

URGENT PETITION TO

UNITED NATIONS

JUAN E. MENDEZ

**UN SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

In the matter of

California Prisoners:

Walter J. Coto, Todd Ashker, Christopher Flores, Alfred Sandoval, Mutope Duguma s/n "James Darren Crawford", Javier A. Zubiata, S. Heshima Denham, Scott D. Stoner, Victor Cantero, DC, Synrico J'Marcus Rodgers, Roberto Campa Lopez, Phil Fortman, Michael Reed Dorrough, Robbie Riva, Michael E. Spencer, GR, Donald Lee Moran Jr., Carlos Roberto Robledo, Derek Carbajal, BL, and Richard Satterfield,

Organizations:

California Prison Focus; Center for Human Rights and Constitutional Law; Families to Amend California's Three Strikes; Fair Chance Project; California Families to Abolish Solitary Confinement; Justice for Families; The Real Cost of Prisons Project; American Friends Service Committee; Community Futures Collective; Center for Prisoner Health and Human Rights; California Prison Moratorium Project; Legal Services for Prisoners with Children; Disability Rights Legal Center; Disability Rights California,

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v.

**United States of America,
State of California,
Jerry Brown, Governor of the State of California, and
Matthew Cate, Secretary,
California Department of Corrections and Rehabilitation**

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TABLE OF CONTENTS

I.	
INTRODUCTION	1
II.THE	
PARTIES	3
A.	Individual Prisoners in Isolated Segregation Units3
B.	Organizational Petitioners	.....30
C.	Responding Parties	.....35
III.	.....OVERCROWDING IN CALIFORNIA’S	
PRISONS	.....	36
IV.	.....CALIFORNIA’S POLICY REGARDING ISOLATED	
SEGREGATION	.....	37
V.	.....THE IMPACT OF SEGREGATION ON CALIFORNIA	
PRISONERS	.....	45
VI.	.....LEGAL	
ANALYSIS	.....	49
1.	CUSTOMARY INTERNATIONAL LAW DOES NOT PERMIT THE ARBITRARY	
ISOLATION OR SEGREGATION OF PRISONERS FOR EXTENDED PERIODS OF		
TIME	.....	49
2.	THE TREATMENT OF THE PRISONER PETITIONERS VIOLATES THE U.N.	
CONVENTION AGAINST TORTURE	.....	55
3.	THE TREATMENT OF THE PRISONER PETITIONERS VIOLATES THE	
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ARTS. 7, 9 &		
10) 57		
4.	TO THE EXTENT THAT THE UNITED STATES’ RESERVATIONS LIMITS ITS	
RESPONSIBILITIES UNDER THE CONVENTION AGAINST TORTURE TO ITS		
OBLIGATIONS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE		
U.S. CONSTITUTION, THE PRISONER PETITIONERS’ CONDITIONS OF		
CONFINEMENT APPEAR TO VIOLATE BOTH THE EIGHTH AND FOURTEENTH		
AMENDMENTS OF THE U.S. CONSTITUTION	.....	58
CONCLUSION	.....	61
EXHIBIT 1: UN PETITION PRISONERS COMPLAINT		

EXHIBIT 2: LIST OF CALIFORNIA PRISONERS JOINING UN PETITION

EXHIBIT 3: CALIFORNIA PRISONS TOTAL POPULATION, NOVEMBER 2011

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I. INTRODUCTION

This Petition is brought on behalf of approximately 4,000 California prisoners who are being detained in isolated segregated units for indefinite periods or determinate periods of many years solely because they have been identified as members of gangs or found to have associated with a gang. *The policy that has resulted in their prolonged detention does not require that they have actually engaged in any misconduct or illegal activity, or that they even planned to engage in any misconduct or illegal activity.*

Transfer to an isolation cell for a relatively short determinate period of time to quell a disturbance, sanction a prisoner for a disciplinary infraction, or to discourage mere membership in a gang or associating with a gang may be a reasonable disciplinary tool. It is one that has been used by many prisons in the past.

However, placing prisoners in almost complete isolation close to 24 hours a day for many years or indefinitely obviously has enormous adverse effects on their mental and physical health, is entirely disproportionate to the alleged offense of mere membership or association with a gang, and amounts to cruel, degrading and extreme punishment prohibited by international human rights norms and obligations of the United States of America, including the State of California.

As discussed in detail below, not only do California prisoners face cruel and dehumanizing long-term and indefinite confinement in small concrete cells with no windows, no natural light, and no furniture, they also endure frequent episodes of cruelty by guards, inadequate medical care, entirely inadequate mental health services, inadequate access to the outdoors and sunshine, inadequate food, inadequate access to legal counsel, inadequate visitation with friends and family, and no opportunities to work or engage in productive activity of any type. They are effectively locked in a concrete small space that becomes a “living coffin” in which many have been confined for many years, even decades.

Some prisoners are housed alone in isolated segregation for the duration of their confinement there. Others are “double-celled,” with one other segregated prisoner assigned to their cell. Double-celled prisoners in isolated segregation have the worst of two painful prison worlds, simultaneously experiencing isolation and overcrowding.

That is, they are completely isolated from normal prison activities and programs, yet forced to live around-the-clock in intolerably cramped and crowded cell conditions. Double-celling requires two strangers to use half the space of a single cell, with dimensions so small that they only permit laying on a bunk, or standing or sitting on the floor next to the bunk, or sitting on a toilet in the cell, or walking a couple of steps and hitting a concrete wall.

While this Petition focuses on a narrow issue of California's use of isolated segregation, it should be noted that the U.S., with about 4.5 % of the world's population, has 25% of the planet's prisoners, with the highest number in California. African Americans, who are about 12.5% the U.S. population, are almost 50% of its 2.3 million prisoners. Latinos, also about 12% of the U.S. population, are more than 25% of the nation's prisoners.

It should also be noted that California's prisoners are extremely overcrowded with virtually all prisons holding far more prisoners than they were designed and built to hold. For example, after operating for more than a decade at 200% of capacity—overcrowding that resulted in unconstitutional medical and mental health care for prisoners that prompted the United States Supreme Court to order a substantial reduction in the state prison population—California prisons are still nearly 160% over capacity overall, with some prisons operating well above that figure. Many mentally ill prisoners, even some of those who are “in crisis,” still wait unconscionably long periods for adequate and appropriate treatment. In addition, many identified mentally ill prisoners are housed in isolated segregation—in administrative segregation and security housing units—for extremely long periods of time (that can last for many months or years in administrative segregation units, and many years or even decades in security housing units).

As a result of the policies and practices that leave California with the largest population of prisoners in isolated segregation anywhere in the world, these prisoners suffer extreme mental and physical harm, including mental breakdowns, extreme depression, suicidal ideation, and breaks with reality. Under California's prison regulations, they often remain in isolated segregation until “gang free” for “six years.”

Their treatment amounts to torture or degrading treatment illegal under well-established international norms and obligations of the United States and the State of California including, *inter alia*, the United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (“CAT”) and the International Covenant on Civil and Political Rights (“ICCPR”).

In July 2011, hundreds of prisoners held in segregated Special Housing Units in California went on a hunger strike to protest conditions, including prolonged solitary confinement in small windowless concrete boxes with little to no human interaction and

other severe physical deprivations. See <http://prisons.org> and <http://www.prisonersolidarity.org>.

In their complaint submitted to California prison authorities, the Pelican Bay prisoners requested an *“end [to] 20+ years of state sanctioned torture in order to extract information from or cause mental illness to California inmates incarcerated indefinitely in punitive isolation ... based on arbitrary policies and practices ... [using the] gang label, without ever being charged, and found guilty of committing a gang related illegal act ...”* See Complaint attached as Exhibit 1 (emphasis added).

The Complaint notes that “most inmates who have been in the SHU for the last 10 to 35+ years have *never* been found guilty of committing a single gang-related illegal act.” *Id.*

II. THE PARTIES

A. *Individual Prisoners in Isolated Segregation Units*¹

In addition to the parties listed below, approximately 300 California prisoners in long-term or indefinite isolated segregation have written to the Center for Human Rights and Constitutional Law requesting that their names and places of detention in solitary segregation be brought to the attention of the Working Group on Arbitrary Detention. They are identified in Exhibit 2 which includes their names, dates of birth, location of their incarceration, and length of time in isolated segregation. They allege that they are in isolated segregation because they have been “validated” as associates or members of gangs without having allegedly engaged in any unlawful acts or plans or threats to do so.

Because California prisoners in isolation who participated in a hunger strike in 2011 to protest their cruel treatment have suffered retaliation by being charged with

¹ Limited access to California prisoners in segregation units makes it difficult to obtain all the information that may be relevant to this Petition. The Working Group has stated that inability to provide all the information requested, “shall not directly or indirectly result in the inadmissibility of the communication.” See, e.g. Report of the Working Group on Arbitrary Detention, E/CN.4/1997/4 (Dec. 17, 1996).

disrupting the prison system and now face additional time in isolated segregation, several of the Petitioners described below and the several hundred prisoners listed on Exhibit 2 have requested that their names not be made public. Their names are being provided only to the Special Rapporteur for his consideration of this Petition.

1. Walter J. Coto, CDC# J-88438

Location: Calipatria State Prison,

Segregation Location: ASU-160L, P.O. Box 5008, Calipatria, CA United States 92233

(recently CDCR placed Mr. Coto on a special transfer to Corcoran State Prison SHU in an attempt to show he had not been in "temporary" segregation for 3 years).

Mr. Walter J. Coto was born on September 16, 1976. He is now 35 years of age.

Mr. Coto was convicted of 2nd degree robbery and was sentenced to serve 15 years in prison. His incarceration began in December 1995 and he has a release date of approximately 2013. He has been assigned to an Administration Segregation Unit (ASU) since on or about March 2, 2009. He has now been in "temporary" isolation segregation for 3 years.

Mr. Coto was assigned to segregation based upon a finding by Institutional Gang Investigator (IGI) Officers that he had gang association. He claims that the evidence used against him was fabricated or insufficient to warrant his placement in an ASU, but even if he did have an "association" with a gang according to the CDCR procedures and standards, indefinite isolation in a segregated unit is an excessive, disproportionate and cruel punishment for such mere association with no alleged bad or illegal conduct or plans to engage in bad or illegal conduct.

Mr. Coto is not provided privileges or rights available to other inmates including work, education, reading materials, TV or Radio, routine access to the outdoors, routine access to a law library, exercise, etc. Medical treatment afforded inmates in segregation is inadequate. There is inadequate psychological help provided despite the substantial adverse psychological impact of segregation.

Mr. Coto only has access to a law library approximately once every two months, far too seldom to allow him to adequately exercise his right to review legal materials so that he may also defend himself in matters relating to prison rules or conditions. Obtaining copies of legal materials is extremely difficult and substantially interferes with Mr. Coto's right to be involved in and advocate for his legal rights. Only two

inmates at a time are allowed in the law library. There are 200 inmates in his segregation unit so he says it makes it difficult to visit the law library.

Mr. Coto has not been provided outdoor exercise. His only access to outdoors is when he is permitted to enter an exterior metal cage. His "yard time" in the "dog cages" is rare, since officers are "short on staff." In winter if he wishes to go out to the cage he must experience extreme cold because during his time in the cage he may not wear pants or shoes, so must be in the cage in his underpants.

Mr. Coto's meals are always less in portions and nutrition compared to the meals served to the general inmate population. The proportions of food are small; and the food is often cold, spoiled, and inedible.

Mr. Coto does not have adequate access to any prison supervisor regarding the conditions of his isolation. Requests to confer with a prison supervisor take months before they are responded to, if any response is provided at all.

Mr. Coto has suffered and continues to suffer extreme adverse mental effects as a result of his isolation in a segregation unit including severe depression, anxiety, sleeplessness, loneliness, and alienation.

Since this is true in the cases of each of the prisoner Petitioners, these details will therefore not be repeated as each prisoner's case is discussed below. Further, a complete psychological examination would be required to reveal the full extent of the psychological damage suffered by the prisoner Petitioners as a result of the dehumanizing treatment they have been and continue to be subjected to.

2. Todd Ashker, CDC# C-58191

Prison: Pelican Bay State Prison

Segregation location: D-1-119 SHU, P.O. Box 7500, Crescent City, CA 95532

Todd Ashker was born on July 5, 1963. He is now 48 years of age. His incarceration began in October 1984. He is serving 6 years plus a 21 to life prison sentence. He does not have a release date.

Mr. Ashker's incarceration began in or about October 1984. He was assigned to a SHU in or about August 1986. He has now been in isolated segregation for more than 25 years.

Mr. Ashker was assigned to segregation based upon a finding by the prison that he had current-active prison gang association with the Aryan Brotherhood (AB), labeled as such since March 1988. He claims that the evidence used against him was fabricated

or insufficient to warrant his placement in a SHU, for he states he was never found guilty of any illegal gang-related act. But even if he did have an "association" with a gang using the CDCR procedures and standards, indefinite isolation in a segregated unit is an excessive, disproportionate, degrading and cruel punishment for mere association with no alleged bad or illegal conduct or plans to engage in bad or illegal conduct.

Mr. Ashker is permitted only approximately two hours per week with a court deadline of law library access per month but with no court deadline then one is lucky to get access to the law library at all. He cannot receive photocopies unless the documents are being mailed to the court; if copying more than 100 pages then the prison requires a court order, and he claims the prison recently stopped allowing inmates to obtain declarations/evidence from any other inmates. This is inadequate and leaves him with no meaningful access to protect or defend his legal rights or prepare legal materials.

Mr. Ashker's outdoors time is in a small, concrete enclosed dog-like yard 1 ½ hours a day with no exercise equipment other than a hand-ball recently given to the SHU inmates as a result of a hunger strike. He claims his yard time is always cancelled due to "staff training," and from the years 1989 - 2011 he received zero time outside, other than when he was allowed to go to into a small enclosed concrete yard. He spent 24 hours a day 7 days a week in a small concrete cell for 22 years.

Mr. Ashker's meals are under-portioned, watered down, under-cooked food is spoiled, cold, no nutrition, salad is rotten, trays are always dirty and covered with dirty dish water.

Mr. Ashker has significant medical conditions including a permanently disabled right arm-wrist-hand with nerve, artery, bone and soft-tissue damage caused by an illegal shooting by a prison guard in the year 1990, and left leg/right knee problems. He alleges that he is denied adequate medical care for permanent arm disability since the 1990 injury where he lives in chronic pain due to lack of physical therapy, lack of pain medications, lack of warm clothing & assistance aids, as well as suffering sleep deprivation for years in solitary isolation. He has problems sleeping, concentrating, anger, depression, anxiety when he goes out of his cell, and anxiety communicating with people face to face. He alleges that he is reluctant to seek mental health services because they are inadequate, and further because mental health staff reportedly inform the prison officials what they are told by prisoners in psychological counseling. In any event, psychologists cannot change the detention conditions in isolation that Mr. Ashker believes significantly contribute to the deterioration of his physical and mental health.

Mr. Ashker claims that both custody and medical staff have told him many times over the course of the past 22 years that the only way he will ever be freed from isolated

segregation-- and thereby end his suffering and receive needed medical care --is if he paroles, dies, or agrees to become a known informant against others for state authorities.

3. *Christopher Flores, CDC# G-48073*

Prison: California Correctional Institution, Segregation Location: 4B-4B-208 U SHU P.O. Box 1906, Tehachapi, CA 93581

Christopher Flores was born on December 7, 1970. He is currently 40 years old. He was convicted of 2nd degree robbery with possession of a firearm. He was sentenced to serve 17 years with 85% of his time in prison. His incarceration began on July 18, 2005.

Mr. Flores has been detained in a SHU since February 10, 2009. He has now been in isolated segregation for almost 3 years.

Mr. Flores was assigned to segregation based upon a finding by an Institutional Gang Investigator (IGI) that he had gang association. He claims that the evidence used against him was fabricated or insufficient to warrant his placement in a SHU, but even if he did have an "association" with a gang using the CDCR procedures and standards, indefinite isolation in a segregated unit is an excessive, disproportionate, degrading and cruel punishment for mere association with no alleged bad or illegal conduct or plans to engage in bad or illegal conduct.

Mr. Flores was placed originally in Administrative Segregation Unit (ASU) before being transferred to the SHU (Secured Housing Unit), where he alleges that it was impossible for him to go to the law library, which adversely impacted his ability to work on a motion for a new trial. In the SHU he only has access to a law library briefly once a month or two months.

Mr. Flores's outdoor activity is limited to short walks to the medical unit and access to a concrete enclosed yard for about nine hours of "yard time" a month.

Mr. Flores's meals are inadequate, and often served cold and on unclean trays.

Mr. Flores has had Hepatitis C and Psoriasis for at least three years. He has not received medical treatment and his Psoriasis has spread throughout his body. He has been informed that he needs thirty minutes of sun three times a day but has not received that medical treatment to date. He believes that his medical conditions are substantially caused or exacerbated by the conditions of his detention.

4. *Alfred Sandoval, CDC# D-61000*

Prison: Pelican Bay State Prison

Segregation location: D-4-214 SHU, P.O. Box 7500, Crescent City, CA 95532

Alfred Sandoval was born on January 31, 1958. He is now 53 years of age. His incarceration began in December 1984. He is serving four life prison sentences and does not have a release date.

Mr. Sandoval's incarceration began in or about December 1984. He was assigned to a SHU in or about July 1987. He has now been in isolated segregation for about 25 years. Mr. Sandoval alleges that even if, *arguendo*, he was a member of a gang or had some association with a gang under the CDCR procedures and standards, indefinite isolation in a segregated unit is an excessive and cruel punishment for alleged association, and in degradation of international norms and obligations.

Mr. Sandoval was transferred to a SHU in July 1987 for alleged prison gang association. He believes that he was cleared in 1988 of being a gang associate but was 're-validated' for past gang association.

Mr. Sandoval is permitted only approximately two –and- a- half hours of law library access per month. This is inadequate time for him to play any meaningful role in the protection of his legal rights.

Mr. Sandoval's time outdoors is ninety minutes a day a few times a week in a cement block with half- plastic roof cover where the prisoners are always alone. He is provided no exercise equipment but can walk in small circles in the yard. Other than that he is isolated in a concrete small cell with a bunk, toilet and sink, no windows, and no fresh air, about 22 ½ hours a day. Apparently, California's plan is for Mr. Sandoval to live the rest of his life in a small concrete coffin- type enclosure until he dies.

Mr. Sandoval's meals are inadequate. The portions are too small, the food is sometimes spoiled, the trays it is served on in the isolation cells are often dirty, and the food is often served cold and is barely edible.

Mr. Sandoval has significant medical conditions including Crohn's Disease, Hepatitis C, Chronic Sinus Infections and Allergies. He alleges that Institutional Gang Investigators make decisions regarding prisoner access to medical care. He has what he calls "SHU Syndrome": He gets paranoid, hears "echoes" in his mind, has extreme anxiety, and suffers from severe depression. He alleges that he is reluctant to seek mental health services because they are inadequate ,and further because mental health staff reportedly inform the prison officials what they are told by prisoners in psychological counseling. In any event, they cannot change the detention conditions in

isolation that Mr. Sandoval believes significantly contribute to the deterioration of his physical and mental health.

5. *Mutope Duguma s/n "James Darren Crawford", CDC# D-05996*

Prison: Pelican Bay State Prison

Segregation Location: D-1-117U SHU, P.O. Box 7500, Crescent City, CA 95532

Mutope Duguma s/n "James Darren Crawford" was born on August 26, 1966. He is 45 years old. He has been incarcerated in California since on or about the year 1988. He was sentenced to serve forty-one years to life with an extra six life sentences, which he states he was extremely 'harsh'. His approximate release date if any would be the year 2059.

Mr. Mutope Duguma s/n "James Darren Crawford" has been in complete isolated segregation for ten (10) years being placed in the SHU on or about August 8, 2001.

Mr. Mutope Duguma s/n "James Darren Crawford" was placed in the SHU after being validated by the Institutional Gang Investigator (IGI) Officers as an associate of the Black Guerrilla Family (BGF) prison gang. He alleges he was never apart of a gang just validated as an associate due to another inmate telling the officers he was a member.. He was disciplinefree for six years prior to being placed within segregation for alleged gang association. He alleges he has never been involved in any gang and CDCR has used his political beliefs to validate him as an "associate" to a prison gang.

Mr. Mutope Duguma s/n "James Darren Crawford" alleges that he only has access to a law library once every approximately sixty to ninety days for two hours at a time, and only allowed to make copies if mailing them to the court. The visits are too short to accomplish anything meaningful to protect or defend his legal rights or prepare legal materials. He is effectively left with no meaningful access to counsel or a law library.

Mr. Mutope Duguma s/n "James Darren Crawford" is permitted for a maximum of ninety minutes a day to be in an enclosed concrete yard with tall concrete walls that is twelve feet high that purposely block out the sun with no proper exercise equipment. Mr. Mutope Duguma s/n "James Darren Crawford" cannot see the outside, no trees, and no birds. He is enclosed 24 hours a day, about 22 ½ hours in a small concrete cell with no windows and insufficient space to do any activities, and about 1 ½ hours in a small enclosed extremely cold concrete yard, always in isolation with another cellmate. He states about ninety percent of the prisoners in the SHU are deprived from having

cellmates but he is allowed to have one by the prison officials, living in a small enclosed concrete space for years with another person.

Mr. Mutope Duguma s/n "James Darren Crawford" describes his food in the SHU as under-portioned and with no nutritional value. He alleges the prison often uses "safety/security protocol" to deny foods to inmates that are very healthy for them, and the staff violate the food handling policy. He also alleges the prison uses the food as a "tactic" to break inmates into "debriefing," by becoming an informant on other inmates allegedly associated with or members of a prison gang. Food is often rotten, portions are inadequate, meals have no nutritional value, food is served cold, trays are dirty, and the food is often barely edible.

Mr. Mutope Duguma s/n "James Darren Crawford" has been diagnosed with an Enlarged Heart, Hypertension and Trigeminal Neuralgia. He alleges that his Trigeminal Neuralgia was the result of an ear infection that went untreated for about seven to eight months. Mr. Mutope Duguma s/n "James Darren Crawford" alleges the prison is currently denying him to see a Neurologist for his medical condition. He has not experienced direct sunlight for many years and suffers from vitamin D deficiency to the extent that his body aches with pain/difficulty concentrating with lack of minerals. He finds himself experiencing mood swings, easily angered, and suffers from "SHU Syndrome".

Mr. Mutope Duguma s/n "James Darren Crawford" does not use prison staff for mental health treatment for he states they cannot change the conditions that contribute to his mental health condition. Also, he alleges the prison forces "psych" medications on the inmates who request mental health services, and information shared with mental health staff is understood to be passed on to the prison authorities and will be used against Mr. Mutope Duguma s/n "James Darren Crawford" to extend his detention in segregation. He also claims a majority of prisoners refuse to talk to a psychiatrist due to the prison medical staff trying to place prisoners on "mood altering prescription drugs" which he claims most suicides in the SHU are from the side effects of these medications.

6. *Javier A. Zubiato, CDC# J-83189*

Prison: Pelican Bay State Prison

Segregation Location: D-1-213 SHU, P.O. Box 7500, Crescent City, CA 95532

Javier A. Zubiato was born on May 2, 1973, and is a native and citizen of Peru. He is 38 years old. He has been incarcerated in California since on or about November 19, 1995. He was sentenced to serve nineteen years to life after being convicted of murder. He does not have an approximate release date.

Mr. Zubiato has been in isolation segregation for sixteen (16) years since being transferred to a SHU on or about December 1, 1995.

Mr. Zubiato was placed in the SHU after being validated by the Institutional Gang Investigator (IGI) Officers as an associate of the Northern Structure prison gang.

Mr. Zubiato has access to a law library once a month for about two hours. However, canceling law library time is left to the discretion of the officers who often cancel for reasons unknown to the prisoners. The time he is provided access to a law library is completely inadequate for him to play any meaningful role in the protection of his legal rights.

Mr. Zubiato is permitted for a maximum of ninety minutes a day to be in a concrete yard with tall concrete walls and plexi-glass ceiling. He walks around in circles alone because the prison doesn't allow him to have a cellmate. He is alone close to 24 hours a day, about 22 ½ hours in a small concrete cell with no windows and insufficient space to do any activities, and about 1 ½ hours in a small concrete yard, always in isolation. Based on his association or alleged association with a gang, Mr. Zubiato has now been living in a small concrete cell for approximately 5,840 days (about 128,480 hours, excluding the few hours he is permitted outdoors).

Mr. Zubiato describes his food in the SHU as barely edible. Food is often rotten, portions are inadequate, meals have little nutritional value, food is served cold, trays are dirty, and the food is often barely edible.

Mr. Zubiato is diagnosed with chronic thygosen's disease and reoccurring corneal erosion in both of his eyes. He alleges that his diseases went undiagnosed and untreated for about twenty-one months because of the inadequate medical treatment available to prisoners in a SHU. A prison staff member has told Mr. Zubiato that if he wants better medical treatment "then debrief to get out of the SHU." Debriefing involves accusing other prisoners of being associates or members of a prison gang. Prisoners like Mr. Zubiato may have no such valid information to share and are afraid of the dangerous consequences of becoming an informant on alleged prison gang members or associates.

Mr. Zubiato alleges that the unhealthy conditions of his confinement combined with his required isolation from other human beings and virtually total inactivity and lack of work have substantially contributed to his physical medical conditions as well as psychological damage. He is aware of obsessive-compulsive disorder, sudden mood swings, extreme depression and anxiety, loneliness, suicidal ideation, and stuttering.

Mr. Zubiato alleges that approximately once a week a mental health specialist appears at his locked door and says "good morning, routine rounds." He does not use

the services of this person because there is insufficient time to converse with them in any meaningful way, they are separated by a locked door, any anything he tells them he believes will be passed on to the prison authorities so there is no confidentiality of discussions regarding his mental health. Indeed, he believes that anything he tells the mental health specialist will be used against him by the prison authorities. He sees no sign that anything he shares with a mental health specialist will be used to improve the conditions of his confinement which are the primary cause of his mental health condition.

7. *S. Heshima Denham, CDC# J-38283*

Prison: Corcoran State Prison

Segregation location: 4B-1L-46C SHU, P.O. Box 3481, Corcoran, CA 93212

S. Heshima Denham was born on January 17, 1960. He is now 51 years of age. His incarceration began in February 1994. He is serving a fifty-five year to life sentence and his approximate release date if any is 2043.

Mr. Denham's incarceration began in or about February 1994. He was assigned to a SHU in or about August 8, 2000. He has now been in isolated segregation for about 11 years. Mr. Denham says that he was validated as an "associate" to the Black Guerilla Family (BGF) prison gang by CDCR; because he had a political drawing of George Jackson, a California Prison Focus news article, his name found in someone else's cell, and for sharing his political beliefs with another inmate. He alleges that even if he was an "associate" of a gang or had some association with a gang under the CDCR procedures and standards, indefinite isolation in a segregated unit is an excessive and cruel punishment for alleged association, and in degradation {how about 'defiance of'} of international norms and obligations.

Mr. Denham alleges that law library access is supposed to be once a week but is routinely cancelled by prison staff, permitting him only approximately law library access once per month. He also alleges the prison staff refuses to allow him to make photocopies of exhibits, evidence, and attachments to pleadings of his case. This is inadequate for him to play any meaningful role in the protection of his legal rights.

Mr. Denham's only outdoors time is three to four hours every two to three times a week in what he alleges are 8x12 "dog cages" and that is the only time he is allowed outside of his concrete cement cell, where he spends 24 hours a day with no fresh air, and no windows. He is provided no exercise equipment while allowed in his "dog cage" but can see the other prisoner next to him in another "dog cage".

Mr. Denham's meals are inadequate, under -portioned, and his food quantity depends on which correctional officer is working that day serving the food trays.

Mr. Denham has been diagnosed with significant medical conditions since being placed in the SHU are Schizophrenia, and Bi-Polar Disorder. His other medical conditions he suffers from are Visual Stigma, Gout, Progressive Joint Degeneration, and Arthritis. He experiences sudden bouts of depression, hopelessness, and uncontrollable frustration from being held in isolation. He alleges that he is reluctant to seek mental health services because they are inadequate and further because mental health staff reportedly inform the prison officials what they are told by prisoners in psychological counseling. In any event, they cannot change the detention conditions in isolation that Mr. Denham believes significantly contribute to the deterioration of his physical and mental health.

8. Scott D. Stoner, CDC# K-40009

Prison: Calipatria State Prison

Segregation Location: ASU-153, P.O. Box 5008, Calipatria, CA 92233

Scott D. Stoner was born on February 8, 1972. He is now 39 years of age.

Mr. Stoner was convicted of Chop Shop/Battery and was sentenced to serve 14 years in prison. His incarceration began in May 2000 and his release date was October 14, 2010 before the prison took away his good credit time therefore extending his release date. He has been assigned to an Administration Segregation Unit (ASU) since on or about December 8, 2008. He has now been in "temporary" isolation segregation for over 3 years.

Mr. Stoner was assigned to segregation based upon an allegation by Institutional Gang Investigators (IGI) Officers that he had gang association to the Aryan Brotherhood (AB) prison gang by using old cellmates (from 6 years prior) information against him. He claims that the evidence used against him was fabricated or insufficient to warrant his placement in an ASU, but even if he did have an "association" with a gang using the CDCR procedures and standards, indefinite isolation in a segregated unit is an excessive, disproportionate and cruel punishment for such mere association with no alleged bad or illegal conduct or plans to engage in bad or illegal conduct.

Mr. Stoner currently has priority to a law library access due to his pending legal court matter. He can access the law library four hours a week. He is allowed to make copies, take notes with access to a computer and a few law books.

Mr. Stoner's only access to outdoors is when he is permitted to enter an exterior cage. His "yard time" in the diminutive metal "dog cages" are not always often because officers are "short on staff'." When officers do not cancel his "yard time", he is allowed to go out to his "dog cage" eight to ten hours a week either alone or with his cellmate.

Mr. Stoner's meals are always less in portions and nutrition compared to the meals served to the general inmate population. The proportions of food are small, and the food is often cold, watered down, often spoiled with moldy bread, and inedible.

Mr. Stoner does not have adequate access to any prison supervisor regarding the conditions of his isolation. Requests to confer with a prison supervisor take months before they are responded to, if any response is provided at all. He alleges he is always forced to lie in his cell, go to the bathroom all over himself without any assistance. When the prison and medical staff do come to his cell, he claims they laugh at him without providing him proper assistance.

Mr. Stoner's medical conditions are due to his previous injury from being assaulted by correctional officers before being placed in segregation. He was diagnosed with Hypotonic Neurogenic Bladder due to his Spinal Cord Injury in result from his fall to the ground. He is forced to use a catheter because he does not have male functions anymore (e.g. urination, erections, feeling of male functions) to where it makes his mobility extremely difficult. Due to his medical condition, Mr. Stoner needs to be on an intermittent catheter every two hours while awake. He claims the prison staff took away his catheter in ASU as punishment so he is left to regularly urinate on the floor. He alleges that he has been unable to receive adequate or proper medical care while in segregation warranted by his medical conditions.

Mr. Stoner alleges that his isolation has contributed to various psychological conditions including severe mood swings and depression. He is in constant fear of losing a grip on his sanity for he states his mind is "not stable". He has visited the mental health staff but he does not believe that the mental health staff can or will do anything to end his period in isolation or change the conditions causing the deterioration of his mental health.

9. Victor Cantero, CDC# T-71200

Prison: California Correctional Institution

Segregation Location: 4B-2A-206 U SHU, P.O. Box 1906, Tehachapi, CA 93581

Victor Cantero was born on October 21, 1976. He is 35 years old. His incarceration in California began on or about March 14, 2005. He was given a two year

and four months sentence after being convicted of driving a vehicle without permission; this was later extended by two years after being convicted of possession of a controlled substance while incarcerated; and further extended by four years and four months after being convicted of assault with a weapon. His total sentence is approximately eight years. He has an approximate release date of December 28, 2012.

Mr. Cantero has been in isolated segregation for seven years since being transferred to a SHU on or about December 4, 2005.

Mr. Cantero was placed in the SHU due to possession of a controlled substance but while in segregation was retained after being accused of association with the Mexican Mafia prison gang by the Institutional Gang Investigators (IGI).

The few times Mr. Cantero is permitted out of his small cell are when he walks to take a shower three times a week and once a week when he gets to go out to a concrete yard for approximately two hours.

Mr. Cantero explains that his meals at the SHU are often cold, the quantity of food offered is too small, the food has little nutritional value, the food is often spoiled, and the trays on which it is delivered to his cell are often dirty.

Mr. Cantero is diagnosed with Spondyolosis (chronic back pain), Hepatitis C, Hepatitis B and Hepatitis A and he also has a kidney mass diagnosed as Oncocytoma. He alleges that he has been unable to receive adequate or proper pain medication. Overall, he has not received the medical care warranted by his medical conditions.

Mr. Cantero alleges that his isolation has contributed to various psychological conditions including severe mood swings, depression, and anxiety. He is in constant fear of losing a grip on his sanity. He has not used the prison's mental health services because the mental health staff simply medicate inmates to keep them docile, there is insufficient time for meaningful treatment, and inmates understand that confidential information they share with mental health staff is shared with prison authorities and will be used against the inmates.

10. DC

Prison: Pelican Bay State Prison

Segregation location: SHU (Secured Housing Unit)

DC was born on August 20, 1952. He is 59 years old. His incarceration began in or about December 1, 1971. He was convicted of first-degree murder and armed robbery with a prison sentence of life with 5 years to life to serve consecutively.

DC has been in isolation segregation on again and off again for a total of 39 years of his 40 years incarcerated in prison. Since being placed in the SHU, Mr. DC has always been denied his six-year gang status review due to claims by prison staff that he is an "active" member of the Aryan Brotherhood prison gang, also of the "debriefing policy" that was implemented around the year 1984 referencing "gang status" by officials. He alleges that even if he was a member of a gang or had some association with a gang under the CDCR procedures and standards, indefinite isolation in a segregated unit is an excessive and cruel punishment for alleged association, and in degradation of international norms and obligations.

Mr. DC's time outdoors is ninety minutes a day a few times a week in a cement block with half-plastic roof cover where the prisoners are always alone. He is provided no exercise equipment, and the 20-foot high cement walls block out the natural sunlight. Other than that he is isolated in a concrete small cell with a bunk, toilet and sink, no windows, and no fresh air, about 22 1/2 hours a day. He has not seen natural sunlight or fresh air in 39 years.

Mr. DC's meals are inadequate. The portions are too small, the food is sometimes spoiled, the trays it is served on in the isolation cells are often dirty, and the food is often served cold and is barely edible.

Mr. DC has significant medical conditions including Chronic Prostatitis, Skin rashes, Blurred Vision, Undiagnosed Respiratory Problems, and a Hip Replacement he received on September 6, 2010. He claims there are extreme delays in diagnosis, with no follow-up treatment from prison medical staff, and delays in receiving medications. He is always in a constant state of lethargy due to the United Nations Working Group on Arbitrary Detention By California, United States, Prisoners in Segregation to hopelessness for he states, "The parole board has never given a release/parole date to a SHU lifer inmate". He alleges that he is reluctant to seek mental health services because they are inadequate and further because mental health staff reportedly inform the prison officials what they are told by prisoners in psychological counseling. In any event, they cannot change the detention conditions in isolation that Mr. DC believes significantly contribute to the deterioration of his physical and mental health.

11. *Synrico J' Marcus Rodgers, CDC# T-21144*

Prison: Corcoran State Prison

Segregation Location: 4A-3L-26L SHU, P.O. Box 3476, Corcoran, CA 93212

Synrico J'Marcus Rodgers was born on September 25, 1960. He was sentenced to twenty-five years in prison after being convicted of robbery in the second degree. He has an approximate release date of March 13, 2033.

Mr. Rodgers has been in isolation segregation for a total of sixteen years, since first being placed in the SHU on June 1, 1995. He was most recently transferred to the SHU on or about August 30, 2010. He was placed in the SHU after being denied his six-year gang status review due to a past validation of association with the Black Guerilla Family (BGF) prison gang. He has been placed on single cell status and is therefore alone in his cell close to 24 hours a day seven days a week. He alleges he should not be in single cell as he has never committed in-cell violence.

Mr. Rodgers has submitted four forms in order to obtain access to the law library and has not been granted any access in response to those requests.

Mr. Rodgers is allowed time alone in a small concrete enclosed yard once a week where all he can do is walk in small circles.

Mr. Rodgers alleges that the food he is fed is often spoiled, cold, and inedible. The portions are also very small and lacking in nutritional value.

Mr. Rodgers is diagnosed with epilepsy (Grand Mal Seizures), high blood pressure, and constant lower back pain. He alleges that he has not received adequate medical attention for his medical condition.

Mr. Rodgers claims that the unhealthy conditions of his confinement combined with his required isolation from other human beings have substantially contributed to his depression, thoughts of suicide, anger, and paranoia. Mr. Rodgers received mental health services during his time at California Correctional Institution, which he says was adequate for him because the session took place in a group participation setting. He stopped receiving mental health services once he was transferred to Corcoran State Prison.

12. **Roberto Campa Lopez, CDC# C-22294**

Prison: Pelican Bay State Prison

Segregation location: D-3-121 SHU, P.O. Box 7500, Crescent City, CA 95532

Roberto Campa Lopez was born on December 31, 1948 and is a native of Los Angeles, CA. He has been incarcerated in California since on or about March 17, 1997. He was sentenced to four years in prison for assault with a weapon and forty-five years for committing his "third strike", under the California's Three Strikes Law. He does not have or does not know his release date.

Mr. Lopez has been isolation segregation for thirteen years since being transferred to the SHU on or about January 1999.

Mr. Lopez was placed in the SHU in Pelican Bay State Prison due to a validation that he was a gang member at his previous prison in San Quentin.

Mr. Lopez alleges that the prison consistently misplaces or ignores his law library access requests. He usually has to wait two to four weeks before being escorted to the law library. He is only permitted access to the law library for 1 ½ to 2 hours per month, and cannot keep copies of court cases or other legal materials in his cell. Access to the law library is completely inadequate for Mr. Lopez to in any meaningful way to research or protect his legal rights.

Mr. Lopez states that he is not permitted any time outdoors except for ten minutes to 1 ½ hours per day/week when he can be in a small concrete yard that he states is "11 steps long, 4 steps wide," and is enclosed with 20 feet high concrete walls or when being escorted to the medical clinic for treatment for asthma.

Mr. Lopez describes the meals he receives in the SHU as small, often smashed, cold, undercooked, watered down, and served on sticky trays. He states the vegetables served are old and their desert is often mixed up with other parts of the meal such as beans.

Mr. Lopez is diagnosed with Hepatitis A and C, Asthma-Bronchitis, Rhinitis-Sinusitis, and an Enlarged Prostate. He is concerned for his safety with his medical condition while in segregation, since he has difficulty getting the attention of the prison staff during an asthma attack when his albuterol inhaler fails to bring him relief, and he finds himself fighting for "oxygen" in his SHU cell. He explains that by the time the prison staff arrives, a significant amount of time has passed and by then he has to be escorted in a wheelchair as he is unable to walk. Mr. Lopez says he has been "disciplinary free" since November 1989 and should be released from the SHU, to the general prison population where he would be allowed to receive immediate emergency medical care for his asthma attacks.

Mr. Lopez believes that the conditions of isolation have radically affected his psychological well-being. He experiences extreme loneliness, fear, depression, and breaks with reality as a result of his isolated segregation and conditions of incarceration.

He is not permitted to engage in any productive activities or work. His segregation is painful and destructive of his mental and physical health.

Mr. Lopez has not requested mental health services, however he was referred to a "psych" after writing the warden to explain how the prison was risking his life by keeping him in the SHU due to his asthma attacks.

13. Phil Fortman, CDC# B-03557

Prison: Pelican Bay State Prison

Segregation Location: D-1-102 SHU, P.O. Box 7500, Crescent City, CA 95532

Phil Fortman was born on June 14, 1943. He is now age 68 years old. He has been incarcerated in California since on or about January 29, 1966. He was sentenced to serve seven years to life after being convicted of murder. He does not have an approximate release date.

Mr. Fortman has been in isolation segregation for a total of (35) years; and the past (25) years has been in the (SHU), where he has been confined since the year 1986.

Mr. Fortman was placed in the SHU in 1986 when the SHU facilities were built for an alleged prison gang "association" by prison staff due to their validation process. He alleges that he has no history in prison of being a member of any gang or engaging in gang activities.

Mr. Fortman has been to the law library once in the past ten years. He was able to access two hours of law library time. He states the 'no talking policy' in the law library implemented by CDCR has deterred inmates to want to access it. He claims if an inmate gets caught talking in the law library prison staff will use that as punishment and take away their televisions among other things. The time he is allowed to visit the law library is entirely too short to permit him to conduct any research necessary to address his legal rights or prepare necessary papers to effectively seek review in any court.

Mr. Fortman's only outdoors time is permitted 7 hours a week to be in a cement enclosed area with plexi-glass above with no direct sun light with no exercise equipment. He is alone close to 24 hours a day, about 22 ½ hours in a small concrete cell with no windows and insufficient space to do any activities, and about 1 ½ hours in a small concrete yard, always in isolation. His body has not felt direct sunlight in 35 years and suffers from vitamin D deficiency.

Mr. Fortman describes his food in the SHU as barely edible for he has to be on a 'special diet' due to his stomach not being able to digest this type of food. Food is often

rotten, portions are inadequate, under-cooked, meals have little nutritional value, food is served cold, trays are dirty, and the food is often barely edible.

Mr. Fortman is diagnosed with congenial heart failure, pancreas malfunction, acid reflux disease, extreme back pain due to a disintegrated disk, arthritis in his hands, neck, and jaw, along with macular degeneration in both eyes. He alleges that the prison does not medically treat him with the proper medication he requires. A prison staff member has told Mr. Fortman that if he wants better medical treatment “then debrief to get out of the SHU.” Debriefing involves accusing other prisoners of being associates or members of a gang. Prisoners like Mr. Fortman may have no such valid information to share and are afraid of the dangerous consequences of becoming an informant on alleged gang members or associates.

Mr. Fortman does not use mental health services because the services are insufficient to be meaningful, he believes the information he shares will be used by prison authorities to keep him in segregation, and mental health staff cannot change the conditions of his detention, which are significantly contributing to his physical and mental deterioration.

14. *Michael Reed Dorrough, CDC# D-83611*

Prison: Corcoran State Prison, Segregation Location: 4B-1L-53 SHU P.O. Box 3481, Corcoran, CA 93212

Michael Reed Dorrough was born on January 27, 1954. He is currently 57 years old. He was convicted of 1st degree murder with possession for sales of narcotics. He was sentenced to serve life without parole plus five years in prison. His incarceration began in the year 1988 and he does not have a release date.

Mr. Dorrough has been detained in a SHU since August 28, 1988. He has now been in segregated isolation for 23 ½ years.

Mr. Dorrough was placed in segregation with approximately 30 African American men after the prison conducted a weapon search. He claims although there was no evidence of weapons found and no charges were placed upon him for weapons, he still remains in the SHU, and as a result of this search, he was validated for gang association. In the year 2006, Mr. Dorrough went up for “inactive/active” prison gang status review, and the prison re-validated him again for another six years to remain in complete isolation. The evidence the prison used against him were books; *Black Reconstruction in America* by W.E.B. DuBois, *A People’s History in the United States* by Howard Zinn, *Democracy in Mexico* by Dan La Botz, *Democracy Matters* by Cornel West, and *Egypt Revisited* by Ivan Van Sertima. He claims that the evidence used against him was

fabricated or insufficient to warrant his placement in an SHU, but even if he did have an “association” with a gang using the CDCR procedures and standards, indefinite isolation in a segregated unit is an excessive, disproportionate, degrading and cruel punishment for mere association with no alleged bad or illegal conduct or plans to engage in bad or illegal conduct.

Mr. Dorrough alleges that he only has access to a law library once every two months, the prison staff cancels it on a regular basis, not being able to make photocopies of legal documents, and ends up missing his legal deadline with the court. He is not allowed to protect or defend his legal rights or prepare legal materials. The time he is allowed to visit the law library is entirely too short to permit him to conduct any research necessary to address his legal rights or prepare necessary paperwork while being forced to miss his court deadlines.

Mr. Dorrough states that he is not permitted any time outdoors except for twice a week for to 6 hours per week when he can be in a small metal yard cage with no exercise equipment.

Mr. Dorrough meals are underportioned, undercooked, cold, and often served the same menu every single day.

Mr. Dorrough has been diagnosed with High Blood Pressure, High Cholesterol, Chronic Back Pain with Degenerative Disc Disease, and a family history of Heart Disease. He requires medication for the constant pain but he states it does not help when the prison serves their food with no adequate nutritional value with the abundance of processed food in the SHU.

Mr. Dorrough has been diagnosed with severe depression which requires medication. He experiences severe bouts of depression, helplessness, hopelessness, forgetfulness, and anger, due, he says, to “being confined in his cell for weeks at a time 24 hours a day and his depression is a result of his isolation.” Mr. Dorrough does not use prison staff for mental health treatment, as these visits are too short to be meaningful for they cannot change the conditions that contribute to his mental health condition.

15. Robbie Riva, CDC# T-49359

Prison: Calipatria State Prison

Segregation Location: ASU – 112 P.O. Box 5008, Calipatria, CA 92233

Robbie Riva is 29 years old. He has been incarcerated in California since on or about February 15, 2001. He was sentenced to serve thirty years to life after being

convicted for attempted voluntary manslaughter (5 years) with a gun enhancement (25 years to life). He does not have an approximate release date.

Mr. Riva has been in “temporary” isolation segregation for one year since being assigned to an ASU on or about February 15, 2001. Mr. Riva was placed in Administrative Segregation Unit (ASU) after being “validated” with evidence that was submitted by the Institutional Gang Investigator (IGI) Officers as an “associate” of a prison gang based on a symbol in a birthday card supposedly found in his cell, a tattoo he received as a child, and a confidential informant. He claims that the evidence used against him was fabricated or insufficient to warrant his placement in ASU or SHU. CDCR has placed him on wait-list to transfer to Pelican Bay State Prison to be placed in the SHU (Secured Housing Unit) for the next 7 years or more.

Mr. Riva alleges that there are no daily custodial staff visits. He believes that the way the ASU is designed, someone could die and staff would not timely be aware of it.

Mr. Riva alleges that he only has access to a law library once every approximately three months, the visits are too short to accomplish anything meaningful to protect or defend his legal rights or prepare legal materials. He is effectively left with no meaningful access to counsel or a law library.

Mr. Riva’s only time out of his small concrete cell is when transported with arms and legs shackled to the medical unit or when in a small “dog cage” for one hour three times a week, if the prison staff does not cancel his “yard time”. Other than that, he is locked in a small concrete enclosure 24 hours a day. He has no work, no education, no contact with the general prison population, he has been denied visits to see his family, and minimal contact with prison staff for short periods of time.

Mr. Riva experiences lower back pains. He alleges that he has submitted numerous requests to see a doctor for his back pain but has been denied adequate medical treatment. Since being placed in segregation, he has developed lumps all over his body including a “lump” on his spine. He has been seen by medical staff due to these “lumps” on his body but is denied proper medical treatment and/or tests to determine the proper diagnoses of these “lumps”.

Mr. Riva alleges that his time within segregation has affected his moods severely. Mr. Riva mentally detaches himself from his family as a coping mechanism. Moreover, he has come to expect the worst at all times as a means of dealing with his isolation. He suffers from depression, intermittent disorientation fear, anxiety, loss of memory, and other disorders. Mr. Riva does not use prison staff for mental health treatment as these visits are too short to be meaningful, they cannot change the conditions that contribute to his mental health condition, and information shared with mental health staff is

understood to be passed on to the prison authorities and will be used against Mr. Riva to extend his detention in segregation.

16. *Michael E. Spencer, CDC# E-90535*

Prison: Pelican Bay State Prison

Segregation location: D-4-216 SHU, P.O. Box 7500, Crescent City, CA 95532

Michael E. Spencer was born on January 29, 1955. He is 56 years old. He has been in isolation segregation for fifteen years, most recently being placed in the SHU on or about August 2002 for alleged gang membership.

Mr. Spencer has no work, no education, no contact with the general prison population, and minimal contact with prison staff for short periods of time. He is housed in a small concrete cell with no windows and no natural light close to 24 hours a day for nine years.

Mr. Spencer has not requested any mental health services since he has been in the SHU because he understands that the mental health service is used against the prisoners by the prison administration. He also does not use any mental health services because the services are insufficient to be meaningful and mental health staff cannot change the conditions of his segregation that significantly contribute to his physical and mental deterioration.

Mr. Spencer has access to the law library every three weeks to a month and is allowed to take notes but not allowed to make copies while in the library. The time he is allowed to visit the law library is entirely too short to permit him to conduct any research necessary to address his legal rights or prepare necessary papers to effectively seek review in any court.

Mr. Spencer alleges that inmates are allowed outdoors in the "dog walk" for ninety minutes a day but that in practice the schedule is arbitrary as the prison administration regularly cancels outdoor yard time.

Mr. Spencer describes the meals in the SHU as small portions compared to the general prison population. His food is often served cold or is outdated, and comes to his cell on dirty trays.

Mr. Spencer has been diagnosed with and receiving treatment for Lymphoma and Leukemia for the past four years. He has not experienced direct sunlight for many years and believes that his eyesight has deteriorated and loss of skin color is a result of this. He has significant hearing problems. He finds himself experiencing mood swings, paranoia, yelling in his sleep, and suffers from depression. He asserts that the medical

staff at the prison is slow to respond to a prisoner's medical needs regardless of how serious the condition may be, and it may take weeks to months to see a doctor.

17. GR

Prison: California Correctional Institution

Segregation Location: SHU

Mr. GR has been incarcerated in California since on or about November 5, 1998. He was sentenced to serve eighteen years after being convicted of assault with a firearm with a consecutive factor of possession of drugs and alcohol. His approximate release date is October 8, 2012.

Mr. GR has been in isolation segregation for three years and eight months since being transferred to the SHU on or about May 12, 2008.

Mr. GR was placed in the SHU after being "validated" as an "associate" of a prison gang. He has appealed these charges through the prison administration but was denied and currently has an appeal pending in the California Court of Appeals.

When Mr. GR has requested medical treatment in the past, his requests have been denied. The isolation of the SHU has affected his psychological health, including causing extreme depression, stress, anxiety, fear, and occasional disorientation.

Mr. GR does not use any mental health services because the services are too insufficient to be meaningful, and he believes the information he shares will be used by prison authorities to keep him in segregation, and mental health staff cannot change the conditions of his detention which are significantly contributing to his physical and mental deterioration.

Mr. GR alleges that law library access has been virtually impossible. He alleges that prisoners are supposed to be provided about 2 1/2 hours access once a month, itself completely inadequate to conduct research or prepare legal briefs, but in reality he has gone for as long as 10 months making requests for law library access which were never approved.

Mr. GR alleges that he is locked in a very small concrete cell with no windows or natural light, close to 24 hours a day and only has access to a small concrete enclosed yard 2 1/2 hours a week.

Mr. GR maintains that he is not allowed access to any prison supervisor and has no daily visitation inspection.

Mr. GR describes the rations of food given to SHU inmates as extremely small, nutritionally inadequate, and the food brought to his cell is often spoiled.

18. *Donald Lee Moran Jr., CDC# J-20212*

Prison: Pelican Bay State Prison

Segregation Location: D-1-105 SHU P.O. Box 7500, Crescent City, CA 95532

Donald Lee Moran Jr. was born June 4, 1969. He is 42 years old. He has been incarcerated in California since on or about 1994. He was sentenced to serve thirty years to life after being convicted of murder. He does not have an approximate release date.

Mr. Moran has been in isolation segregation for seventeen (17) years since being transferred to the SHU on or about 1995.

Mr. Moran was placed in the SHU in 1995 due to an alleged prison gang "association" based on confidential informants. He alleges that he has no history in prison of being a member of any gang or engaging in gang activities.

Mr. Moran explains that access to the law library at Pelican Bay SHU is minimal and inadequate to permit any meaningful research.. An inmate may visit the law library once every month or few months for one and a half hours. Even these few visits are often denied or blocked by prison staff.

Mr. Moran is only allowed outdoors time in a "dog kennel" ninety minutes a day. There is no exercise equipment in the yard.

Mr. Moran describes the food in the SHU as served in small portions that he does not believe meet dietary policies as designed by CDCR. He further asserts that meals have worsened throughout the years.

Mr. Moran has a herniated protruding disc with fibrosis, severe degenerative disc disease that has caused him muscle loss to his left leg and chronic pain, an enlarged prostate with scarring, a growth on his right testicle, and a low platelet count. He alleges that the prison medical staff routinely neglect and ignore prisoners' medical concerns leading to ailments being left untreated and becoming more severe. He alleges that his present prostate problem, which might be contributing to urination/bowel movement difficulties, is going untreated by the medical staff.

Mr. Moran believes that the time spent in isolation has caused him to become anxious, fearful of CDCR staff, experience mood swings, insomnia, depression, fatigue, stress and sensory desensitization.

Mr. Moran's observation of the mental health staff over the past seventeen years in the SHU is that basically do "a walk through" the unit. He has not asked for mental health services because he understands they will share information with the prison staff making it less likely he will ever be released from isolated segregation, he believes their visits are far too short to accomplish any meaningful treatment, and he does not believe that the mental health staff can or will do anything to end his period in isolation or change the conditions causing the deterioration of his mental health.

19. Carlos Roberto Robledo, CDC# T-72730

Prison: Calipatria State Prison

Segregation Location: ASU – A:108L, P.O. Box 5008, Calipatria, CA 92233 (recently CDCR placed Mr. Robledo on a special transfer to Corcoran State Prison SHU in an attempt to show he had not been in "temporary" segregation for 2 years)

Carlos Roberto Robledo was born on November 24, 1980. He is 31 years old. He has been incarcerated in California since on or about 1999. He was sentenced to serve fifty years to life. He does not have an approximate release date.

Mr. Robledo has been in "temporary" isolation segregation for one year and seven months since being transferred from the general prison population to an Administrative Segregation Unit (ASU) on or about June 7, 2010.

Mr. Robledo was placed in an Administration Segregation Unit (ASU) after an incident in which he alleges that he was a victim of a stabbing. While being held in an ASU, he alleges the Institutional Gang Investigators (IGI) told him to "debrief" or be "validated", and he says he was "validated". Mr. Robledo states the Institutional Gang Investigators (IGI) used his stabbing incident (which he was found not guilty of) as a "source" against him for his validation of alleged prison gang "association". He is awaiting transfer to the SHU (Secured Housing Unit) at Pelican Bay State Prison.

Mr. Robledo does not have access to the outdoors with the exception of going outside four times a week, two hours per yard time in a fenced area he refers to as a metal "dog cage."

Mr. Robledo alleges that his meals are smaller than the general prison population which he believes is a tactic the prison uses to break inmates into "debriefing," by becoming an informant on other inmates allegedly associated with or members of a

gang. The food delivered to his cell is often cold, undercooked, and spoiled, and the portions are less than provided in the general prison population.

Mr. Robledo alleges that it can take from one week to a month for inmates to see medical staff when requested. Mr. Robledo suffers various medical conditions including Hepatitis C, allergies, a broken nose, heart palpitations, and his right shoulder is in severe pain and may require surgery. The prison has denied medical treatment for his broken nose along with all of his other medical maladies.

Mr. Robledo alleges that the time spent in isolation has substantially contributed to conditions of stress, anxiety, headaches, and depression. Mr. Robledo has requested mental health services numerous times, but he has been seen by mental health staff only twice during his detention in segregation. He claims the mental health staff tell him "if he was in the general prison population then they will be able to help him". Mr. Robledo is not in the general prison population and the only way out of his accused "validation" label and out of isolation segregation is to "debrief". Therefore, he is being denied proper mental health treatment while in isolated segregation. Debriefing involves accusing other prisoners of being associates or members of a gang. Prisoners like Mr. Robledo may have no such valid information to share and are afraid of the dangerous consequences of becoming an informant on alleged gang members or associates.

20. Derek Carbajal, CDC# H-86305

Prison: Pelican Bay State Prison

Segregation Location: D-9-223 SHU, P.O. Box 7500, Crescent City, CA 95532

Derek Carbajal was born on August 2, 1973. He is 38 years old. He has been incarcerated in California since on or about October 31, 1992. He is eligible for release if approved by the parole board in 2014.

Mr. Carbajal has been in the SHU for eight years and four months since being transferred to the SHU on or about September 3, 2003.

Mr. Carbajal was placed in the SHU after a former cellmate greeted him with a street gang moniker, which resulted in Institutional Gang Investigator (IGI) officers validating him as being an associate with a prison gang.

Mr. Carbajal is permitted to spend time outdoors ninety minutes a day, seven days a week in a small concrete open cell (yard) but this privilege is often arbitrarily cancelled. He has no personal contact with anyone unless he has a cell mate and highly occasional and short interactions with prison staff.

No prison staff is available to counsel prisoners in Mr. Carbajal's unit and he alleges that there is no supervisor in charge to whom prisoners' questions or complaints can be brought before.

Mr. Carbajal's food is often cold or rotten. He alleges that he is sometimes provided pieces of bread with no other food due to what he believes are cost cutting measures in the prison.

As a result of the conditions of his isolation, Mr. Carbajal experiences insomnia, constant fatigue, loss of appetite, skin rashes, loss of weight, head aches, memory loss, depression, back pain, and ankle pain. He alleges that his conditions of confinement are a substantial cause of his medical conditions and that prison authorities provide inadequate care for the conditions they cause.

Mentally, Mr. Carbajal undergoes constant feelings of fear, dread, anxiety and hopelessness. The lack of private visits with the mental health professionals has prevented him from obtaining needed psychological help.

21. BL

Prison: Sierra Conservation Center
Segregation location: Ad-Seg

His incarceration began on or about September 27, 2008. He was sentenced to serve four years in prison after being convicted of possession of a firearm by a felon. His approximate release date was November 30, 2011; it has been recently extended by the prison for release date of April 2012 due to his alleged prison gang association status.

Mr. BL has been in isolated segregation for one year, eight months since being transferred to Administrative Segregation (Ad-Seg) on May 4, 2010.

Mr. BL was placed in Ad-Seg to serve an indeterminate SHU term after being validated as an associate of the Mexican Mafia prison gang in a manner he alleges violated proper procedural due process.

Mr. BL describes that access to a physical law library does not exist. He explains that an inmate must request the books they need; they are allowed access to the books from within their cell once a week on Fridays for two hours. They are allowed to take notes from the books but find it difficult and hassling to make copies.

Mr. BL is permitted outdoors in an exercise yard every other day for 3 1/2 hours. The only other time he is allowed access to the outdoors are the brief trips to visit the medical staff.

Mr. BL describes his meals in Ad-Seg as cold and not enough considering that there are stricter limitations on the amount inmates in Ad-Seg can spend in "Canteen" (a General Store within the prison). He maintains that many of the inmates in Ad-Seg stay hungry most of the time.

Mr. BL mentions that medical treatment is severely lacking. He specifies that he was diagnosed with Hepatitis C and has been trying to get treatment since March 2011; he alleges that the medical staff has told him that he must have had the disease for a certain amount of time prior to treatment.

Mr. BL asserts that the time he has spent in isolation has adversely affected his day-to-day emotions. He mentions that he is affected by mood swings and insomnia, which had never been an issue prior to isolation. He is unsure of the entirety of the effects isolation has had on his psychological health particularly because he fears that psychological treatment in the prison will only leave him worse off.

22. Richard Satterfield, T-79743

Prison: California Correctional Institution

Segregation location: 4B-2A-107 SHU, P.O. Box 1906 Tehachapi, California, 93581

Richard Satterfield was born on December 3, 1972. He has been incarcerated in California since on or about January 14, 2009. He was sentenced to serve a 44 month sentence after being convicted of possession of a sawed off shotgun and possession of a firearm by an ex-convict. He has an approximate release date of July 29, 2013.

Mr. Satterfield has been in isolated segregation for two years and five months since being transferred to the SHU on or about August 26, 2009.

Mr. Satterfield was placed in the SHU after confidential informants alleged his association with a prison gang, despite Mr. Satterfield never being convicted for any gang related crimes or illegal conduct in or out of incarceration.

Mr. Satterfield alleges that access to the law library takes approximately 1-1/2 months to be granted, and then inmates are only allowed less than two hours to research in the library. He alleges that the minimum time allowed in the library and the

limited materials available are inadequate to permit him to conduct any meaningful research.

Mr. Satterfield is permitted outdoors to a concrete enclosed yard once every two to three weeks for two hours. Other than that he remains close to 24 hours a day in a small concrete cell not large enough to allow any activity other than laying down, sitting, or pacing back and forth for 2-3 steps.

Mr. Satterfield is undergoing treatment for Hepatitis C. Since being placed in isolation he alleges that his physical and mental conditions have deteriorated significantly as a result of his long-term confinement in isolated segregation. He fears the prison authorities, suffers from acute depression, anxiety, loss of sleep, nightmares, and extreme loneliness and alienation.

B. Organizational Petitioners

1. California Prison Focus

California Prison Focus (“CPF”) is a non-profit corporation dedicated to protecting the civil and human rights of California prisoners. See www.prisons.org

CPF provides legal services for prisoners, engages in administrative advocacy on behalf of California prisoners, prepares and distributes publications on the rights of California prisoners, and recently engaged in negotiations with California on behalf of prisoners in isolated segregation who initiated a hunger strike to protest the conditions of their detention. The demands of the hunger strikers in segregation is attached as Exhibit 1 (“Complaint”).

The CPF is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

2. Center for Human Rights and Constitutional Law

The Center for Human Rights and Constitutional Law (“CHRCL”) is a non-profit California corporation dedicated to protecting and promoting the civil and human rights of insular minorities, including prisoners. Its offices are located at 245 S. Occidental Blvd., Los Angeles, CA 90057. CHRCL provides technical and advocacy

support to legal services providers offering representation for low-income vulnerable populations in California. The CHRCL is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

3. Families to Amend California's Three Strikes

The Families to Amend California's Three Strikes is a not-for-profit organization with offices located at 3982 South Figueroa Street, Suite 210, Los Angeles, California, 90037. Families to Amend California's Three Strikes engages in advocacy and informational support for California prisoners sentenced to life in prison because of California's "three strikes" law.² Families to Amend California's Three Strikes membership is made up of prisoners, family members, community leaders and activists, attorneys, students, professors, clergy and people of conscience. Families to Amend California's Three Strikes is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

4. Fair Chance Project

The Fair Chance Project is a not-for-profit organization with offices located at 3982 South Figueroa Street, Los Angeles, California, 90037. The Fair Chance Project is made up of families of prisoners sentenced to life or long terms in prison under California's "three strikes" law, and concerned community members, seeking to **educate and support** people in prison and their families on how to navigate the system from court, visitation, conditions of confinement, appeals, Parole and homecoming. the release of thousands of prisoners who have already spent many years in prison long after accepting full responsibility for their crimes, long after they have been fully rehabilitated, and long after they fulfilled all requirements to become eligible for parole. The Fair Chance Project is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often

² In brief, California's "three strikes" law requires that someone convicted of a third "serious" felony (which includes burglary of an unoccupied dwelling), is sentenced to a life sentence with the possibility of parole. Many prisoners sentenced under the "three strikes" law are held in solitary segregation in a Special Housing Unit.

indefinite periods of time merely based upon their identification as affiliates or members of a gang.

5. California Families to Abolish Solitary Confinement (CFASC)

The CFASC is a not-for-profit coalition of families of prisoners in isolated segregation in California prisons. The CFASC and its members are deeply concerned with and advocate to change California policies and practices relating to the placing of prisoner in isolated segregation. CFASC works for legislative changes to allow for periodic review of extreme sentences and improved treatment of long-term prisoners and provides technical support and training to prisoners and their families in order to protect and promote the rights of long-term prisoners.

6. Justice for Families

Justice for Families is a not-for profit organization with offices located at 175 Remsen Street, 8th Floor, Brooklyn, New York 11201. Justice for Families is a new national support, advocacy and organizing initiative of families of court involved and incarcerated youth that works to challenge the community disinvestment, zero tolerance school policies, and punitive laws that lead to the disparate lockup of youth of color. Justice for Families is building a national bipartisan movement for justice reinvestment--the reallocation of government spending away from mass incarceration and toward investment in families. Justice for Families is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

7. The Real Cost of Prisons Project

The Real Cost of Prisons Project is a not-for-profit organization with offices at 5 Warfield Place, Northampton, Massachusetts, 01060. The Real Cost of Prisons Project seeks to broaden and deepen the organizing capacity of prison/justice activists working to end mass incarceration. The Real Cost of Prisons Project brings together justice activists, artists, justice policy researchers and people directly experiencing the impact of mass incarceration to create popular education materials and other resources which explore the immediate and long-term costs of incarceration on the individual, her/his family, community and the nation. The Real Cost of Prisons Project is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated

segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

8. American Friends Service Committee

The American Friends Service Committee is a not-for-profit organization. The American Friends Service Committee (AFSC) is a Quaker organization that includes people of various faiths who are committed to social justice, peace and humanitarian service. Our work is based on the principles of the Religious Society of Friends, the belief in the worth of every person, and faith in the power of love to overcome violence and injustice. AFSC seeks to understand and address the root causes of poverty, injustice, and war. AFSC hopes to act with courage and vision in taking initiatives that may not be popular. AFSC are called to confront, nonviolently, powerful institutions of violence, evil, oppression, and injustice. Such actions may engage us in creative tumult and tension in the process of basic change. AFSC seeks opportunities to help reconcile enemies and to facilitate a peaceful and just resolution of conflict. AFSC works with all people, the poor and the materially comfortable, the disenfranchised and the powerful in pursuit of justice. AFSC is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

9. Community Futures Collective

Community Futures Collective_(CFC) was founded in 2002 to provide fiscal sponsorship, infrastructure development and support for advocacy and service organizations. CFC encourages funding agencies and contributors to take risks in funding new projects and programs and takes great pride in sponsoring projects committed to positive social change and a more equitable distribution of wealth, resources and power. Funders and contributors of CFC projects and programs are investing in the future of communities by supporting projects that seek out the root causes of social problems and pose new solutions. CFC is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

10. Center for Prisoner Health and Human Rights

The Center for Prisoner Health and Human Rights is a means to articulate policy recommendations and to promote advocacy on behalf of prisoner health and human rights issues. The Center seeks to advance the health and human rights of criminal

justice populations through research, education, and advocacy. The Center identifies, initiates, and supports projects that respond to the epidemic of incarceration and recidivism in the criminal justice system and the associated complex public health crisis. At the epicenter of the crisis are individuals suffering from addiction, substance use, and mental illness whose treatable illnesses and diseases have been effectively, if not actually, criminalized. The Center is a collaboration of doctors and health care professionals, faculty, researchers, and students from a variety of academic disciplines and institutions, lawyers, community activists, and others who are dedicated to shaping and effecting the interdisciplinary response that the crisis demands. Harnessing the passion, skills, and training of these individuals, the Center strives to educate health professionals, students, policy and opinion makers, and the general public, and to translate world-class research into sound, evidence-based policies and practices that address the multiple dimensions of this public health and human rights crisis. The Center for Prison Health and Human Rights is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

11. California Prison Moratorium Project

The California Prison Moratorium Project is a not-for-profit organization with offices located at 623 N. Harrison, Fresno, California, 93728. The California Prison Moratorium Project seeks to stop all public and private prison construction in California. The Moratorium Project believes that since the majority of people are sent to prison for non-violent drug-related or economic crimes, these people should have access to drug treatment and/or economic assistance (such as education, affordable childcare, job training and placement, or welfare) instead of prison terms. The California Prison Moratorium Project is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

12. Legal Services for Prisoners with Children

Legal Services for Prisoners with Children (LSPC) is a non-profit organization with a history of over thirty years of working to restore rights of incarcerated and formerly-incarcerated people, release people from prison & reunify people, families and communities during and after incarceration. Guided by the vision of people in prison and of formerly-incarcerated people, working in unity with expert attorneys and policy advocates, LSPC seeks to transform the injustice of mass

incarceration. LSPC is deeply concerned with the placement of hundreds or thousands of prisoners in California in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang.

13. Disability Rights Legal Center

The Mission of the Disability Rights Legal Center (DRLC) is to champion the rights of people with disabilities through education, advocacy and litigation. DRLC is located at the Loyola Law School Public Interest Law Center, 800 South Figueroa Street, Suite 1120 in Downtown Los Angeles. DRLC has a satellite office on the campus of the University of La Verne College of Law in the Inland Empire of Southern California, and a Midwest Regional Office in Chicago, Illinois. Disability Legal Rights Center is deeply concerned with the placement of hundreds of prisoners in California with mental disorders in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang. It is also concerned that the treatment of Petitioners by California inevitably causes them to suffer from severe mental disabilities.

14. Disability Rights California

The mission of Disability Rights California is to provide legal services and advocacy support to disabled people in order to protect their right to equal treatment, dignity, independence, and freedom from abuse, neglect, and discrimination. Disability Rights California has regional offices in Sacramento, San Francisco, Los Angeles, and San Diego. Disability Rights California is deeply concerned with the placement of hundreds of prisoners in California with mental disorders in isolated segregation units for lengthy and often indefinite periods of time merely based upon their identification as affiliates or members of a gang. It is also concerned that the treatment of Petitioners by California inevitably causes them to suffer from severe mental disabilities.

C. *Responding Parties*

1. United States of America;³
2. Jerry Brown, Governor of the California;
3. Matthew Cate, Secretary of the California Department of Corrections; and
4. The California Department of Corrections and Rehabilitation.⁴

III. OVERCROWDING IN CALIFORNIA'S PRISONS

The overcrowding in California prisons is far beyond the design or rational capacity of the prisons in use. On November 2, 2011, the California Department of Corrections and Rehabilitation issued its monthly report regarding the population in California's prison. See Exhibit 3 attached.

The CDCR's November report states that the agency had 146,218 prisoners in custody in California, excluding civil addicts. *Id.* p. 1. The report provides a breakdown by prison, and shows, for example, that 5,728 prisoners are held at Avenal SP, a prison designed and built for 2,920 prisoners; the California Correctional Institution has 5,487 in a prison designed and built for 2,783 prisoners; the California SP Centinela has 4,163 prisoners in a facility designed and built for 2,308 prisoners; the CTF prison has 6,643 prisoners in a facility designed and built for 3,312 prisoners. Virtually all of the 30 prisons for men in California are vastly overcrowded. See Exhibit 3, page 2.

Results from studies on prison overcrowding indicate that density generally corresponds with the rate of inmate rule violations.⁵ Research has demonstrated that prison overcrowding creates competition for limited resources, aggression, higher rates

³ While the policies and actions addressed in this Petition are those of the State of California, as the Committee on Torture has noted, "the State party [i.e. the United States of America] "has a federal structure, but ... [it] is a single State under international law and has the obligation to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") in full at the domestic level." U.N. Comm. Against Torture, 36th Session, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and Recommendations of the Committee Against Torture: United States of America, CAT/C/USA/CO/2, at P 36 (May 18, 2006) (hereinafter "Committee Against Torture, CAT/C/USA/CO/2")

⁴ Jurisdiction defined under Cal. Penal Code § 5003

⁵ See, e.g. <https://www.ncjrs.gov/App/publications/Abstract.aspx?id=97950>

of illness, increased likelihood of recidivism and higher suicide rates.⁶ Obviously overcrowding also leads to increased inmate-on-inmate altercations and violence. In this environment gangs flourish primarily as a source of protection for prisoners but also sometimes to act as predators.

While California creates the extreme conditions which encourage prisoners to associate with or join gangs mostly in order to survive, it then punishes prisoners who seek gang protection by placing them for many years or indefinitely in isolated segregation. As discussed next, release from isolated segregation in most cases requires a “debriefing” process in which a prisoner is forced to become an informant on other prisoners, an activity that can lead to serious injury or death.

IV. CALIFORNIA’S POLICY REGARDING ISOLATED SEGREGATION

The Petitioning prisoners are all currently being housed in isolated segregation in California prisons, for the most part in units called Secure Housing Units (SHU).

The California Department of Corrections and Rehabilitations (CDCR) is responsible for the operation of California’s prisons including setting written policies some of which are published in the California Regulations and others appear in policy memoranda. CDCR is also responsible for training and monitoring its officers.

Title 15 of the California Administrative Code sections 3341 (“CCR § 3341”) and 3378 (“CCR § 3378”) set forth the CDCR policies on “validating” suspected associates or members of gangs for placement in isolation units.

Section 3378(c) provides in relevant part as follows:

Gang involvement allegations shall be investigated by a gang coordinator/ investigator or their designee.

(1) CDC Form 812-A or B shall be completed if an inmate/ parolee has been verified as a currently active member/ associate, inactive member/ associate or dropout of a gang (prison gang or disruptive group) ... *Current activity is defined as any documented gang activity within the past six (6) years* consistent with section 3341.5(c)(5) [see below].

(2) ... [T]he identification of an inmate/ parolee as a currently active gang member or associate [must be] supported by at least *three independent source items*

⁶ See, e.g. <http://www.johnhoward.ab.ca/pub/C42.htm#exe>

in the inmate's ... central file. The independent source items must contain factual information or, if from a confidential source, meet the test of reliability established in section 3321. The verification of an inmate ... identified as a gang dropout *shall require a formal debriefing* conducted or supervised by a gang investigator.

(3) A member is an inmate/parolee or any person who has been *accepted into membership by a gang.* This identification requires at least three (3) independent source items of documentation indicative of actual membership [including] ... *at least one (1) source item be a direct link to a current or former validated member or associate of the gang,* or to an inmate ... or any person who is validated by the department within six (6) months of the established or estimated date of activity identified in the evidence considered.

(4) An associate is an inmate ... or any person *who is involved periodically or regularly with members or associates of a gang ...* Validation of an inmate ... shall require at least one (1) source item be a direct link to a current or former validated member or associate of the gang

(5) A dropout is an inmate ... who was either a gang member or associate and has discontinued gang affiliation. *This identification requires the inmate/parolee to successfully complete the debriefing process.*

(6) The verification of an inmate ... gang identification shall be validated or rejected by the chief, office of correctional safety (OCS), or a designee.

(A) Prior to submission of a validation package to the OCS ... the subject of the investigation shall be interviewed by the Institution Gang Investigator, or designee, and *given an opportunity to be heard* in regard to the source items used in the validation or inactive status review.

(B) Inmates shall be given written *notice at least 24 hours in advance of the interview ...*

(C) All source items referenced in the validation ... shall be disclosed to the inmate ... at the time of notification. The inmate/parolee shall be given copies of all non-confidential documents ... Confidential information used in the validation or inactive status review shall be disclosed to the inmate/parolee via a CDC Form 1030 (Rev. 12/86), Confidential Information Disclosure Form.

(D) The interview shall be documented and include a record of the inmate's ... opinion on each of the source items used in the validation. Staff shall record this information and provide a written record to the inmate ... within fourteen (14) calendar days and prior to submission of the validation package to OCS.

(E) The documented interview shall be submitted with the validation package to the OCS for consideration to approve or reject the validation. ...

- (F) The inmate's mental health status and/or need for staff assistance shall be evaluated prior to interview ...
- (7) The [validation forms] shall be reviewed by a classification committee at each *annual hearing and upon any review for transfer consideration* ...
- (8) The determination of a gang identification shall reference each [of the three] independent source item ... The sources shall be based on the following criteria:
- (A) *Self admission*. Staff shall document information about the inmate / parolee's self-admission and specific involvement with the gang ...
- (B) *Tattoos and symbols*. Body markings, *hand signs, distinctive clothing, graffiti*, etc., which have been identified by gang investigators as being used by and distinctive to specific gangs. ...
- (C) *Written material*. Any material or documents evidencing gang activity such as the membership or enemy lists, constitutions, organizational structures, codes, training material, etc., of specific gangs ...
- (D) *Photographs*. Individual or group photographs with gang connotations such as those which include insignia, symbols, or validated gang affiliates ... *No photograph shall be considered for validation purposes that is estimated to be older than six (6) years*. Any photograph being utilized as a source item that depicts gang members and/or associates shall require that at least one of the individuals be *previously validated by the department, or validated as a member or associate of the gang by the department within six (6) months of the photograph's established or estimated date or origin* ...
- (E) *Staff information*. Documentation of staff's *visual or audible observations* which reasonably indicate gang activity. Staff shall articulate the basis for determining the content or conduct at issue is gang related ...
- (F) *Other agencies* ... Verbal information from another agency shall be documented by the staff person who receives such information, citing the source and validity of the information ...
- (G) *Association*. Information related to the inmate's ... *association with validated gang affiliates*. Information including addresses, names, identities and reasons why such information is indicative of association with a prison gang or disruptive group ...
- (H) *Informants*. *Documentation of information evidencing gang affiliation from an informant shall indicate the date of the information, whether the information is confidential or non-confidential, and an evaluation of the informant's reliability*. Confidential material shall also meet the requirements established in section 3321. Staff shall articulate how the information specifically relates to the inmate's involvement with the gang as a member or associate. *The information may be used as a source of validation if the informant provides specific knowledge of how he/she knew*

the inmate to be involved with the gang as a member or associate. Multiple confidential sources providing information regarding a single gang related incident or behavior shall constitute one (1) source item. Exclusive reliance on hearsay information provided by informants will not be used for validation purposes ...

(I) Offenses. Where the circumstances of an offense evidence gang affiliation such as where the offense is between rival gangs, the victim is a verified gang affiliate, or the inmate's ... crime partner is a verified gang affiliate. Staff shall articulate why an offense is gang related. Multiple sources of information relative to a single incident or offense will be considered one (1) source of validation ...

(J) Legal documents. Probation officer's report or court transcripts evidencing gang activity ...

(K) Visitors. Visits from persons who are documented as gang "runners", or community affiliates, or members of an organization which associates with a gang. Staff shall articulate the basis for determining that the relationship between the visitor and inmate is gang related in nature or that the visitor and inmate engaged in a gang related discussion or gang conduct. Staff shall articulate the basis for identifying the visitor as associated with the gang ...

(L) Communications. Documentation of telephone conversations, conversations between inmates, mail, notes, greeting cards, or other communication, including coded messages evidencing gang activity. Staff shall articulate why, based on either the explicit or coded content, the communication is reliable evidence of association or membership with the gang...

(M) Debriefing reports. Documentation resulting from the debriefing required by (c)(2), above. Only information referencing specific gang related acts or conduct shall be considered as a source item. Multiple sources of information relative to a single gang related offense or activity shall be considered a single source of validation ...

...

(e) An inmate housed in a security housing unit (SHU) as a gang member or associate may be considered for review of inactive status by the Department Review Board when the inmate has not been identified as having been involved in gang activity for a minimum of six (6) years. Verification of an inmate's inactive status shall be approved or rejected by the chief, OCS, or a designee ...

(f) A gang member or associate, who is categorized as inactive or validated as a dropout of a prison gang and released from a SHU, may be removed from the general population or any other placement based upon one reliable source item identifying the inmate as an active gang member or associate of the prison gang with which the inmate was previously validated. The source item must identify the inmate as a gang member or associate based on information developed after his or her

release from SHU. The source item need not be confidential, but must meet the test of reliability established at section 3321.

(g) The procedures relating to the initial validation or rejection of gang members or associates as described in this section shall be followed when reviewing the present status of an inactive gang member or associate. Verification of an inmate's/parolee's active status shall be approved or rejected by the chief, OCS, or a designee. This determination shall be forwarded for placement in the inmate's/parolee's central file.

(h) A classification committee is authorized to return an inmate to a SHU based upon the restoration of the inmate's gang status and a determination that the inmate's present placement endangers institutional security or presents a threat to the safety of others. As provided at section 3341.5, placement in a SHU requires approval by a classification staff representative.

15 CCR 3378(c) (emphasis added).

15 CCR § 3341.5. describes Segregated Program Housing Units.

Special housing units are designated for extended term programming of inmates not suited for general population. Placement into and release from these units requires approval by a classification staff representative (CSR).

...

(c) Security Housing Unit (SHU). An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a SHU.

...

(2) Length of SHU Confinement. *Assignment to a SHU may be for an indeterminate or for a fixed period of time.*

(A) Indeterminate SHU Segregation.

1. An inmate assigned to a security housing unit on an indeterminate SHU term shall be reviewed by a classification committee at least every 180 days for consideration of release to the general inmate population ...

2. Except as provided at section 3335(a), section 3378(d) and subsection (c)(5), *a validated prison gang member or associate is deemed to be a severe threat to the safety of others or the security of the institution and will be placed in a SHU for an indeterminate term.*

(B) Determinate SHU Segregation.

1. *A determinate period of confinement in SHU may be established for an inmate found guilty of a serious offense listed in section 3315 of these regulations. The term shall be*

established by the Institutional Classification Committee (ICC) using the standards in this section, including the SHU Term Assessment Chart (see section 3341.5(c)(9)), Factors in Mitigation or Aggravation (see section 3341.5(c)(10)), SHU Term Assessment Worksheet CDC Form 629-A, Rev. 3/96, Assessment of Subsequent SHU Term Worksheet CDC Form 629-B, Rev. 9/90, and SHU Time Computation Table (see CDC Form 629-D, Rev. 7/88).

...

8. The Unit Classification Committee shall conduct hearings on all determinate cases at least 30 days prior to their MERD or during the eleventh month from the date of placement, whichever comes first.

...

(3) Release from SHU. An inmate shall not be retained in SHU beyond the expiration of a determinate term or beyond 11 months, unless the classification committee has determined before such time that continuance in the SHU is required for one of the following reasons:

(A) The inmate has an unexpired MERD from SHU.

(B) Release of the inmate would severely endanger the lives of inmates or staff, the security of the institution, or the integrity of an investigation into suspected criminal activity or serious misconduct.

...

(4) *A validated prison gang member or associate shall be considered for release from a SHU, as provided above, after the inmate is verified as a gang dropout through a debriefing process.*

(5) As provided at section 3378(e), the Departmental Review Board (DRB) may authorize SHU release for prison gang members or associates categorized as inactive. **The term inactive means that the inmate has not been involved in gang activity for a minimum of six (6) years ...**

...

(6) As provided at section 3378(f), an inmate categorized as inactive or validated as a dropout of a prison gang and placed in the general population *may be returned to segregation based upon one reliable source item identifying the inmate as a currently active gang member or associate of the prison gang with which the inmate was previously validated. **Current activity is defined as, any documented gang activity within the past six (6) years ...***

...

(10) Factors in mitigation or aggravation of SHU term. The SHU term shall be set at the expected range unless a classification committee finds factors exist which

warrant the imposition of a lesser or greater period of confinement ... The total period of confinement assessed shall be no less than nor greater than the lowest or highest months listed for the offense in the SHU Term Assessment Chart. In setting the term, the committee shall determine the base offense. If the term being assessed includes multiple offenses, the offense which provides for the longest period of confinement shall be the base offense. Lesser offenses may be used to increase the period beyond expected term. After determining the base offense, the committee shall review the circumstances of the disciplinary offense and the inmate's institutional behavior history using the factors below. The committee shall then determine that either no unusual factors exist or find that specific aggravating or mitigating factors do exist and specify a greater or lesser term. The reasons for deviation from the expected term shall be documented on a CDC 128-G, Classification Chrono, and SHU Term Assessment Worksheet, a copy of which shall be provided to the inmate.

(A) Factors in Mitigation [Note: These factors are *not* considered when “validating” alleged gang members or associates for indefinite placement in isolation segregation].

1. The inmate has a minor or no prior disciplinary history.
2. The inmate has not been involved in prior acts of the same or of a similar nature.
3. The misconduct was situational and spontaneous as opposed to planned in nature.
4. The inmate was influenced by others to commit the offense.
5. The misconduct resulted, in part, from the inmate's fear for safety.

(B) Factors in Aggravation [Note: These factors are *not* considered when “validating” alleged gang members or associates for indefinite placement in isolation segregation].

1. The inmate's prior disciplinary record includes acts of misconduct of the same or similar nature.
2. The misconduct was planned and executed as opposed to situational or spontaneous.
3. The misconduct for which a SHU term is being assessed resulted in a finding of guilty for more than one offense.
4. The inmate influenced others to commit serious disciplinary infractions during the time of the offense.

15 CCR § 3341.5 (emphasis added).

The inmate Petitioners in this case challenge their placement in isolated segregation for an “indefinite” period or for many years solely based upon a “validation” that they are gang members or are associates of a gang. Petitioners allege that penalizing prisoners with indefinite or determinate terms of many years solely for gang membership or association without the prisoner having engaged in any illegal acts or acts in violation of prison rules, or even having planned to do so, constitutes cruel and degrading treatment in violation of California’s obligations under international law.

The violation is exacerbated by rules discussed above that (a) require a prisoner to be gang-free for “six years” before being considered for release from segregation, and (b) allow a prisoner to be “validated” based upon often ambiguous indicators such as “hand signs,” “distinctive clothing,” “group photographs with ... gang members,” a prisoner’s “association with validated gang affiliates,” or information from “an informant” who supposedly possesses “specific knowledge” of how “he/she knew” the inmate to be involved with the gang as a member or associate.

3378.1. Debriefing Process.

(a) Debriefing is the process by which a gang coordinator/investigator determines whether an inmate/parolee (subject) has dropped out of a gang. A subject shall be debriefed only upon his or her request, although staff may ask a subject if he or she wants to debrief.

Debriefing shall entail a two-step process that includes an interview phase and an observation phase.

(b) The purpose of the debriefing interview is to provide staff with information about the gang’s structure, activities and affiliates.

The violation is further exacerbated by the conditions experienced by prisoners in isolated segregation as detailed above in Section II(A), including insufficient access to fresh air and outdoors, inadequate food, inadequate access to human contact with other people, inadequate medical and psychological care, and other inhuman and degrading treatment.

While there are time restraints on disciplinary hearings for SHU inmates, there is none on inactive or SHU release Departmental Review Board reviews, so prisoners often wait years for these reviews on their inactive gang status.⁷

⁷ CCR Tit. 15 sections 3320 and 3376.1 (d)(3) and 3378(e)

Finally, the placement of “validated” prisoners in *indeterminate* isolation for mere membership in or association with a gang, while other prisoners who commit serious offenses are placed in isolation for a determinate term, appears to violate the “validated” prisoners right to equal protection under the laws and differences in treatment that are at minimum justified by some rational or legitimate basis.

V. THE IMPACT OF SEGREGATION ON CALIFORNIA PRISONERS

In the 1980s Dr. Stuart Grassian performed studies on prisoners in the Massachusetts Correctional Institute at Walpole and Pelican Bay state Prison in California.⁸ In the study conduct at Walpole, many inmates initially discussed their time in solitary confinement with indifference. However, Dr. Grassian found that the inmates’ previous statements were actually a denial of the conditions that led to troubling descriptions of mental torture.⁹

The symptoms of these inmates included: Perceptual distortions and loss of perceptual contacts, including hallucinations in some, ideas of reference and paranoid ideation short of overt delusions, emergence of primitive aggressive fantasies, which remained ego-dystonic and with reality-testing preserved, disturbances of memory and, and derealization experiences.¹⁰

In eight instances, solitary segregation resulted in anxiety that caused recurrent physical conditions including rapid heartbeat, perspiration, shortness of breath, panic, trembling, and fear of imminent death.¹¹ Several prisoners exhibited “fantasies of revenge, torture, and mutilation of the prison guards.” Also, five inmates reported episodes of a lack of impulse control with random violence, including cases of self-mutilation.¹²

⁸ Stuart Grassian, M.D., Psychopathological Effects of Solitary Confinement, 140 Am. J. Psychiatry 1450 (1983)

⁹ *Id.* at 1452

¹⁰ *Id.* at 1453-54.

¹¹ *Id.* at 1452

¹² See *Id.*

The inmates at Pelican Bay displayed many of the same behaviors when a large sample of them was interviewed by Dr. Grassian's colleague Dr. Haney.¹³ Dr. Haney's prevalence study of a representative sample of one hundred Pelican Bay SHU prisoners revealed that most were suffering from a variety of symptoms of psychological trauma and distress, including two-thirds or more who were plagued by anxiety, chronic lethargy, depression, impaired thought processes, and the sense of an impending emotional breakdown.¹⁴ Dr. Haney also observed that some prisoners were so desperate for human contact and interaction that they "act out as a way of getting a reaction from their environment," even though they know that this often leads to more deprivations.¹⁵ Other prisoners "create their own sense of reality, one seemingly 'crazy' but easier for them to tolerate."¹⁶ In addition to the symptoms mentioned above, the deprivations experienced in the SHU can lead to frustration, anger, and rage.¹⁷

United States Senator John McCain, who experienced five years of solitary confinement as a prisoner of war, wrote "[i]t's an awful thing, solitary. It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment."¹⁸

The former European Commission on Human Rights made clear that "it is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and social abilities." *Koskinen v. Finland*, 18 Eur. H.R. Rep. CD 146 P 73 (1994).

¹³ Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 *Crime & Delinquency* 124-156 (2003).

¹⁴ *Id.* at 132-137. See, also, *id.* at 130-132 for a summary of psychological and psychiatric symptoms reported by prisoners in other studies of isolated confinement.

¹⁵ Craig Haney, *Infamous Punishment: The Psychological Consequences of Isolation*, *Nat'l Prison Proj. J.* 3, 6-7 (Spring 1993), at 5.

¹⁶ *Id.*

¹⁷ *Id.* For a discussion of the atmosphere of cruelty and harm that is created inside many of these units, see Craig Haney, *A Culture of Harm: Taming the Dynamics of Cruelty in Supermax Prisons*, 35 *Criminal Justice and Behavior* 956-984 (2008).

¹⁸ John McCain, *Faith of My Fathers* 206 (Random House, 1999).

A United States Federal District Court judge observed the following about inmates in solitary segregated confinement:

[Inmates] can go weeks, months or potentially years with little or no opportunity for normal social contact with other people [They] remain confined to their cells for 22 and 1/2 hours of each day. Food trays are passed through a narrow food port in the cell door. Inmates eat all meals in their cells. Opportunities for social interaction with other prisoners or vocational staff are essentially precluded [S]ome inmates spend the time simply pacing around the edges of the pen; the image created is hauntingly similar to that of caged felines pacing in a zoo.

Madrid v. Gomez, 889 F. Supp. 1129, 1146 (N.D. Cal. 1995).

The Court in *Madrid* noted that “[s]ocial science and clinical literature have consistently reported that when human beings are subjected to social isolation and reduced environmental stimulation, they may deteriorate mentally and in some cases develop psychiatric disturbances. . . . [There is] an ample and growing body of evidence that this phenomenon may occur among persons in solitary or segregated confinement – persons who are, by definition, subject to a significant degree of social isolation and reduced environmental stimulation.” *Id.*, 889 F.Supp. at 1146.

The United States Supreme Court has described the effects of solitary segregation as follows:

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. It became evident that some changes must be made in the system . . .

Medley, Petitioner, 134 U.S. 160, 168 (1890).

In 2008, the UN Special Rapporteur of the Human Rights Council submitted a report to the UN General Assembly finding that:

The weight of accumulated evidence to date points to the serious and adverse health effects of the use of solitary confinement: from insomnia and confusion to hallucinations

and mental illness. The key adverse factor of solitary confinement is that socially and psychologically meaningful contact is reduced to the absolute minimum, to a point that is insufficient for most detainees to remain mentally well functioning

...

Torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/63/175 (28 July 2008). (Hereinafter “Torture and other Cruel, Inhuman or Degrading Treatment U.N. Doc. A/63/175”)

In advance of the 2011 hunger strike, California prisoners held in solitary segregation described their conditions of detention and the impact of those conditions in a document served on responding parties Governor Brown and Secretary Cate, as follows:

For the last 10 to 20 plus years these ... SHU inmates have been subject to the punitive conditions ... in order to coerce them into becoming notorious informants for the state, or die/suffer mental illness in SHU – examples being:

1. Subject to 10+20 years of sensory deprivation via isolation and intentional limitations of normal human contact and social interaction, as much as possible.
2. Denied physical contact with family/friends; no phone calls and not even able to have a photograph taken to send home ...
3. If they want out of the SHU, prisoners have to provide staff with information and be willing to testify against other prisoners, free citizens, including family members. This is a Catch 22 situation—by either becoming a notorious informant thereby placing yourself, possibly your family at serious risk of retaliation, die or become mentally ill in the SHU ...
4. Denied adequate medical care ... [T]elling SHU inmates, “if you want better care get out of the SHU” ... SHU inmates are chained down to the floor of the clinic like animals if they need to see a doctor/nurse. The Psychiatric Staff are complicit too claiming that “there are no mental health issues precluding continued SHU confinement”, without any personal interaction with those inmates.
5. ... [M]ost cells are freezing in winter and adequate clothing and head coverings are restricted/denied ... No exercise equipment is provided ... [A]ll property privileges are severely restricted/denied ... [A]ll college and education

programs have been taken away from all ... SHU inmates. Also, "group punishment" is a common response to any rule violation.

All of this rises to a level which constitutes illegal policies that include psychological and physical torture for purposes of coercion and punishment—all based on the arbitrary status [of being an alleged associate or member of a gang].

Complaint, Exhibit 1.

VI. LEGAL ANALYSIS

1. *CUSTOMARY INTERNATIONAL LAW DOES NOT PERMIT THE ARBITRARY ISOLATION OR SEGREGATION OF PRISONERS FOR EXTENDED PERIODS OF TIME*

The United Nations Charter of 1945 does not address directly the rights of prisoners but does make clear in Article 55 the requirement that U.N. members practice "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."¹⁹

Article 5 of the Universal Declaration of Human Rights ("Universal Declaration"), adopted in 1948, and considered part of customary international law, states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Although neither of these initial human rights documents were legally binding, they are generally accepted as part of customary international law.²⁰

¹⁹ See Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (1948).

²⁰ See, e.g., Suzanne M. Bernard, *An Eye for an Eye: The Current Status of International Law on the Humane Treatment of Prisoners*, 25 RUTGERS L.J. 759, 769 (1994) (noting how the Universal

Declaration carries "great weight and may be taken as evidence of binding customary international law"); Nan D. Miller, *International Protection of the Rights of Prisoners: Is Solitary Confinement in the United States a Violation of International Standards?* 26 CAL. W. INT'L L.J. 139, 141 (1995).

According to Restatement (Third) of the Foreign Relations Law of the United States: "A state violates international law if, as a matter of state policy, it practices, encourages, or condones ... (d) torture or other cruel, inhuman, or degrading treatment or punishment, or . . . (g) a consistent pattern of gross violations of internationally recognized human rights."²¹

In determining what is entailed in "international customary law" or "law of nations," institutions review a multitude of sources, such as the writings of foreign jurists, the general usage and practice of other nations, and judicial decisions recognizing and enforcing such law.²² We therefore next examine a range of decisions and principles regarding the placement of prisoners in isolated segregation.

The U.N. in 1955 adopted the Standard Minimum Rules for the Treatment of Prisoners ("Standard Rules").²³ The Standard Rules recognize solitary confinement and prolonged segregation as appropriate only in exceptional circumstances, to be used sparingly and not arbitrarily. *Id.* R. 57. The United States incorporated the Standard Rules in the Model Penal Code of 1962.²⁴ The Standard Rules "have been increasingly recognized as a generally accepted body of basic minimal requirements."²⁵ Article 27, for example, provides that discipline and order shall be maintained with "no more restriction than is necessary for safe custody and well-ordered community life."

Article 30(2) of the Standard Rules requires that a prisoner be given a proper opportunity of presenting his defense. Here no adequate opportunity exists to present a defense because the prisoner may be arbitrarily confined to years of segregation based upon insignificant and often arbitrary criteria. It is impossible to defend oneself against

²¹ Martin A. Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections Under Domestic Civil Rights Law-A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71, 107 (2000) (quoting from Restatement (Third) of the Foreign Relations Law of the United States § 702 (1987)).

²² See footnote 22, at 107-108. (quoting from Restatement (Third) of the Foreign Relations Law of the United States § 702 (1987)).

²³ Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 2076, U.N. ESCOR, 62d Sess., Supp. No. 1, UN Doc. E/5988 (1977) [hereinafter "UN Standard Minimum Rules"], available at http://www.unhchr.ch/html/menu3/b/h_comp34.htm.

²⁴ Miller, *supra* note xxx, at 148.

²⁵ *Id.* (quoting Daniel L. Skoler, *World Implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, 10 J. INT'L L. & ECON. 453, 455 (1975)).

vague hearsay from an unnamed confidential informant. Furthermore, a prisoner previously validated and subsequently released from segregation may be “revalidated” and returned to isolated segregation simply by being informed that he is believed to be a gang member or associate according to a confidential informant, with this accusation provided one day before a meeting with a prison official where the “revalidation” decision is made.

Article 31 provides that all “cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.” Placing prisoners in segregated isolation for many months or years based merely upon membership or “association” with a gang until the prisoner has been “gang free” for “six years” is arbitrary detention, and is a cruel, inhuman and degrading punishment.

Article 32(1) provides that punishment by “close confinement or reduction of diet” shall never be inflicted unless a medical officer “has examined the prisoner and certified in writing that he is fit to sustain it.” In this case prisoners have the quality and nature of their confinement very substantially and arbitrarily changed without a medical officer determining that they are fit to sustain extended isolated segregation.

“[S]olitary confinement can, in certain circumstances, amount to inhuman and degrading treatment ...”²⁶ This is particularly true when the solitary confinement is for an extended period of time or indefinite. *See* U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Switzerland, P 133, U.N. Doc. CAT/A/49/44 (Apr. 20, 1994); U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: New Zealand, P 5, U.N. Doc. CAT/C/CR/32/4 (May 19, 2004); U.N. Human Rights Comm., General Comment No. 20, P 6, U.N. Doc. CCPR/A/47/40/1992, Annex VI (1994).

²⁶ *See* Eur. Comm. for the Prevention of Torture & Inhuman or Degrading Treatment or Punishment, 2nd General Report on the CPT's Activities Covering the Period 1 January to 31 December 1991, CPT Annual General Reports, CPT/Inf(1992) 3, at P 56, available at <http://www.cpt.coe.int/en/annual/rep-02.htm>; *see also* Eur. Comm. for the Prevention of Torture & Inhuman or Degrading Treatment or Punishment (CPT), The CPT Standards: "Substantive" Sections of the CPT's General Reports, CPT Annual General Reports, CPT/Inf/E (2002) 1, Rev. 2006, at 20, available at <http://www.cpt.coe.int/en/documents/eng-standards-prn.pdf> [hereinafter The CPT Standards]; *Ramirez Sanchez v. France*, App. No. 59450/00, 45 Eur. H.R. Rep. 49, P 83 (2007).

In 1991, for example, in its assessment of isolated segregation in Spanish prisons, the ECPT concluded that subjecting prisoners to a regime of isolated segregation with “nothing by way of activity” for “long periods” constitutes inhuman treatment. Eur. Comm. for the Prevention of Torture & Inhuman or Degrading Treatment or Punishment, Report to the Spanish Government on the Visit to Spain from 1 to 12 April 1991, CPT/Inf (1996) 9 [Part 1], p 113, available at <http://www.cpt.coe.int/documents/esp/1996-09-inf-eng-1.pdf>.

According to the Inter-American Court of Human Rights, “prolonged isolation and coercive solitary confinement are, in themselves, cruel and inhuman treatments, damaging to the person's psychic and moral integrity and the right to respect of the dignity inherent to the human person.” *Velasquez Rodriguez Case*, Inter-Am. Ct. H.R. (ser. C) No. 4, at 9 P 156 (1988) (“prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment”); *see also Case of the Miguel Castro-Castro Prison v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 160, at P 323 (Nov. 25, 2006).

The overriding rationale for segregated isolated confinement is to impose order and maintain safety in the prison environment. Petitioners recognize that there may be cases in which indefinite or lengthy isolated segregation may be justified without violating international human rights norms, including for example prisoners whose conduct has clearly shown are a serious danger to the safety of prison officials or other prisoners. However, because of the obvious very harmful long term effects of solitary confinement over a long period of time, “a rigorous examination is called for ... to determine whether it [is] justified.” *Ramirez Sanchez v. France*, App. No. 59450/00, 45 Eur. H.R. Rep. 49, ¶¶ 125, 136, 150 (2007).

This is not a case like the detention of Abdullah Ocalan in segregated isolation for six years in Turkey. *Ocalan v. Turkey*, App. No. 46221/99, 41 Eur. H.R. Rep., 45 p 196 (2005). Abdullah Ocalan was convicted for responsibility in the deaths of thousands of civilians as the leader of the Kurdistan Workers' Party. Even in that case, the Court observed that solitary segregation “cannot be imposed on a prisoner indefinitely.” *Id.* at 145. In this case a prisoner may be placed in segregation indefinitely for merely having “associated” with a gang without ever having used offensive language, or assaulted anyone, or threatened anyone, etc.

However, by 2007, the Council of Europe’s European Committee for the Prevention of Torture (CPT), determined that eight years of detention in isolated segregation had substantially impacted Ocalan's mental health and held that he should be moved into a unit where he could have contact with other prisoners and greater opportunity for activities. Eur. Comm. for the Prevention of Torture & Inhuman or Degrading Treatment

or Punishment, Report to the Turkish Government on the Visit to Turkey, CPT/Inf (2008), at 33.

European rules require that solitary confinement only be used if a medical officer certifies in writing that the prisoner is sufficiently fit, and that the medical officer must observe the prisoner daily for any changes. Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails*, 21 Am. U. Int'l L. rev. 71, 93-94 (2005).

The Council of Europe's European Committee for the Prevention of Torture stated as early as 1992 that "solitary confinement can, in certain circumstances, amount to inhuman and degrading treatment; in any event, all forms of solitary confinement should be as short as possible." *Id.* at 94.

In 2008, the UN Special Rapporteur of the Human Rights Council submitted a report to the UN General Assembly finding that:

In general comment No. 20 (1992), the Human Rights Committee stated that the use of prolonged solitary confinement may amount to a breach of article 7 of the International Covenant on Civil and Political Rights (para. 6). The Committee against Torture has recognized the harmful physical and mental effects of prolonged solitary confinement and has expressed concern about its use, including as a preventive measure during pre-trial detention, as well as a disciplinary measure.

Except in exceptional circumstances, such as when the safety of persons or property is involved, the Committee has recommended that the use of solitary confinement be abolished ... or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and exercised under judicial supervision ... Principle 7 of the Basic Principles for the Treatment of Prisoners states, "Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged."

...

In the opinion of the Special Rapporteur, the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services.

Torture and other Cruel, Inhuman or Degrading Treatment U.N. Doc. A/63/175, *supra*.

The United States, as a member of the Organization of American States ("OAS"), has also agreed to specific prisoner rights in a more regional context.

The American Declaration of the Rights and Duties of Man ("American Declaration"), established shortly before the Universal Declaration, provided two articles dealing specifically with prisoner rights.²⁷ Article XXV of the American Declaration vowed that "every individual who has been deprived of his liberty ... has the right to humane treatment during the time he is in custody. *Id.* art. XXV. Article XXVI further determined that every prisoner has the right "to be free from cruel, infamous, or unusual punishment." *Id.* art. XXVI.

Thirty years later in the American Convention on Human Rights ("American Convention"), Article 5 states that "[e]very person has the right to have his physical, mental, and moral integrity respected."²⁸ Article 5 reiterates the prohibition of "torture or to cruel, inhuman or degrading punishment or treatment," and encourages inmate reformation: "Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners."

In this case, the prisoner Petitioners face indefinite isolation in segregated cells merely because they are believed to be associates or members of a gang, without having been accused of acting illegally or threatening to do so. The extreme impact of these prison conditions, as described above, results in a severe deterioration of prisoners' mental and physical health, far out of proportion with their alleged offense.

²⁷ American Declaration of the Rights and Duties of Man, O.A.S. Official Rec., OEA/Ser. L./V.II.23, doc. 21 rev. 6 (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser. L. V./II.82, doc. 6 rev. 1, at 17 (1992), *available at* <http://www.cidh.oas.org/Basicos/basic2.htm>.

²⁸ American Convention on Human Rights, Nov. 22, 1969, art. 74(2), O.A.S.T.S. No. 36, *available at* <http://www.oas.org/juridico/english/Treaties/b-32.htm>.

2. *THE TREATMENT OF THE PRISONER PETITIONERS VIOLATES THE U.N. CONVENTION AGAINST TORTURE*

The United States is a party to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (“CAT”). The CAT was ratified by the US in 1990.

The CAT defines torture as:

An act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as . . . punishing him for an act he or a third person committed or is suspected of having committed or intimidating or coercing him or a third person . . . 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.

There is no question but that California’s policy of placing prisoners in isolated segregation for many years or often indefinitely causes severe physical and mental pain and suffering. Furthermore, this pain and suffering is imposed not to punish a prisoner “for an act he . . . committed or is suspected of having committed,” but because of his alleged mere association with or membership in a gang, regardless of *any* acts actually committed or suspected of having been committed. California may argue that its placement of prisoners in isolated segregation is for administrative purposes not punishment, but the reality is that while some administrative purpose may be served, the end result is unquestionably punishing and indeed severe punishment.

Petitioners further allege that California uses the cruel practice of isolated segregation in order to force prisoners to become informants and provide information regarding the involvement of other prisoners in gangs or as associates of gangs, the goals and objectives of gangs, the make up of gang structures, the identity of gang leaders, etc. The use of torture to extract information from prisoners clearly violates the CAT.

When the CAT was ratified, the U.S. stated several reservations.

The first reservation is that the term “cruel, inhumane, or degrading treatment or punishment” is the equivalent to the cruel, unusual, and inhumane punishment already

prohibited by the fifth, eighth and fourteenth amendments to the U.S. constitution.²⁹ Furthermore, U.S. reservations say that mental pain or suffering only refers to prolonged mental harm from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the use or threat of mind altering substances; (3) the threat of imminent death; or (4) that another person will imminently be subjected to the above mistreatment.

A further reservation provides that the US does not “consider itself bound by Article 30(1), but reserves the right specifically to agree to follow this or any other procedure for arbitration in a particular case.”³⁰

The U.N. Committee Against Torture established under the Convention Against Torture recommends that the practice of placing prisoners in isolation be abolished altogether. *See* U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Denmark, P 14, U.N. Doc. CAT/C/DNK/CO/5 (July 16, 2007); U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Luxembourg, P 6, CAT/C/CR/28/2 (June 12, 2002); U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Norway, P 156, U.N. Doc. CAT/A/53/44 (May 6, 1998); U.N. Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Sweden, p. 225, U.N. Doc. CAT/A/52/44 (May 6, 1997).

The widespread or systematic practice of torture constitutes a crime against humanity. *See, e.g.*, Art. 5 of the Rome Statute of the International Criminal Court.

Citing CAT Article 16, the Committee Against Torture has expressed direct concern about long segregated periods of isolation prisoners are subjected to in "super maximum prisons" in the United States. In its report, the Committee made clear that it was “concerned about the prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment.” Committee Against Torture, CAT/C/USA/CO/2 at ¶ 36. The Committee held that the United States “should review the regime imposed on detainees in ‘super

²⁹ See 8 CFR §201.18

³⁰ *Id.*

maximum prisons', in particular the practice of prolonged isolation." *Id.*³¹

The Petitioners contend that the treatment of California "validated" prisoners who endure indefinite or many years of solitary segregation amounts to torture as that term is used in the CAT. They further note that the United States of America has specifically stated that "[u]nder U.S. law, there is no derogation from the express statutory prohibition of torture," and that "[n]o circumstances whatsoever ... may be invoked as a justification or defense to committing torture ..." Committee Against Torture, *supra*, CAT/C/USA/CO/2, ¶ 19 (quoting the U.S. Government's statement to the Committee).

3. THE TREATMENT OF THE PRISONER PETITIONERS VIOLATES THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ARTS. 7, 9 & 10)

Article 7 of the International Covenant on Civil and Political Rights (ICCPR) prohibits "cruel, inhuman, or degrading treatment or punishment." Article 9(1) provides in part that everyone has the right to liberty and security of person. No one shall be subjected to "arbitrary ... detention." Article 10 provides that "all persons deprived of their liberties shall be treated with humanity and with respect for the inherent dignity of the human person." Article 14 provides that "[a]ll persons shall be equal before the courts and tribunals." International Covenant on Civil and Political Rights, G.A. Res. 2200, at 52, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966).

As discussed throughout this Petition, the placement of Petitioners in long-term isolated segregation is arbitrary in numerous procedural and substantive ways. In addition, all prisoners are not treated "equal[ly]" before the law for one obvious reason: One prisoner may actually commit a serious violent offense while serving a sentence in prison and in response receive a *determinant* sentence to isolated segregation while another prisoner simply alleged to be an associate of a gang may be placed in solitary segregation until he is considered to be "gang free" for "six years." This disparity in treatment is arbitrary and capricious and violates *inter alia* Article 14 of the ICCPR.

³¹ The Committee also encouraged the United States to consider making the declaration under article 22, thereby recognizing the competence of the Committee to receive and consider individual communications, as well as ratifying the Optional Protocol to the Convention. *Id.* at ¶ 41.

The United States ratified the ICCPR in 1992 with reservations on specific articles.³² Reservations bind the Government of the United States to ICCPR Article 7 only to the extent "cruel, inhuman or degrading treatment" means such treatment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.³³

Considering the reservation to Article 7 of the ICCPR as a significant divergence from international standards, it appears that the United States only reserves obligations regarding *treatment* or *punishment*, but still remains accountable on the torture prohibition.³⁴ Stone, *supra* at 21.

4. TO THE EXTENT THAT THE UNITED STATES' RESERVATIONS LIMITS ITS RESPONSIBILITIES UNDER THE CONVENTION AGAINST TORTURE TO ITS OBLIGATIONS UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION, THE PRISONER PETITIONERS' CONDITIONS OF CONFINEMENT APPEAR TO VIOLATE BOTH THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION

In *Hutto v. Finney*, 437 U.S. 678, 687 (1978), the Court applied the "deliberate indifference" standard to find that Arkansas' practice of solitary confinement exceeding thirty days violated the Eighth Amendment. The Court found that solitary confinement "is not necessarily unconstitutional, but it may be depending on the duration of the confinement and conditions thereof ... A filthy, overcrowded cell and a diet of 'gruel' might be tolerable for a few days and intolerably cruel for weeks or months."

In *Troop v. Dulles*, 356 U.S. 86, 101 (1958), which found that the scope of Eighth Amendment is "not static," the Court stated that the phrase "cruel and unusual punishment" should be broadly interpreted:

³² *International Covenant on Civil and Political Rights: Hearing Before the Senate Comm. on Foreign Relations*, 102d Cong. (1991) [hereinafter "ICCPR Hearing"]

³³ *ICCPR Hearing*, *supra* note xxx, at 8 (describing other U.S. reservations).

³⁴ See John Henry Stone, *The International Covenant on Civil and Political Rights and the United States Reservations: The American Conception of International Human Rights*, 7 U.C. DAVIS J. INT'L L. & POL'Y 1, 9-10, at 21 (2001).

[T]he basic policy reflected in these words [cruel and unusual punishment] is firmly established in the Anglo-American tradition of criminal justice. The phrase in our Constitution was taken directly from the English Declaration of Rights of 1688, and the principle it represents can be traced back to the Magna Carat. The basic concept underlying the Eighth Amendment is nothing less than the dignity of man. *While the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards.*

365 U.S. at 597-598 (emphasis added).

In *Jones El v. Berge*, 164 F.Supp.2d 1096, 1125 (W.D.Wis. 2001), the district court described the extreme conditions at the Supermax Correctional Institution in Wisconsin, which constituted “almost complete isolation and sensory deprivation.” *Id.* at 1117. The inmates spend “all but four hours a week” confined to a cell; they experience “almost total idleness”; “[t]he cells are illuminated 24 hours a day”; and inmates are not allowed to possess “clocks, radios, watches, cassette players or televisions.” *Id.* at 1098. Finding that “[t]he conditions at Supermax are so severe and restrictive that they exacerbate the symptoms that mentally ill inmates exhibit,” the Court granted the plaintiffs’ motion for a preliminary injunction and ordered mentally ill inmates removed from the prison. *Id.* at 1116.

In *Ruiz v. Johnson*, 37 F. Supp.2d 855 (S.D.Tex. 1999), the district court described in vivid detail the conditions of solitary confinement in Texas prisons, and concluded that the evidence showed that “an incarceration that inflicts daily, permanently damaging, physical injury and pain is unconstitutional. Such a practice would be designated as torture.” 37 F.Supp.2d 855, 914 (S.D.Tex. 1999). *See also Hilao v. Marcos*, 103 F.3d 789, 795 (9th Cir. 1996) (in alien tort claim by victim of Ferdinand Marcos, finding that “it seems clear that all of the abuses ... including the eight years during which he was held in solitary or near solitary confinement – constituted a single course of conduct of torture”).

However, the United States’ Prison Litigation Reform Act of 1995 (“PLRA”) imposes an obstacle to relief for prisoners in isolated segregation suffering mental harm. 18 U.S.C. 2626. Intended to reduce frivolous prisoner litigation, the PLRA provides that “[n]o Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.” 42 U.S.C. § 1997e(e). However, the PLRA does not abrogate the U.S. Government’s obligations under international law. It simply restricts a prisoner’s access to the United States courts unless the prisoner can show that

in addition to suffering mental injury as a result of prison conditions, he or she must also establish a “physical injury.”

In *Sheley v. Dugger*, 833 F2d 1420 (11th Cir. 1987), the court held –

While courts have been hesitant to apply Eighth Amendment to claims of physical and mental deterioration by prisoners in general prison population, 12-year confinement in close management solitary confinement raises serious constitutional questions and where in addition to mental and physical deterioration claim is supported by contention that confinement is punitive in nature whether segregation is punitive should be determined and it should be further determined whether segregation shocks conscience, is grossly disproportionate to offense, or is totally without penological justification and where no evidence on Eighth Amendment claim has been presented, case will be remanded for evidentiary hearing.

In *Bailey v. Shillinger*, 828 F2d 651 (1987 10th Cir.), the court held that placing an inmate in segregation as preventative measure does not necessarily violate the Eighth Amendment “as long as conditions do not involve unnecessary infliction of pain and are not grossly disproportionate to [the] severity of crime warranting imprisonment.” *Id.*³⁵

In summary, the Working Group On Arbitrary Detention may reasonably conclude that even considering the reservations of the United States with regards to its ratification of the Convention Against Torture and the International Covenant on Civil and Political Rights, the policies addressed in this Petition appear to violate the CAT and the ICCPR because they may be deemed cruel and unusual punishment under the

³⁵ There are also cases in which courts in the United States have rejected claims by prisoners that their segregation violated the Eighth Amendment. *See, e.g., Arey v Warden, Connecticut Correctional Institution*, 187 Conn 324, 445 (1982) (restriction of recreation time to one hour per week, showers to 2 per week, and serving and consumption of meals in same cell where bodily functions are performed did not violate the Eighth Amendment); *Sweet v South Carolina Dep’t of Corrections*, 529 F2d 854 (1975) (“Conditions of segregated confinement must meet basic sanitation and nutrition requirements, though isolation from companionship, restriction on intellectual stimulation, and prolonged inactivity, inescapable accompaniments of segregated confinement, will not render it unconstitutional absent other illegitimate deprivations”).

Eighth Amendment of the U.S. Constitution or a violation of the Fourteenth Amendment guarantees of due process and equal protection of the laws.

CONCLUSION

Solitary confinement and prolonged segregation in U.S. prisons follow neither international standards for prison management nor internationally established protections for prisoner rights.

For all of the reasons set forth above, the Petitioners respectfully request that the Working Group On Arbitrary Detention –

- Assume competency over this Petition,
- Urgently seek a response from the Government of the United States,
- As promptly as reasonably possible conduct an on-site visit to inspect and review California prisons segregation housing units,
- Interview the prisoner Petitioners and other prisoners detained in isolated segregation solely based on alleged gang association or membership,
- Call upon the Government of the United States to allow representatives of the Red Cross to visit the prisoners and assess their medical and mental health records and terms of confinement,
- Call upon the Government of the United States to insure that California permits an independent panel of medical experts to review Petitioner's medical and mental health records and interview Petitioners to assess the impact of their isolated segregation on their mental and physical health,
- Call upon the Government of the United States to insure that California prisoners in isolated segregation are not punished merely for protesting through hunger strikes the cruel conditions of their confinement,
- Issue a report holding that the lengthy or indefinite placement of the Petitioners and others similarly situated in isolated segregation merely based upon their alleged association with or membership in a gang is disproportionate to the

status alleged, and constitutes cruel and degrading treatment in violation of international law, and

- Call upon the Government of the United States to take all necessary steps to insure that California terminates its policy of placing prisoners in isolated segregation for periods of several years merely based upon their alleged membership in or association with a gang.

Dated: March 20, 2012

Respectfully Submitted,

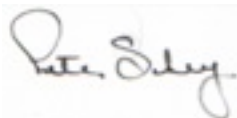
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