuse unnecessary and unwanted psychotherapy, for a condition that CDCR has not even proven exists!! Indeed, the current SGT process involves absolutely no assessment or mental health consultation to determine the need for treatment. Nor are there any Mental Health staff involved in the current STG Process.

STG inmates are entitled to a hearing wherein they can challenge CDCR's requirement that they satisfactorily complete long-psychotherapy (against their will) as a precondition to release from solitary confinement. *See* Neal, 131 F.3d at 831 ("Neal did not receive the minimum due process protections required under Wolff. Neal has never been convicted of a sex offense and has never had an opportunity to formally challenge the imposition of the 'sex offender' label in an adversarial setting. He must be afforded that opportunity." (emphasis added)); Conn. Dep't of Pub Safety v. Doe, 538 U.S. 1, 9 (2003) ("The] convicted offender has already had a procedurally safeguarded opportunity to contest." and at 9 (Scalia, J., concurring) (noting that" a convicted sex offender has no right to additional 'process' enabling him to establish that he is not dangerous"); Foucha v. La, 504 U.S. 71, 78-79 (1992) ("keeping Foucha against his will in a mental institution is improper absent a determination in a civil commitment proceeding of current mental illness and dangerousness."); Lappe v. Loeffelhotz, 815 F.2d 1173 (8th Cir. 1986) (First hearing was a "full Vitek type hearing" therefore no need for second hearing); Wills, 882 F. Supp. 2D at 77 ("Neither party disputes that the [sex offender condition] 'required' that the plaintiff, who was not a sex offender, 'undergo sex offender treatment.'"), and at 78 (finding process inadequate where plaintiff "was provided no notice of any sort of prior to the Commission's initial imposition of the condition"); *See* also Jennings v. Owens, 602 F.3d 652, 659-59 (5th Cir. 2010) ("The conclusion that the sex offender therapy condition stigmatized Coleman rested heavily upon the fact that he had never been convicted of a sex offense – therefore, the label 'sex offender' was false as supplied to him." (discussing Coleman v. Dretke, 409 F.3d 665, 668 (5th Cir. 2005) (per curiam)); U.S. v. Brandon, 158 F.3d 947, 953-56 (6th Cir. 1998) (due process violation where pretrial detainee denied hearing prior to being forcibly medicated because detainees have significant interest in avoiding forcible medication and in freedom from bodily intrusion).

2. THE VALUE OF ADDITIONAL PROCEDURAL SAFEGUARDS

In order to avoid erroneous deprivation in this case the court should require CDCR to (1) demonstrate how the long-term psychotherapy component of the SDP is reasonable related to a legitimate penalogical interest; (2) provide STG SDP inmates with a mental health assessment by qualified personnel who can whether there is a need for involuntary treatment; and (3) allow STG SDP inmates the opportunity to challenge, thought appropriate procedures, any determination that involuntary treatment is necessary. Neal, 131 F.3d at 831; Chandler, 2014 U.S. Dist. LEXIS at *51-52.

4.

CDCR'S MANDATORY BEHAVIOR MODIFICATION PROGRAM VIOLATES THE FIRST AMENDMENT BECUASE IT "INVADES THE SPHERE OF INTELLECT AND SPIRIT" BY INTERFERING WITH THE INMATES' FREEDOM OF THOUGHT AND BELIEF

A. CDCR'S MANDATORY BEHAVIOR MODIFICATION PROGRAM

The Step Down Program's intent and stated purpose is to instill, but "evidence-based psychotherapeutic treatment." government prescribed morals, values and social skills through

> "an integrated, cognitive behavior change program that will include cognitive restructuring, social skills development, and development of problem solving skills, This program [is] designed for small groups and [will] address the cognitive, social, and emotional needs of the inmate population."

C.C.R. Title 15 §3999.13 at section 700.2 ("Step Down Program Components"); *See* also EXHIBIT 1.

As noted in EXHIBIT 1, it really cannot be disputed that the SDP is a progressively intense cognitive behavioral therapy treatment plan that includes weekly sessions of group therapy. This program is materially indistinguishable from other behavior modification programs recognized by the courts to satisfy the Vitek framework.

B. APPLICABLE LAW

The fact that the Court has allowed the government to punish certain categories of speech does not mean that the Court will allow the government to punish individuals because they hold points of view that differ from those of the government. John E. Nowak, Ronald D. Rotund, Principles of Constitutional Law, 4th ed. at p.615 (Thompson Reuters 2010).

All of the clauses of the First Amendment are tied together by the concept of a freedom of belief. Although the freedom of belief or the freedom of thought is not explicitly mentioned in the first Amendment, it is the core value of all of the clauses of the first Amendment. *Id*. at 615. the government may not enter the political marketplace by forcing persons to subscribe or advance favorable messages favorable to the government. Such activity is inconsistent with the fundamental freedom of belief that lies at the core of all First Amendment guarantees. The government should not be able to force a person who objects to a position to endorse that position absent the most unusual and compelling circumstances, none of which have appeared in the cases to date.

For example, in West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), the Court prohibited states from requiring children to pledge allegiance to the country at the start of the school day. All students have a First Amendment right to refuse to pledge allegiance to the country or its symbols because of the freedom of though, and belief, that is central to all First Amendment freedoms.

Similarly, in Wooley v. Maynard, 430 U.S. 705(1977), the court held that no private person could be required to broadcast governmental symbols or to endorse governmental position absent the most compelling

circumstances. The Court based its decision on the free speech clause, not the free exercise clause.

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by work or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us." Barnette, 319 U.S. at 642

The holding principles of Barnette have been consistently followed, particularly in the context of religious belief. *See* Torcaso v. Watkins, 367 U.S. 488, 495-96 (1961) (holding unconstitutional a state law that required an individual to affirm a belief in God to obtain a governmental commission).

In Beard v. Banks, 548 U.S. 521 (2006), the court concluded, with no majority opinion, that prison officials could deny newspapers, magazines and photographs to some inmates in order to influence the behavior of those prisoners. It is worth noting that this was a relatively small number of prisoners (as opposed to CDCR's thousands of SDP participants), and the inmates in Beard were not subjected to involuntary psychotherapy as a method of behavioral modification, but instead, suffered extreme deprivation of property and privileges. The court, applying the Turner standard, ruled in favor of prison officials but not without strong and well articulated dissension from Justices STEVENS and GINSBERG:

> "The State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read and freedom inquiry, freedom of thought...Plainly, the rule at issue in this case strikes at the core of the First Amendment rights to receive, to read, to think."

Beard, 548 U.S. at 543 (J. STEVENS, dissenting)(citations omitted).

> "What is perhaps most troubling about the prison regulation at issue in this case is that the rule comes perilously close to a state-sponsored effort at mind control. The State may not 'invade the sphere of intellect and spirit which is the purpose of the First Amendment to our Constitution to reserve from all official control.'" Wooley v. Maynard, 430 U.S. 705, 715 (1977) (quoting West Virginia Bd. Of Ed. v. Barnette, 319 U.S. 624-642 (1943)

Id. at 552.

Surely, if this case made it to the Supreme Court, we would have at least two Justices on our side! I understand this is an ambitious argument to make, but even the most skeptical person would recognize that in this case, the State is indeed "com[ing] perilously close to (if not accomplishing) a state-sponsored effort at mind control."

///

EXHIBIT 1

As demonstrated in the next section, CDCR declares openly and often that one of the central components of the SDP is progressively intense cognitive behavioral therapy (See Next Section). CDCR defines Cognitive Behavioral Therapy as follows:

> " Cognitive Behavioral Therapy is evidence-based psycho-therapeutic treatment which addresses dysfunctional emotions, maladaptive behaviors, and cognitive processes, using incremental monitoring and assessment of progress in all three ares to reach prescribed goals."

Cal. Code of Regs. Title 15 §3000 Definitions.

The California Business & Professions Code §2903 defines "Psychotherapy" as follows:

> "Psychotherapy means the use of psychological methods in a professional relationship to assist a person or persons to acquire greater human effectiveness or to modify feelings, conditions, attitudes and behavior which are emotionally, intellectually, or socially ineffectual or maladjustive."

(quoted from California Ass'n of Psychology Providers v. Rank, 214 Cal. 3D 1207 (Cal. App. 2nd Dist. 1988)

The "Diagnostic and Statistical Manual, 4th edition" ("DSM-IV") is published by the American Psychiatric Association and provides the nomenclature and standard criteria for the classification of mental disorders. The DSM-IV organizes each mental health diagnosis into five dimensions as follows:

Axis I – clinical disorders, including major disorders (such as schizophrenia, bipolar, depression and anxiety disorders);

Axis II – personality disorders and intellectual disabilities;

Axis III – physical disorders which may or may not impact on psychological conditions

Axis IV – psychosocial and environmental factors that contribute to the disorder or impact on functioning;

Axis V – the global assessment of functioning or GAF score.

See also Indiana Protection & Advoc. Serv. Comm'n v. Indiana D.O.C., 2012 U.S. Dist. LEXIS 182974 *19-20 (same)

"Courts have used the term 'mental disorder' to characterize 'organic functional psychoses, neuroses, personality disorders, alcoholism, drug dependence, behavior disorders, and mental retardation." Indiana, 2012 U.S. Dist. LEXIS at *19 (citing Ruiz v. Estelle, 503 F. Supp.1265,1332 n. 140 (S.D.Tex. 1980), aff'd in part & reversed in part, 679 F. 2d 1115 (5th Cir. 1982)).

Of course, I am no expert but I believe the cognitive behavioral therapy component of CDCR's SDP qualifies as treatment for psychosocial disorder for constitutional purposes under C.C.R. Title 15 §3000; Cal. Bus. & Prof. Code §2903; and the DSM-IV Axis IV.

KEY WORD INDEX OF ALL STG DOCUMENTS

The following is an index of all the references to cognitive behavioral therapy that CDCR makes in describing and/or adopting the Step Down Program and it's components.

COGNITIVE BEHAVIOR CHANGING COMPONENTS:

* C.C.R. TITLE 15 §3999.13 STG Pilot Program (Pilot Program) at §700

COGNITIVE BEHAVIOR CHANGE PROGRAM:

* Pilot Program at §700.2(a)

COGNITIVE RESTRUCTURING:

* Pilot Program at §700.2(a)

COGNITIVE SKILLED BASED PROGRAMMING:

* Pilot Program at §700

*CDCR STG Prevention, Identification and Management Strategy" (March 1, 2012)(herein after "CDCR STG Strategy March 2012") at p.32

MANDATED COGNITIVE INSTRUCTION (including Self-Directed Journals:

* NCR STG Regs Proposed Text (hereinafter "Proposed Text") (1014014) at CDCR Form 128-b SDP1 (Rev. 11/13)

* NCR Proposed Text at CDCR Form 128-B SDP2 (Rev. 11/13)

* NCR Proposed Text at CDCR Form 128-B SDP3 (Rev. 11/13)

* NCR Proposed Text at CDCR Form 128-B SDP4 (Rev. 11/13)

* Pilot Program CDCR Form 128B SDP1 (10/12)

* Pilot Program CDCR Form 128B SDP2 (10/12)

EXHIBIT 1 (continued)

* Pilot Program CDCR Form 128B SDP3 (10/12)

* Pilot Program CDCR Form 128B SDP4 (10/12)

ENHANCED PROGRAMS:

* Pilot Program at section entitled "PURPOSE"

* CDCR STG Strategy March 2012 at p.32

* NCR Specific Purpose at §§3000 (defining SDP), 3341.5 (c)(5), 3376.1(d)(3)

PROGRESSIVE PROGRAMS:

* NCR Proposed Text at §3378.3(a)(2)

* Final STG Adopted Regulations (hereinafter "STG Adopted Regs") (9-2-14) at §3378.3 (a)(3)

* Pilot Program at §§700,700.2(a)

* NCR Specific Purpose at §3378.3(a)

TREATMENT FOR VALIDATED STG MEMBERS:

* Pilot Program at section entitled "BACKGROUND"

* CDCR STG Strategy March 2012 at section entitled "PREFACE"

INDIVIDUAL THERAPEUTIC TREATMENT:

* CDCR STG Strategy March 2012 at p.32

COMPLETION OF ALL REQUIRED COMPONENETS/CURRICULUM:

* NCR Proposed Text at §§3378.3(b)(1), (2), (3)

* STG Adopted Text at §§3378.3(b)(1), (2), (3)

* Pilot Program at §700

* NCR Specific Purpose at §3378.3(b)(2), (3)

NOTICE OF EXPECTATIONS REQUIRING COMPLETION OF ALL SDP COMPONENTS:

*NCR Proposed Text at §§3378.3(a)(1), 3378.3(b)(2), (3)

* STG Adopted Text at CDCR Form 128-B SDP1 (Rev. 6/14)

CDCR Form 128-B SDP2 (Rev. 6/14)

CDCR Form 128-B SDP3 (Rev. 6/14)

CDCR Form 128-B SDP4 (Rev. 6/14)

* NCR Proposed Text at CDCR Form 128-B SDP1 (Rev. 11/13)

CDCR Form 128-B SDP2 (Rev. 11/13)

CDCR Form 128-B SDP3 (Rev. 11/13)

CDCR Form 128-B SDP4 (Rev. 11/13)

*Pilot Program at section entitled "PLACEMENT OF OFFENDERS IN THE STG PILOT PROGRAM"

* NCR Specific Purpose at §3378.3

THINKING FOR A CHANGE:

* CDCR STG Strategy March 2012 at pp. 26 & 32

NOTE: This is a cognitive behavioral therapy program that CDCR stands behind (along with other programs) The court in Erickson v. Magnuson, 2013 U.S. Dist. LEXIS 82347 *17-18 (D.Maine 2013) noted:

> " Thinking For A Change is a cognitive behavioral modification program for offenders developed by and through the National Corrections Institute of the United States Department of Justice; a description of the program is available at the Institute's website, http://nicic.gov/T4C.... It is based upon psychological principles of cognitive behavioral modification."

*CDCR cites numerous CBT programs that are apart of the SDP including:

- The Change Companies
- Interactive Journaling®

In fact these programs are the actual programs being forced on SDP inmates as the so-called Journals are trademarked with these names.

Finally in the STG Notice of Change to Regulations CDCR lists a number of behavior modification programs and Reports, Studies, and Articles relied upon and the works are all based on cognitive behavioral therapy. See e.g. * Vohryzek-Bolden, Miki, Recommendations to the [CDCR] to Address Violence in Male Prisons, California State Univ., Sacramento, Division of Criminal Justice, June 2011 at Table No. 1 (Recommending CDCR incorporate CBT into the Pilot Program (which they of course did), see also p.3 of this document.