

**Human Rights and Solitary Confinement in the Americas:**  
Thematic Hearing Before the Inter-American Commission on Human Rights  
March 12, 2013

**Written Testimony of the Center for Constitutional Rights**

Honorable Commission Members:

The Center for Constitutional Rights (CCR) would like to thank the Inter-American Commission on Human Rights (hereinafter IACHR or “Commission”) for holding this important thematic hearing on human rights and solitary confinement in the Americas.

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

CCR has a long history of challenging the use of isolation in U.S. prisons, and firmly believes that all people are entitled to dignity, safety, and humane treatment, irrespective of whether and where they are incarcerated.

The use of solitary confinement across the U.S. is an assault on these basic human rights principles, and has drawn widespread criticism both domestically and internationally. In *Wilkinson v. Austin*, 545 U.S. 209 (2005), the U.S. Supreme Court unanimously agreed with CCR and the ACLU that the Due Process Clause of the Fourteenth Amendment gave rise to a liberty interest in avoiding solitary confinement in Ohio’s Supermax prison. In May 2012, CCR raised a constitutional challenge to prolonged solitary confinement in a federal class action complaint on behalf of prisoners at California’s notorious Pelican Bay SHU facility, where prisoners are confined to windowless cells for between 22½ and 24 hours a day, without access to natural light, telephone calls, contact visits, and vocational, recreational, or educational programming.<sup>1</sup> At Pelican Bay, hundreds of prisoners have been held in solitary confinement for over 10 years; 78 prisoners have languished under these conditions *for over 20 years*.

In this Testimony, we will address some of the human rights and U.S. Constitutional implications of solitary confinement, and this kind of prolonged solitary confinement in particular. We sincerely hope that this hearing will result in the fundamental reassessment of the widespread use of solitary confinement in the U.S., and serve as a catalyst to end the brutalizing use of isolation for unconscionable periods of time in U.S. prisons, jails, and detention centers.

#### **A. Solitary Confinement Is Psychologically and Physically Destructive.**

In the early nineteenth century, the U.S. began imprisoning people in solitary cells, without access to any human contact or stimulation, as an experiment in rehabilitation. The results were disastrous: prisoners quickly and predictably became severely mentally disturbed. Describing the devastating effects of solitary confinement in 1890, Justice Miller of the Supreme Court observed that prisoners housed in isolation “fell, after even a short confinement, into a

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<sup>1</sup> Second Amended Complaint, *Ashker et al. v. Brown et al.*, 09-cv-5796 (N.D. Cal.) (Wilken, J.).

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.”<sup>2</sup> In light of these devastating effects, the use of solitary confinement was all but abandoned in the U.S.

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

The devastating psychological and physical effects of these harsh conditions have been well-documented by psychological experts. Their conclusions are inescapable: the use of solitary confinement results in severe psychological and physical harm. Researchers have demonstrated that common psychological effects of prolonged solitary confinement include a persistent and heightened state of anxiety, and paranoid and persecutory fears. This mindset commonly persists long after prisoners are released from solitary confinement. Other common symptoms experienced by prisoners in prolonged solitary confinement include severe headaches, ruminations and irrational anger, violent fantasies, oversensitivity to stimuli, extreme lethargy, and insomnia. Scientists have also shown that prisoners in prolonged solitary confinement find their ability to concentrate significantly impaired, and experience an extreme state of confusion. A significant proportion of prisoners in prolonged solitary confinement describe hearing voices, and experience hallucinations, perceptual distortions, and frequent bouts of dizziness. Prisoners in prolonged solitary confinement also often suffer from a decreased ability to control their impulses, leading to self-mutilation and violence towards others. Many in prolonged solitary confinement experience severe panic attacks and a sense of an impending nervous breakdown. Even those who withstand the ordeal without succumbing to mental illness or suicide develop a profound sense of emotional and mental “numbness” from years of isolation.

Psychological experts have concluded that the psychological and physical effects of solitary confinement coalesce into a far-ranging and discrete illness in its own right. Prisoners in prolonged isolation are often so debilitated by the experience that they may become unable to

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<sup>2</sup> *In re: Medley*, 134 U.S. 160, 168 (1890).

live under any other circumstances; the psychological changes they experience may be permanent. Because almost every aspect of these prisoners' day-to-day existence is so circumscribed, they lose the ability to set limits for themselves or control their behavior through internal mechanisms. Prisoners in these conditions sometimes "act out" in a desperate attempt to prove to themselves that they are still alive and capable of eliciting a genuine response from other human beings.

Psychological experts also report that the symptoms they have commonly found in prisoners in prolonged solitary confinement may in fact be worse than they suspect. The extent of these prisoners' psychological dysfunction may not be fully quantifiable until after they return to more normal social settings. This is because these prisoners are minimally functional under conditions of solitary confinement, and so never receive careful and routine psychiatric assessments. And where prisoners have been kept in solitary confinement for years at a time, their symptoms are almost identical to those described in psychological literature about the long-term effects of severe trauma and torture.

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

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

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

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As a result of the severe psychological distress, desperation, and hopelessness that they experience from languishing in the SHU for decades, hundreds of Pelican Bay prisoners engaged in two sustained hunger strikes in 2011, and recently announced plans to strike to the death on July 8, 2013 should the California Department of Rehabilitation and Correction (which operates the SHUs) not take meaningful steps to meet the prisoners' unanswered demands.<sup>3</sup> Almost every participant with whom we have spoken reported viewing the possibility of death by starvation as a worthwhile risk in light of their current situation. It is well known that the incidence of suicides, attempted suicides and the development of mental illness is much higher amongst prisoners in solitary confinement than those held in the general population.

Placing prisoners in these devastating conditions for years at a time – whether at Pelican Bay, one of the innumerable SHU or Supermax facilities across the country, or in Guantánamo Bay—exposes those prisoners to a significant risk of descending into irreversible mental illness. As CCR contends in *Ashker v. Brown*, the Eighth Amendment to the U.S. Constitution, which forbids the imposition of cruel and unusual punishment, cannot tolerate such a risk. Solitary confinement strips human beings of their basic dignity and humanity, and simply violates contemporary standards of human decency.

But in addition to offending our U.S. Constitutional commitments, it offends our dignity as a society to allow tens of thousands of human beings to languish under such severe conditions, slowly losing their grip on sanity and ability to function. Many prisoners who have been held in solitary confinement will ultimately be released into the community. If these prisoners have been broken down to a point of inability to function, we cannot have any hope that they will be successful in their efforts to reintegrate into society, or that the mistreatment to which they have been subjected will ultimately serve the interests of public safety.

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<sup>3</sup> Prisoner Hunger Strike Solidarity, *Prisoners reject CDCR proposal; threaten new hunger strike*, Posted December 17, 2012, available <http://prisonerhungerstrikesolidarity.wordpress.com/2012/12/17/prisoners-reject-cdcr-proposal-threaten-new-hunger-strike/>

**B. Solitary Confinement Is Disproportionately Used Against Prisoners of Color, and Other Vulnerable Incarcerated Populations.**

A common misperception is that solitary confinement is reserved for the “worst of the worst” – that is, for violent “super-predators” who cannot function in the normal prison environment. CCR firmly believes that no human being should be placed in cruel and inhumane prolonged solitary confinement, irrespective of the circumstances. In reality, however, just as we now know that the prisoners placed in Guantanamo Bay were often not the “worst of the worst” or even terrorists at all, many prisoners warehoused in solitary confinement for many years within the United States have not committed any violent misbehavior in prison. Instead, race, political affiliation, religion, association, vulnerability to sexual abuse, and challenging violations of one’s rights all too frequently play a role in which prisoners are sent to solitary confinement.

There are, for example, significant racial disparities in who is sent to solitary confinement. Confinement in isolation units – and therefore the resultant psychological and physical harms that ensue – is disproportionately visited upon African American and Latino prisoners. For example, 85% of the prisoners at the Pelican Bay SHU are Latino. While it is justified by corrections officials as necessary to protect prisoners and guards from violent prisoners, all too often solitary confinement is imposed on individuals, particularly prisoners of color, who threaten prison administrators in an altogether different way. Consistently, jailhouse lawyers and doctors, who administer to the needs of their fellow prisoners, are placed in solitary confinement. They are joined by political prisoners from various civil rights and independence movements. Several African American prisoners in Louisiana known as the “Angola 3” have been held in solitary confinement for over 30 years, and are unlikely to ever be released from solitary confinement, due in large part to their association with the Black Panther Party and their political beliefs. And as one California District Court recently observed in the context of prison officials actions against a Black Nationalist held in the SHU, prison officials “may have taken a race-based shortcut and assumed anything having to [do] with African-American culture could be banned under the guise of controlling the [Black Guerilla Family].”<sup>4</sup> Solitary confinement and other harsh measures also appear to be applied reflexively in the cases of Muslim defendants being prosecuted for terrorism, many of which rest on material support allegations that raise grave First Amendment concerns.

So too is gender identity, sexual identity, and vulnerability to sexual assault inappropriately used to confine prisoners in solitary confinement, ostensibly for prisoners’ own protection. Confining prisoners who are vulnerable to sexual assault (including prisoners who are lesbian, gay, bisexual, transgender, intersex, and/or gender non-conforming, and those who are perceived as such regardless of their identity) in prolonged solitary confinement is inappropriate and harmful. Prison officials must be able to ensure the safety of all prisoners

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<sup>4</sup> *Harrison v. Institutional Gang of Investigations*, 2010 U.S. Dist. LEXIS 14944 at \*21 (N.D. Cal. 2010).

without resorting to placing these prisoners in involuntary solitary confinement. Too often, prisoners with disabilities, young or old inmates, and other inmates targeted for violence are similarly warehoused in solitary confinement.

California is an example of a state that officially imposes prolonged solitary confinement based not on specific acts of violence, but merely on a prisoner's alleged *association* with a prison gang. While California purports to release "inactive" gang members after six years in the SHU, in reality their gang validation and retention decisions (and resulting indefinite SHU placement) are made without considering whether a prisoner has ever undertaken an illegal act on behalf of a gang, or whether they are – or ever were – actually involved in gang activity. CCR client George Ruiz, for example, has been held in the Pelican Bay SHU for over 22 years under conditions of extreme isolation 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. His only way out of isolation is to "debrief" to prison administrators (i.e. report on the gang activity of other prisoners). Thus, California prison officials condition release from inhumane conditions on cooperation with prison officials in a manner that places prisoners and their families in significant danger of retaliation, whether or not these prisoners – many of whom have been in solitary confinement for over 25 years – have gang-related information to report.

### C. Solitary Confinement and Special Administrative Measures ("SAMs").

Just as states such as California have used overly broad, exaggerated responses to the development of prison gangs or violence within prison to keep thousands of prisoners in inhumane prolonged solitary confinement, the Federal government routinely imposes extremely harsh forms of solitary confinement on persons suspected of or convicted of terrorist-related crimes. In addition to solitary confinement, for example, the U.S. Department of Justice (DOJ) imposes Special Administrative Measures (SAMS) on a number of prisoners in the federal system.<sup>5</sup> These restrictions, imposed at the discretion of the Attorney General, have been used even in cases where the prisoner has not been convicted of a violent crime, and represent a particularly harsh example of solitary confinement.

While the government has refused to make information publicly available about the nature of the measures themselves, the conditions of a CCR client, Fahad Hashmi, shed some light on the practice. Mr. Hashmi was subject to SAMs for four years while detained at the Metropolitan Correctional Center ("MCC") SHU in New York<sup>6</sup> and the Administrative

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<sup>5</sup> The DOJ has refused to make virtually any information publicly available about the use of SAMs, including who and how many are subject to the measures, where these individuals are being held, and what the measures entail. The only available official data is from 2009, when DOJ reported that there were 44 prisoners subject to SAMs in Bureau of Prisons ("BOP") facilities. See U.S. Dep't Justice, Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System, June 9, 2009, available at <http://www.justice.gov/opa/pr/2009/June/09-ag-564.html>.

<sup>6</sup> For more information on conditions at the MCC, see Amnesty International, *Open Letter to Eric Holder, Attorney*

Maximum (“ADX”) facility in Florence, Colorado, where he continues to be held. His SAMs were imposed in addition to solitary confinement, and included provisions expressly prohibiting communication of any kind with other prisoners; expressly prohibiting group prayer, a central tenet of his Islamic faith; restricting all family and social communication to three individuals – his mother, father and brother; severely restricting the frequency of his communication with even those few individuals, including limiting his written correspondence to one three-page letter per week; imposing additional restrictions on his access to reading material; and prohibiting him from all communication with members of the media.<sup>7</sup> The government first imposed Mr. Hashmi’s SAMs in 2007 citing his “proclivity for violence,” even though he had been detained for a year prior without incident and had never been alleged to have committed an act of violence before or after he was taken into custody.

SAMs, combined with solitary confinement, can be imposed pre-trial, when the debilitating physical and psychological effects of isolation have obvious implications for detainees’ ability to effectively assist in their defense. Mr. Hashmi was held under SAMs in the SHU at the MCC for nearly three years pre-trial. They are also shrouded in secrecy. Mr. Hashmi’s SAMs, for example, included provisions effectively barring his attorneys and family members from sharing any information received from him with third parties, under threat of criminal sanction. Separate from the implications for zealous advocacy and free speech, these gags, together with DOJ’s refusal to provide meaningful information, mean that the public knows very little about a critical aspect of the government’s treatment of prisoners in federal custody, and make this hearing all the more urgent.

#### **D. The Use of Solitary Confinement at Guantánamo**

The U.S. government has also embraced the use of solitary confinement at Guantánamo Bay. In the past, nearly 70% of the men imprisoned in Guantánamo were held in solitary confinement or isolation, with severely restricted access to natural light, air, or recreational opportunities.<sup>8</sup> Today, most prisoners at Guantánamo are held in Camp 6, which was modeled after federal super-maximum security prisons and where, for years, prisoners were held in solitary or other isolative conditions. Camp 6 has now been converted into the prison’s communal living facility. However, the government still employs the use of solitary confinement for prisoners held in Camp 5.<sup>9</sup>

The government has always maintained that Guantánamo prisoners are not subjected to solitary confinement. This, however, is likely a dispute over terminology; the government has

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*General: Special Housing Unit in the Metropolitan Correctional Center*, New York, Feb. 16, 2011, available at <http://www-secure.amnesty.org/en/library/asset/AMR51/029/2011/en/ca690d55-1476-4d97-8aa6-edf4aff26251/amr510292011en.html>.

<sup>7</sup> The SAMs described herein refer to Mr. Hashmi’s 2007 SAMs, which are available on the docket sheet for his prior criminal case, *USA v. Hashmi*, No. 06-cr-442 (LAP) (S.D.N.Y.), Dkt. No. 20, Ex. 1.

<sup>8</sup> William Glaberson, *Detainees’ Mental Health is Latest Legal Battle*, New York Times, April 26, 2008.

<sup>9</sup> U.S. Government Accountability Office, *Guantanamo Bay Detainees: Facilities and Factors for Consideration If Detainees Were Brought to the United States*,

conceded that prisoners have been held in what it euphemistically calls either “privacy” or “single-occupancy cells.”

The U.S. Department of Defense holds prisoners in Camp 5 for purposes of segregation and observation.<sup>10</sup> It also routinely rotates prisoners into the isolative conditions of Camp 5 for disciplinary reasons. As of December 2012, CCR client, Tariq Ba Odah (ISN 178), was being housed in Camp 5. The Department of Defense moved Mr. Ba Odah to Camp 5 in 2009 to isolate him from other prisoners because he has been on a 6-year, peaceful hunger-strike to protest his indefinite detention without charge. As a result, Mr. Ba Odah is strapped to a restraint chair and force-fed through his nose each day. In what Mr. Ba Odah believes are clear attempts to break his protest, prison administrators have told him that “if [he] stops his strike, [he would] be moved to the common area with friends, television, and recreation time” – basic rights the men in Camp 5 are often deprived.<sup>11</sup>

In Camp 5 cells, prisoners have no view of the outside world; a frosted window provides minimal access to natural light. Recreation time is limited to between 2-4 hours per day, during which time only one other prisoner is permitted to be in the recreation area. Prisoners in Camp 5 also have virtually no human contact. Food is delivered through a slot in the door. Prisoners may try to shout to one another through the slot with great difficulty,<sup>12</sup> and at risk of further disciplinary sanction. To protest these conditions, Mr. Ba Odah has also gone on “no wash protests,” in one instance going four months without showering, leaving his cell for recreation or cutting his nails. According to Mr. Ba Odah, he “looked like [he] crawled out of a grave.”

Like most of the 166 prisoners who remain at Guantanamo, Mr. Ba Odah has never been charged with a crime. 86 of the men at Guantanamo have been unanimously cleared for transfer by every U.S. national security and law enforcement agency with a stake in Guantanamo detainee affairs.

### **E. Prolonged Solitary Confinement Is a Form of Torture and Violates Human Rights Standards.**

The growing understanding of the destructive effects of prolonged solitary confinement has resulted in international condemnation of the practice. International human rights organizations and bodies, including the United Nations, have decried solitary confinement as a human rights abuse that can amount to torture. In August 2011, for example, the U.N. Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading

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<sup>10</sup> U.S. Government Accountability Office, *Guantanamo Bay Detainees: Facilities and Factors for Consideration If Detainees Were Brought to the United States*, GAO-13-31, Nov 14, 2012, available: <http://www.gao.gov/products/GAO-13-31>, pp. 16-7.

<sup>11</sup> This comes from unclassified attorney notes from meetings at Guantánamo. If the Commission requires more information, they can contact CCR Counsel.

<sup>12</sup> William Glaberson, *Detainees' Mental Health is Latest Legal Battle*, New York Times.

Treatment or Punishment issued a Report on solitary confinement.<sup>13</sup> The report found that prisoners must, at a minimum, have access to windows and light, sufficient sanitary fixtures, outdoor exercise and programming, access to meaningful human contact within the prison, and contact with the outside world (including visits, mail, and phone calls from legal counsel, family and friends, and access to reading material, television or radio). The conditions seen in SHUs and Supermax facilities in the United States typically fall well short of these basic standards. The prisoners at the Pelican Bay SHU, for example, are forbidden all access to the outdoors, are deprived of programming, and cannot call their loved ones and family.

The Special Rapporteur also concluded that use of solitary confinement is appropriate only in exceptional circumstances, and where imposed, its duration must be as short as possible and for a definite term that is properly announced and communicated. Prolonged solitary confinement, he found, is prohibited by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 1 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). The U.S. has ratified both the ICCPR and CAT. And yet, the forms of solitary confinement condemned under both continue to proliferate across the U.S. The Special Rapporteur explicitly concluded that, depending on the circumstances, prolonged solitary confinement constitutes either torture or cruel, inhuman or degrading treatment or punishment. Thousands of prisoners have languished in solitary confinement U.S. prisons for years at a time. At Pelican Bay, hundreds of prisoners have been held under these conditions for well over 10 years – over 250 times the amount of time the U.N. has deemed acceptable. Hundreds more are being held in solitary confinement at ADX and have been for years.

The United States' obligations under these international human rights instruments, including the American Declaration, demand that the U.S. seriously re-examine the use of solitary confinement, and bring our practices in line with standards and norms recognized by the international community.

## **F. Conclusion**

With strong leadership, effective policies, and sound practices, U.S. prisons can develop ways to house prisoners in settings that are less restrictive and more humane than solitary confinement, and thereby meet its international human rights obligations and Constitutional standards.

For example, states such as Massachusetts, Vermont, and Washington have long limited the length of time a prisoner may be placed in solitary confinement to 15, 30, and 20 days, respectively. Colorado and New Mexico have recently passed legislation to limit or study the effects of solitary confinement, and similar bills have been introduced in Virginia, Pennsylvania,

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<sup>13</sup> See Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Aug. 2011).

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and Texas. Other states, including Maine, Mississippi and Ohio, have significantly reduced their solitary confinement population in the last decade through voluntary changes. To our knowledge, in none of these states did prison violence increase after the use of solitary confinement diminished.

Working to eliminate the use of solitary confinement is to the benefit of everyone – prisoners, staff, and ultimately the communities to which almost all prisoners eventually return. Notable steps have been taken in this direction, but much progress must still be made to eliminate the use of solitary confinement for all but the most limited periods of time. We hope that today’s IACHR hearing represents an important step in this direction.