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When we wrote this Informational Material we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. However, the laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

SECURITY THREAT GROUP (GANG) VALIDATION, PLACEMENT AND DEBRIEFING revised December 2012

You have written to us with questions or concerns about the gang validation and/or the debriefing process. This letter explains how the California Department of Corrections and Rehabilitation (the CDCR) may “validate,” or officially label, a prisoner as a prison gang member or associate and how a prisoner may try to have that label removed.

The CDCR has new rules for deciding who is a gang member or associate, and whether those prisoners are placed in a Security Housing Unit (SHU). The new rules also establish a new way for gang members or associates in SHU to possibly be released to the general population, called the Step Down Program (SDP). Finally, the new rules provide for a special one-time review of validated gang members or associates currently in SHU; the review will determine whether the prisoner is released from or stays in SHU.

The new rules are set forth in an October 2012 CDCR Memorandum entitled “Pilot Program for Security Threat Group Identification, Prevention and Management Plan.” The CDCR has stated that the pilot program Memorandum will be available in all of the prison law libraries. The pilot program replaces all other rules regarding gangs even though the Director’s Rules (Title 15 of the California Code of Regulations or 15 CCR) have not yet been changed. The new rules are being phased in between October 2012 and summer 2013 and will be in effect at all CDCR prisons. The pilot program will last for two years while the CDCR evaluates whether it is effective.

This letter contains a general summary of the pilot program. A Table of Contents is included on the next page.

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What are the Main Changes Under the Pilot Program?

According to the CDCR, the pilot program is a management strategy for gang “affiliates” that is similar to what is done in other states.¹ Some prisoners may be favorably affected by the changes and some prisoners may be affected unfavorably. Here is a list of the main changes under the pilot program:

- The validation and housing rules now refer to broader category of “security threat group” (STG), which includes prison gangs, disruptive groups and/or street gangs;
- When validating prisoners as STG affiliates, the CDCR will continue to take into account similar types of “source items” as under prior gang validation rules. However, there is a new “point” system by which different source items carry different weights. There must be three source items adding up to at least 10 points to validate a prisoner as an STG affiliate, replacing the old rule that just required three source items. To be current, evidence of STG behavior must have occurred within the previous four years.
- There are now multiple categories of STG affiliation. Prisoners in higher categories must be placed in a Security Housing Unit (SHU) but prisoners in lower categories will be placed in a SHU only if they remain involved in STG behavior or commit certain types of rule violations.
- STG-related behavior or possession of STG contraband are now listed as administrative rule violations. STG-related directing, controlling, disruptive or violent behavior is a serious rule violation. STG behavior is that which promotes, furthers or assists a STG. There is a matrix setting forth the consequences of STG-related rule violations on housing and program status for validated STG affiliates or former STG affiliates.
- The former six-year inactive gang review process is replaced by a four-year “Step Down Program” (SDP) in which validated STG affiliates can progress through a series of increased privileges and programming opportunities to return to the general population.
- There is also a two-phase “debriefing” process that prisoners can go through to drop out of an STG and return to the general population.
- Prisoners who were validated as gang members prior to the pilot program will be reviewed by the Departmental Review Board (DRB) to determine whether they will be placed in the SDP or released from SHU.

¹ The term “affiliates” includes people who are either “members” or “associates” of gangs/security threat groups.

What Will Happen to Prisoners who Were Validated as Gang Affiliates Before the Pilot Program Took Effect?

Validated prisoners who were already serving indeterminate SHU terms prior to the enactment of the pilot program will not be re-validated under the new process and criteria. Instead, each of those prisoners will be reviewed by the Departmental Review Board (DRB) to determine if the prisoner will remain in or be released from the SHU. The review will be based on the prisoner's behavior over the most recent four-year period. If the DRB keeps the prisoner in the SHU, the prisoner will go into the Step Down Program (SDP).²

According to CDCR Headquarters staff, the DRB reviews will be conducted at each prison and prisoners can attend their review hearings. The reviews have already started, but it is not known how long it will take to complete review of the approximately 3,000 prisoners who were validated as gang affiliates prior to October 2012. Although there are no rules regarding when current SHU prisoners will be reviewed, it appears that the CDCR is starting with the associates who have been in the SHU the longest.

Prisoners who are released from SHU as a result of the case-by-case DRB reviews (or who were released from a SHU under the old rules for inactive gang members) can be placed in the SDP for confirmed STG behavior, for getting one serious STG-related rule violation, or for getting two STG-related administrative rule violations within a 12 month period. Prisoners can also be sent to the SDP based on newly-received information from other law enforcement agencies or from outside CDCR's jurisdiction; the STG behavior must have occurred within the last four years and the source information must total at least 10 additional validation score points.³

What are the Criteria for Validating Prisoners as STG Affiliates Under the Pilot Program?

Under the pilot program, inmates will be validated using new STG categories and a new source information point system.

The pilot program defines two levels of STGs. STG-Is are recognized prison gangs and other groups that pose the most severe threat to safety and security based on a history of violence and/or influence over others. STG-IIs are other groups like street gangs, who are subservient to the more dominant STG-I groups. There is a process for the CDCR to officially "certify" a group as an STG-I, but groups identified as STG-IIs do not need to be "certified."⁴

² *Pilot Program Memorandum, Placement of Offenders in the Security Threat Group Pilot Program*, p. 3.

³ *Pilot Program Memorandum*, § 600.2(e) (placement in SDP for new misbehavior) and § 600.3 (use of new information from outside CDCR).

⁴ *Pilot Program Memorandum*, §§ 200-200.4.

A prisoner can be validated as a member or an associate of either an STG-I or STG-II. A member is prisoner who has been accepted into membership of the STG. An associate is a prisoner who is involved periodically or regularly with the members or associates of an STG.⁵

Validation as either a member or an associate requires at least three independent source items with a combined weighted value of 10 points or greater, coupled with “information/activity indicative of” membership or association.⁶ At least one of the source items must be a direct link to a current or former validated STG member or associate, or to a person who was validated within six months of the activity described in the source item. Source items must contain factual information or, if from a confidential source, must be deemed to be reliable.⁷

The types of validation source items that can be considered are the same as those used by the CDCR in the past. However, the different categories of source items now have point values assigned so that some items are weighted more heavily than others. The points assigned to the various categories are as follows:

- Two points: symbols (e.g., hand signs, graffiti, distinctive closing), written materials that are not in the personal possession of the prisoner (e.g., membership or enemy lists, constitutions, codes, training material)
- Three points: association with validated STG affiliates, informant information, debriefing reports
- Four points: written materials that are in the personal possession of the prisoner, photos that are no more than four years old, CDCR staff observations, information from other agencies, visitors known to promote or assist STG activities, communications (e.g., phone conversations, mail, notes).
- Five points: self admissions
- Six points: crimes committed for benefit, at direction or in association with an STG, tattoos or body markings,

⁵ *Pilot Program Memorandum*, § 400.

⁶ *Pilot Program Memorandum*, § 400.

⁷ A confidential item must meet one of the criteria set forth in 15 CCR § 3321(c): information previously supplied by the informant has proven to be true; other confidential sources have independently provided the same information; the information incriminates the source; the information is “sufficiently corroborated” through investigation or information from non-confidential sources; or the confidential source is the victim of a related rule violation. Federal courts have also required that the notice of confidential information include a prison official’s affirmative statement that safety considerations prevent the disclosure of the informant’s name. (*Zimmerlee v. Keeney* (9th Cir. 1987) 831 F.2d 183, 186.)

- Seven points: official legal documents showing STG conduct.⁸

What is the Process for Validating Prisoners as STG Affiliates Under the Pilot Program?

The process for validation under the pilot program is quite similar to the CDCR's previous validation process, although the titles of some of the staff and the names of the forms have been changed.⁹

When prison staff has gathered evidence that a prisoner may be involved in STG activities, STG investigative staff will review the evidence. If the STG Lieutenant determines that further action should be taken, an investigator will be assigned to prepare a validation package. The documents in the validation package must list each source item and explain how the item shows STG activity or behavior. If there is any confidential information, the package must include disclosure forms describing the general nature of the information and why it is deemed to be reliable.

The STG investigator will provide a copy of the validation package to the prisoner, and must give the prisoner a minimum of 72 hours to prepare a written response to the information. The investigator will then interview the prisoner in order to review the prisoners written response and give the prisoner a meaningful opportunity to be heard. A staff assistant should be provided if the prisoner is mentally ill or is disabled and needs help with the documents or hearing. After the hearing, investigative staff will write a written summary of the interview and the prisoner's position on each source item, and will provide a copy of the summary to the prisoner.

After the interview, the whole validation package will be submitted to the CDCR Office of Correctional Safety (OCS) for review. The OCS staff will decide which source items can be relied upon and which must be rejected. The OCS will make a recommendation as to the appropriate STG designation. The OCS's actions will be documented on a CDCR Form 128-B2.

The case will then go to the STG Unit Classification Committee for review. The prisoner has a right to attend the committee hearing. If the committee disagrees with the OCS recommendation, it can discuss the issues with the OCS and advocate for a change in the OCS recommendation. Otherwise, the committee will approve the recommended validation and establish the validation status. The decision will be documented on CDCR Form 128-B2 and CDCR Form 128-G1.

A validation will be reflected on a prisoner's classification score sheet with the Administrative Determinant code STG (formerly, the code was GAN).

⁸ *Pilot Program Memorandum*, § 400.1.

⁹ The validation process and which staff are responsible for various steps in the process are described in the *Pilot Program Memorandum*, § 400.2.

Where Are Validated STG Affiliates Housed?

After a validation is made, the Institution Classification Committee (ICC) will determine the appropriate housing for the prisoner.

Under the pilot program, some STG affiliates must be placed in the Step Down Program (SDP) which generally requires placement in a SHU (Security Housing Unit). However, some STG affiliates can remain in the general population. Where the validated prisoner is housed will depend on the level of STG involvement and/or the prisoners' behavior:

- An STG-I member will be placed into the SDP.
- An STG-I associate will be placed into the SDP if any of the validation source items involve serious rule violations for STG behavior that are SHU-able offenses. Otherwise, an STG-I associate shall be placed in the general population or other appropriate housing.
- An STG-II member or associate will be placed into the SDP if at least two of the validation source items involve serious rule violations for STG behavior that are SHU-able offenses. Otherwise, an STG-II member or associate shall be housed in the general population or other appropriate housing.¹⁰

If a validated prisoner has committed or commits a rule offense that qualifies for a SHU term (see 15 CCR 3341.5(c)), the ICC can impose the SHU term. The prisoner will serve the SHU term in regular SHU housing, not in the Step Down Program (SDP). The ICC can also opt to suspend a SHU term and place the validated prisoner directly in the SDP.¹¹

A validated prisoner who is not initially placed in the SDP can later be sent to the SDP for new misbehavior. An STG-I associate will be sent to the SDP if found guilty of one serious STG-related rule violation or two administrative STG-related rule violations within a 12 month period. An STG-II member or associate will be sent to the SDP if found guilty of two STG-related rule violations which are SHU-able offenses per 15 CCR § 3341.5(c)(9).¹² Prisoners can also be moved to higher validation levels based on newly-received information from other law enforcement agencies or from outside CDCR's jurisdiction; the STG behavior must have occurred within the last four years and the source information must total at least 10 additional validation score points.¹³

¹⁰ *Pilot Program Memorandum*, § 200.2. A list of STG-related rule violations is set forth in § 600.1, and § 1200 sets forth planned changes to 15CCR §§ 3314, 3315 and 3323 adding specific language describing STG-related rule violations.

¹¹ *Pilot Program Memorandum*, § 600.2 & § 700.1(a).

¹² *Pilot Program Memorandum*, §§ 600-600.2(a) & (b).

¹³ *Pilot Program Memorandum*, §§ 600.3.

What is the Step Down Program (SDP)?

The SDP is an incentive-based multi-step program to assign, transition and monitor validated STG members and associates who pose a threat to the safety of staff, inmates and the public.¹⁴ A prisoner in the SDP must complete four steps to return to non-segregated housing. To participate, a prisoner must sign a contract outlining the goals and expectations of the program and the consequences of failing to participate. A prisoner does not need to acknowledge or admit to being an STG affiliate. A prisoner who does not participate in the SDP will remain in SHU even if he or she has no STG-related behavior.

The SDP starts with Step 1, followed by Step 2. Prisoners in Steps 1 and 2 will usually be housed in the PBSP SHU (CIW SHU for female prisoners), although they may be at any SHU facility.¹⁵ Prisoners in Steps 1 and 2 have only in-cell programming and all movement is in restraints. Steps 1 and 2 are designed to be completed in 12 months each. However, the ICC will review the prisoner's progress every 180 days. At the review, the ICC can "accelerate" completion of Step 1 or 2 and let the prisoner move on to the next step if he or she has completed program requirements, been free of STG behavior and demonstrated a sincere desire to participate.

SDP prisoners who complete Steps 1 and 2 can go to Step 3, followed by Step 4. Prisoners in these steps will generally be housed in the SHU facilities at CCI, CSP-Corcoran, CSP-Sacramento (CIW for female prisoners), although they may be at any SHU facility. Steps 3 and 4 include educational programs and programs like anger management, parenting, substance abuse, and violence prevention. Prisoners must complete "self-directed journals" to help develop a system of values and strategies that lead to responsible thinking and behavior. They may have voluntary work assignments. In Step 3, programs are either in-cell or in individual treatment modules and movement is in restraints. In Step 4, programming may be in small groups, there may be some unrestrained movement, and yard time will be with a cell-mate for six months and then on an integrated yard. Prisoners in Step 3 are reviewed by the ICC every 180 days and prisoners in Step 4 are reviewed every 90 days. Prisoners must stay in Step 3 for a minimum of 12 months and in Step 4 for a minimum of 12 months.

The CDCR pilot program memorandum describes the privileges available to prisoners at various levels of the SDP. Prisoners get more privileges as they work their way through the steps.

¹⁴ The SDP is described in §§ 700 through 800.1 of the *Pilot Program Memorandum*. The program components are described in § 700 and § 700.2, privileges available to SDP prisoners at various levels are set forth in § 700.3. Housing, movement and classification review rules are in § 700.4.

¹⁵ Prisoners who are validated STG affiliates and who have serious mental illnesses may be participate in the SDP while housed in a Psychiatric Services Unit (PSU). A PSU provides housing and care for prisoners who require SHU level of security and who have mental health disorders requiring EOP (Enhanced Out-Patient) level of care.

Prisoners who are in SDP Steps 1 through 4 will have to stay in the SDP longer if they commit STG-related misbehavior. The CDCR calls this “regressing.” The pilot program memorandum has a rule matrix setting the range of consequences for various types of STG-related misbehavior. For example, prisoners can be sent back a few months or to the start of their current step, sent back to the previous step, or sent all the way back to the start of Step 1.¹⁶

Upon completion of Step 4, a validated prisoner will go to Step 5 of the SDP.¹⁷ In Step 5, the prisoner will be observed by staff for a minimum of 12 months while programming in a Level 4 general population facility (regardless of placement score). A male Step 5 prisoner will be housed in a 180 design facility unless the ICC refers the prisoner to the DRB and the DRB approves lower level housing. A Step 5 inmate will be assigned to Close B Custody unless special case factors require Close A Custody. Step 5 involves general population programming and privileges, but with greater scrutiny of cell contents, mail, and phone calls, and periodic STG investigator interviews. When a prisoner goes to Step 5, the Administrative Determinant on the prisoner’s Classification Score Sheet will change to MON, for “monitored status.”

If a prisoner programs successfully in Step 5 for 12 months, with no STG involvement, he or she will then be considered for transfer to a general population facility consistent with his or her placement score and other program needs.

A prisoner who is in or who has graduated from Step 5 can be sent back to higher levels of the SDP for (1) one serious STG-related rule violation, (2) two administrative STG-related rule violations within a 12-month period, or (3) if confirmed intelligence identifies the prisoner as participating in on-going STG behavior. In such circumstances, the prisoner normally will be sent back to Step 1 and have to serve at least two years before progressing to a lower level.¹⁸

Can Prisoners in the SDP Earn Sentence-Reducing Conduct Credits?

Prisoners in Steps 1 through 4 of the Step Down Program (SDP) who are validated as STG-I members or associates do not earn any sentencing-reducing conduct credits.¹⁹ Prior to January 25, 2010, prisoners who were housed in SHUs as validated gang members could earn some conduct credits. There is a legal argument that taking away credit-earning eligibility from prisoners who previously could earn credits violates the U.S. Constitution’s prohibition on ex

¹⁶ *Pilot Program Memorandum*, § 600.1, § 600.5 & § 700.1.

¹⁷ The process for moving from Step 4 to Step 5 is described in the *Pilot Program Memorandum*, § 700.5. Completion of Step 5 is covered in §§ 800-800.1.

¹⁸ *Pilot Program Memorandum*, § 800.2; see also § 600.2(d) and § 600.5.

¹⁹ *Pilot Program Memorandum*, § 1200 (amending 15 CCR § 3043.4(b) and 3044(b)(7)).

post facto laws. However, both the state and federal courts have rejected such an argument in regards to the recent changes to credits for validated gang members.²⁰

The pilot program memorandum does not address whether prisoners who are in Steps 1 through 4 as validated STG-II members or associates can earn any conduct credits; unless the CDCR makes clear otherwise, it appears those prisoners may be eligible for day for day credit (“half-time”) under 15 CCR 3044(b)(6).

It appears that prisoners in Step 5 of the SDP earn the same conduct credits as they would earn if they were regular general population prisoners.

Can Validated STG Affiliates Debrief?

The new pilot program allows prisoners to “debrief” as a way to drop out of an STG and gain release to the general population.²¹ The CDCR’s primary goal is to debrief validated STG-I affiliates. Prisoners who are validated as STG-II affiliates can debrief while they are in the SDP, although they may also be allowed to debrief if they are housed elsewhere such as in general population or a regular SHU. The procedures for debriefing are somewhat similar to those under the CDCR’s previous rules in 15 CCR §§ 3378.1 through 3378.3. One important difference is that there is no longer a requirement that a debriefing prisoner serve an observation period prior to being placed in the Transitional Housing Unit (THU) program.

Debriefing is a two-step process, consisting of an interview/investigation phase and an observation phase. A prisoner must request or agree to participate in the debriefing process and may end his participation in the process at any time.

In Phase 1, the prisoner must write an autobiography of his STG involvement and be interviewed by investigative staff one or more times. The purpose of the interviews are to provide staff with information about the STG’s structure, activities and affiliates; they are not for the purpose of acquiring incriminating evidence against the debriefing prisoner. Investigative staff will prepare a debriefing report, which must be approved by staff at the CDCR’s Office of Correctional Safety (OCS). A copy of the debriefing report will be placed in the confidential portion of the prisoner’s c-file. Debriefing reports can be used as confidential information to validate other prisoners or to bring rule violation charges against them.

Phase 2 requires the prisoner to complete an observation phase of up to six months in the Transitional Housing Unit (THU) program. Under CDCR’s existing regulations (15 CCR § 3378.3(b)), prisoners in a THU are placed in Work/Privilege Group A-1A and have credit-

²⁰ *In re Sampson* (2011) 197 Cal.App.4th 1234; *In re Efstathiou* (2011) 200 Cal.App.4th 725; *Soto v. Lewis* (N.D. Cal. 2012) No. C11-4704 CRB; *Nevarez v. Lewis* (N.D. Cal. 2012) No. C12-1912 SI; *Gregory v. Lewis* (N.D. Cal. 2012) No. C12-0967 EMC.

²¹ The process for debriefing is set forth in the *Pilot Program Memorandum*, § 900-900.5.

earning eligibility and privileges similar to general population inmates; the pilot program does not appear to change this rule. Upon completion of Phase 2, the prisoner will be referred to the ICC for transfer to appropriate housing.

A prisoner who has debriefed and been released from the THU is on “dropout” status. A prisoner on dropout status may be removed from the general population and sent to the SDP if found guilty of new misbehavior consisting of either one serious STG-related rule violation or two STG-related administrative rule violations within a 12-month period.²²

Debriefing can pose many pitfalls. For prisoners who have been wrongly accused of gang membership, the debriefing process may prove difficult; a prisoner will be unable to provide sufficient information to the IGI if he never knew anything about the gang in the first place. Also, prisoners may be reluctant to provide information regarding gang members given the prisoner code of conduct that discourages cooperation with prison officials and the risk of retaliation by other prisoners. Even when a prisoner agrees to participate in the debriefing process, it may take months to obtain an interview. Finally, there have been cases of prisoners who have successfully debriefed only to find themselves back in segregation shortly thereafter based on a new gang affiliation charge. Thus, prisoners who are contemplating debriefing should carefully consider the possible advantages and disadvantages.

What Legal Rights Do Prisoners Have Regarding STG Validation and SDP Placement?

This section discusses the general legal rights that prisoners have in regards to gang validation and segregation. The next section summarizes the legal tools that prisoners have for challenging STG validations and placement in segregated housing.

The pilot program allows the CDCR a lot of discretion in validating prisoners as STG affiliates and placing them in segregated housing. However, prisoners do have some legal protections.

First, prisoners have state law protections against unfair validation or segregation. The due process clause of the California Constitution (Art. I, § 7) forbids taking away liberty without due process of law. Prisoners also have a right to have the CDCR follow its own rules and procedures.²³ Courts will defer to the CDCR’s interpretation and application of its own regulations, so long as it is not unreasonable.²⁴ Nonetheless, the courts do sometimes overturn

²² *Pilot Program Memorandum*, § 600.2(c).

²³ See e.g., *In re Scott* (2003) 113 Cal.App.4th 38, 44; *In re Carter* (1988) 199 Cal.App.3d 271, 276-277; *In re Lusero* (1992) 4 Cal.App.4th 572, 575.

²⁴ *In re Cabrera* (2012) 55 Cal.4th 683 [upholding CDCR policy that “association” does not have to be “reciprocal” to satisfy the “direct link” requirement, such that prisoner’s possession of copies of drawings made by gang affiliates established a “direct link”]; see also *In re Furnace* (2012) 185 Cal.App.4th 649.

gang validations. In a recent case, a court held that a jailhouse lawyer's possession of a validated gang associate's chronos for use in preparing legal documents could not serve as validation source item, since CDCR rules say that prisoners can possess other prisoners' documents to assist them with legal work. Because none of the other source items in the validation package provided a direct link to gang members, the court vacated the validation and ordered the CDCR to release the prisoner from segregation.²⁵

Whether prisoners have federal due process rights related to gang validation and/or gang-based segregation is a more complicated question. The U.S. constitution does not itself give prisoners a due process right to avoid validation or placement in segregation. However, states can create federally-protected due process rights if (1) the state rules about gang validation/segregation contain specific mandatory standards for validation/segregation and (2) the gang validation or segregation imposes an "atypical and significant hardship" "in relation to the ordinary incidents of prison life."²⁶ In a case from Ohio, the U.S. Supreme Court found that a program for placing validated prisoners in indeterminate super-max confinement did create a due process liberty interest.²⁷ Courts also have held that CDCR's prior gang validation regulations created a due process liberty interest in not being placed in indeterminate SHU based on an unsupported validation.²⁸ The CDCR's STG pilot program is different from prior policies because it does not require segregation of all validated gang affiliates and provides faster and more certain means of release back to the general population. Since the pilot program has not yet been examined by the courts, it has not been determined whether it creates due process liberty interests enforceable in federal court.

To assure substantive due process, prison officials must have "some evidence" with "some indicia of reliability" to support a validation. The "some evidence" standard is met if there is any evidence in the record that could support the validation.²⁹ The "indicia of reliability" means that "an inmate may not be confined to the SHU for gang affiliation unless the record contains some factual information from which [the prison officials] can reasonably conclude that the information was reliable."³⁰

²⁵ *In re Villa* (2012) 209 Cal.App.4th 838 [a de-publication request and consideration for review are pending as of 12/17/2012].

²⁶ *Sandin v. Conner* (1995) 515 U.S. 472, 483-484.

²⁷ *Wilkinson v. Austin* (2005) 545 U.S. 209.

²⁸ U.S. Const., Amends. V and XIV; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146, 1261, 1271; *Toussaint v. McCarthy* (9th Cir. 1986) 801 F.2d 1080, 1097-1098; *Toussaint v. Yockey* (9th Cir. 1984) 722 F.2d 1490, 1494 fn.6 (note that these cases pre-date the establishment of the standard set forth in *Sandin*); see also *Bruce v. Ylst* (9th Cir. 2003) 351 F.3d 1283, 1287-1288.

²⁹ *Madrid*, 889 F.Supp. at p. 1273; *Bruce*, 351 F.3d at pp. 1287-1288; see also *Superintendent, Massachusetts Correctional Institution v. Hill* (1985) 472 U.S. 445, 455, 105 S. Ct. 2768; *Cato v. Rushen* (9th Cir. 1987) 824 F.2d 703, 705.

³⁰ *Madrid*, 889 F.Supp. at p. 1274; see also *Cato*, 824 F.2d at p. 705.

Due process also involves procedural protections. The federal courts have held that gang validation and segregation advances legitimate prison administrative purposes and is not punishment, so prisoners who are being validated as gang members are not entitled to the same procedural protections as prisoners who are facing serious rule violation charges.³¹ In deciding whether a prison's procedures are adequate, courts must weigh various factors: prisoners' interest in being free from long-term segregation on the basis of gang validation, the risk that prison officials will erroneously validate a prisoner and place him in segregation, the probable value of additional or different procedural safeguards, and the monetary and administrative burdens that additional or different procedural requirements would cause.³² Under these principles, prisoners who are facing gang validation and segregation as gang affiliates have been entitled to advance notice of the allegations and an opportunity to present their views to prison officials involved in the validation decision, as well as a limited right to staff assistance.³³ Opportunity for multiple levels of review is also a form of due process protection.³⁴

How Can Prisoners Challenge an STG Validation or SDP Placement Decision?

Challenges to STG validations should focus on any failure of the CDCR to follow its own procedures, failure to provide notice and a hearing prior to a validation or greater level of segregation, or lack of sufficient reliable evidence to support the validation or SDP placement decision. Prisoners should consider exactly what evidence of STG association is being used and whether that evidence can be challenged as unreliable or insufficient.

A prisoner's first opportunity to attack the STG allegations is during the initial validation process and at subsequent reviews by prison officials. The prisoner should always make an effort to explain any reasons why the allegations are not supported and to present any evidence undermining the allegations.

A prisoner should also file an administrative appeal (CDCR Form 602) when the initial validation is made and every time the validation and SDP placement are re-affirmed. A prisoner must file his or her appeal of an STG validation within 30 calendar days of receipt of the CDCR Form 128-B2 documenting the STG Unit Classification Committee's final validation decision.³⁵ The prisoner should pursue the 602 appeal all the way through third level of review. Even if the prisoner believes that the 602 appeal will be denied, it is necessary to complete the administrative appeal process before filing any court action challenging the STG validation.

³¹ *Madrid*, 889 F.Supp. at pp. 1274-1275; *Bruce*, 351 F.3d at p. 1287.

³² *Wilkinson v. Austin* (2005) 545 U.S. 209.

³³ *Madrid*, 889 F.Supp. at pp. 1272, 1274-1275; *Castro v. Terhune* (9th Cir. 2002) 29 Fed.Appx. 465; *Toussaint*, 801 F.2d 1080; see also *Wilkinson*, 545 U.S. at pp. 225-226.

³⁴ *Wilkinson*, 545 U.S. at pp. 226-227.

³⁵ *Pilot Program Memorandum*, § 400.3.

This is because prisoners are usually barred from bringing court actions until they have “exhausted administrative remedies.”

After the 602 appeal is denied at the third level, a prisoner may bring a court action. One option is a state court petition for writ of habeas corpus. Another option is a federal civil rights (“section 1983”) lawsuit. When deciding what type of action to file, the prisoner should take into consideration whether the issues being raised are matters of state or federal law or both. Further discussion of the pros and cons of the two types of court actions, as well as their procedural and substantive requirements, are beyond the scope of this letter. The Prison Law Office has manuals with more information on filing administrative appeals, state petitions for writ of habeas corpus and federal civil rights suits. These manuals are available free of charge on request.