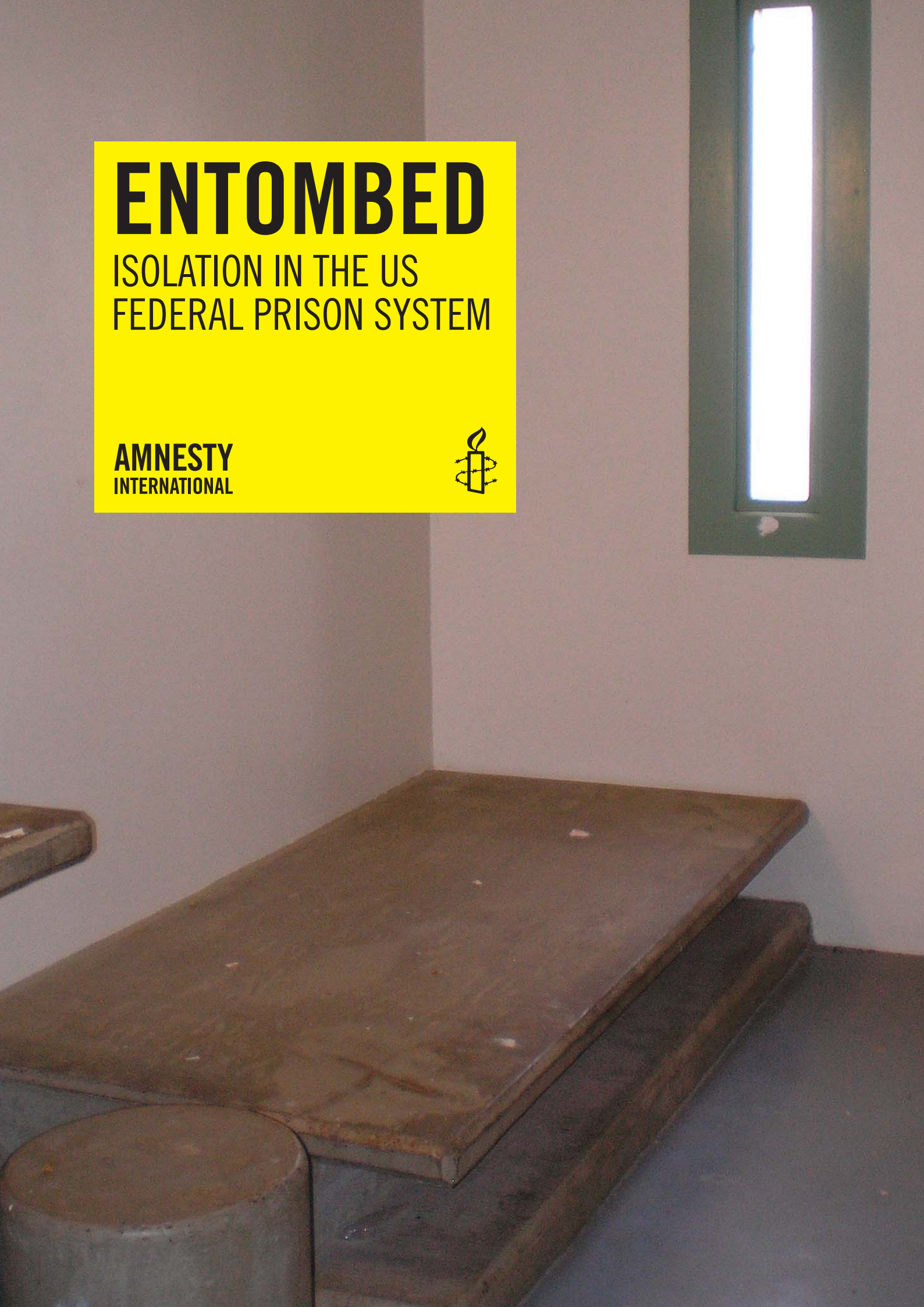


ENTOMBED

ISOLATION IN THE US
FEDERAL PRISON SYSTEM

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

AMNESTY
INTERNATIONAL



First published in 2014 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

© Amnesty International 2014

Index: AMR 51/040/2014
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Cover photo: Interior of a SHU cell at ADX © Private

amnesty.org

TABLE OF CONTENTS

Introduction	2
Restrictions on access to ADX: Lack of transparency regarding BOP use of isolation	5
Long-term isolation in other parts of the federal system.....	6
Prisoners held in solitary confinement in pre-trial federal detention	7
Further observations on conditions in ADX	8
Conditions in General Population UNITS	8
Exercise	10
In cell activities and programing	13
Contact with staff	16
The Step-Down Program (SDP)	18
Prisoners in ADX more isolated than before	19
Length of time in isolation/access to the SDP.....	20
Lack of clear criteria or safeguards for progressions to the sdp	21
Special Security Unit (SSU) - H-Unit	24
Control Unit, SHU and Range 13.....	27
Mentally Ill Prisoners at ADX	30
Overview of US obligations under international law and standards	34
US Law and Standards	36
Recommendations	38
Endnotes	41

List of abbreviations

- ADX: United States Penitentiary Administrative Maximum facility, super maximum security prison which forms part of the FCC at Florence, Colorado
- BOP: Federal Bureau of Prisons
- CAT: United Nations Committee against Torture
- CU: Control Unit
- ECHR: European Court of Human Rights
- FCC: Federal Correction Complex at Florence, Colorado,
- GAO: General Accounting Office
- GP: General Population Units
- H-Unit, also known as Special Security Unit
- ICCPR: International Covenant on Civil and Political Rights
- IU: Intermediate Unit, first stage of the SDP
- MCC: Metropolitan Correctional Center
- NCCHC: National Commission for Correctional Health Care
- PTU: Pre-Transfer Unit, final stage of the SDP, located at USP Florence
- SAMs: Special Administrative Measures
- SDP: Step Down Program
- SHU: Security Housing Unit
- SMR: United Nations Standard Minimum Rules for Treatment of Prisoners
- SMU: Special Management Unit
- SSU: Special Security Unit, also known as 'H-Unit'
- TU: Transitional Unit, second stage of the SDP, located at USP Florence
- USP Florence, a high security prison which forms part of the FCC at Florence, Colorado

INTRODUCTION

“Though I know that I want to live and have always been a survivor, I have often wished for death. I know, though, that I don’t want to die. What I want is a life in prison that I can fill with some meaning”

Thomas Silverstein, confined for over 30 years in isolation, nine of which have been spent in ADX¹



An isolation cell in a General Population Unit at United States Penitentiary, Administrative Maximum (ADX) © Private

The USA stands virtually alone in the world in incarcerating thousands of prisoners in long-term or indefinite solitary confinement, defined by the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as “the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day”.² More than 40 US states are believed to operate “super-maximum security” units or prisons, collectively housing at least 25,000 prisoners.³ This number does not include the many thousands of other prisoners serving shorter periods in punishment or administrative segregation cells – estimated to be approximately 80,000 on any given day.⁴

While US authorities have always been able to segregate prisoners for their own protection or as a penalty for disciplinary offences, super-maximum security facilities differ in that they are designed to isolate prisoners long-term as an administrative control measure. It is a management tool that has been criticized by human rights bodies, and is being increasingly challenged by US penal experts and others, as costly, ineffective and inhumane.

The federal government currently operates one super-maximum security prison, the United States Penitentiary, Administrative Maximum (ADX) facility in Colorado. With capacity for 490 male inmates, the vast majority of ADX prisoners are confined to solitary cells for 22-24 hours a day in conditions of severe physical and social isolation. The cells have solid walls preventing prisoners from seeing or having direct contact with those in adjacent cells. Most cells have an interior barred door as well as a solid outer door, compounding the sense of isolation. Prisoners eat all meals inside their cells, and in most units each cell contains a shower and a toilet, minimising the need for the inmate to leave his cell. Visits by prison staff, including routine checks by medical and mental health staff, take place at the cell door and medical and psychiatric consultations are sometimes conducted remotely, through teleconferencing. All outside visits are non-contact, with prisoners separated from their visitors by a glass screen. Prisoners in the General Population (GP) (the majority of prisoners at ADX) are allowed out-of-cell exercise for up to ten hours a week, in a bare interior room or in small individual yards or cages, with no view of the natural world. Prisoners in some other units receive even less out of cell time.⁵

Most prisoners assigned to ADX have reportedly been convicted of serious offences in prison, such as assault, murder or attempted escape. ADX also houses a number of prisoners convicted of terrorism-related offences; most of these prisoners were sent to the facility based on their committal offence rather than for their conduct during incarceration and some have Special Administrative Measures (SAMs) placed on them by the Department of Justice which restrict their communications with the outside world. In a letter responding to concerns raised by the UN Special Rapporteur on Torture, the US government said that ADX is “designed to meet the exceptional security requirements of its inmates”, noting that prisoners are sent there only after it is determined that they would pose a serious risk to themselves or the safety of other inmates, staff, or the public if placed in a less secure setting.⁶ The letter asserts that the regime, while restrictive, is humane, pointing out that the cells have windows which allow access to natural light; that most inmates have TVs with multiple channels and access to in-cell educational and other programs; and that they have daily contact with staff. It also states that GP inmates have an opportunity to participate in a Step Down Program (SDP) where they can earn their way to a less restrictive setting and ultimately to another facility.

As discussed in this report, Amnesty International believes that the conditions at ADX are unacceptably harsh and that in-cell programmes cannot compensate for the lack of meaningful social interaction which many prisoners endure for years on end. The poverty of the exercise facilities at ADX is also disturbing, particularly given the long periods in which prisoners are otherwise confined to cells. Failure to provide suitable, daily outdoor exercise falls short of the United Nations (UN) Standard Minimum Rules (SMR) for the Treatment of Prisoners. Amnesty International recognizes that the authorities have an obligation to ensure the safety of staff and inmates and that it may be necessary at times to segregate prisoners. However all measures must be consistent with the USA's obligation to treat all prisoners humanely, without exception.

In recognition of the psychological harm that can result from isolating people even for relatively brief periods, international human rights experts and organizations have called on governments to restrict their use of solitary confinement so that it is applied only in

exceptional circumstances, for the shortest possible period of time. US professional bodies such as the American Bar Association have made similar recommendations. However, prisoners at ADX must spend a minimum of 12 months in isolation, and often far longer, before becoming eligible for the SDP. There is no detailed public information on the time prisoners spend in each unit at ADX. However, a Federal Bureau of Prisons (BOP) analysis based on a limited survey of 30 inmates in 2011 for a case before the European Court of Human Rights (ECHR) showed prisoners were likely to spend at least three years in the GP (confined to solitary cells 22-24 hours a day) before being admitted to the SDP.⁷ Other sources based on a wider sample of prisoners have found that scores of prisoners have spent more than twice as long in solitary confinement.⁸ Prisoners in the Control Unit, the most isolated section of the facility, are ineligible for the SDP as they are serving fixed terms in the unit for disciplinary infractions, terms which can extend to six or more years.

While all prisoners now receive a hearing prior to placement at ADX, advocates have criticised the internal review procedures – including those for deciding when a prisoner can access and progress through the SDP – as over-discretionary and lacking clear criteria. According to lawsuits and other sources, this means that some prisoners effectively remain in isolation indefinitely, without being able to change their circumstances.⁹ Amnesty International believes that the conditions of isolation at ADX breach international standards for humane treatment and, especially when applied for a prolonged period or indefinitely, amount to cruel, inhuman or degrading treatment or punishment in violation of international law.

Amnesty International is further concerned that prisoners with serious mental illness are detained at ADX and, according to an ongoing lawsuit, have not been adequately screened, treated or monitored.¹⁰ While not in a position to assess the quality of mental health provision currently at ADX, the organization is concerned by the cases cited in the litigation and believes that no prisoner with mental disabilities should be held in solitary confinement. Such practice is against international standards and the recommendations of mental health experts and organizations. US courts have also consistently found that isolating people who are seriously mentally ill in “super-maximum security” facilities is incompatible with the US constitutional prohibition of “cruel and unusual punishment”.

In putting together this report at a time when the BOP is conducting a “comprehensive review” into its restricted housing operations¹¹, Amnesty International is seeking to ensure that the audit be guided by the organizations’ concerns, including pre-trial isolation, and that its recommendations for best practise reflect those contained within this report.

This report will detail how conditions in ADX breach international standards for the humane treatment of prisoners. By doing so, it seeks to oppose any replication of the ADX regime as currently proposed by the BOP in the newly acquired Thomson facility. The prison, due to open within the next years has been designated as a maximum high security prison with ADX and SMU cells.¹²

This report will also show how in the period of time since ADX was built, conditions have become increasingly restrictive with prisoners held in more severe conditions of isolation for longer periods. As conditions have become more restrictive, so has access to the facility for human rights groups, experts and the press. In detailing how the original purpose of the prison- to provide a route out of isolation within a defined period – has eroded over the years, the organization seeks to underscore the increased need for external scrutiny including access to the facility for the UN Special Rapporteur on Torture.

RESTRICTIONS ON ACCESS TO ADX: LACK OF TRANSPARENCY REGARDING BOP USE OF ISOLATION

In producing this report, Amnesty International relied on a range of sources including court documents available through lawsuits and other information provided by attorneys representing ADX inmates, as well as policy directives issued by the BOP. However, there is a lack of detailed publicly available information on the facility, including length of time prisoners are held in each unit (see below). In June 2001 an Amnesty International representative was given a tour of ADX and was provided with access to most parts of the facility and an opportunity to speak to the Warden, senior staff and some prisoners. Some of the observations in this report are thus based on first-hand viewing of conditions in the facility and on policies in place at that time. However, the organization's further requests to visit the prison in 2011 and 2012 were turned down by the Bureau. This appears to reflect a more general tightening of access to the facility in recent years, including by members of the media.¹³

While Amnesty International welcomes the review of the use of segregation in federal prisons currently being carried out by outside contractors, it believes that prisons should not be insulated from outside scrutiny by human rights groups and experts. In this regard, the organization has joined with other NGOs in calling on the State Department to extend an invitation repeatedly requested by the UN Special Rapporteur on Torture to visit the USA to examine, among other things, the use of solitary confinement in federal and state facilities, including through on-site visits.¹⁴ Such an invitation would be consistent with the commitment made by the US government to support the work of the Special Rapporteurs and UN human rights mechanisms, and to encourage the full enjoyment of the human rights of persons deprived of their liberty.

External scrutiny is of particular importance in the case of "super-maximum" security facilities where prisoners are isolated within an already closed environment. In ADX there is little publicly available information about the current operation of the facility beyond a few institutional supplements giving a bare outline of the various units and programs. Lack of information on conditions and their impact on individual cases is compounded by the fact that prisoners under Special Administrative Measures (SAMs) often have severe restrictions placed on their communication with the outside world, including through visits and correspondence. A report by the General Accounting Office (GAO) in May 2013 noted more generally that "there is little publicly available information on BOP's use of segregated housing units."¹⁵

The GAO study also found that, while the BOP had an Internal Review Division which periodically inspected compliance with policies in other federal segregation units (including in Security Housing cells and Special Management Units in other prisons), "BOP does not have requirements in place to monitor similar compliance for ADX-specific policies".¹⁶ Overall, the GAO study found that BOP had not assessed the impact of segregated housing on institutional safety or the impact of long-term segregation on inmates. While the BOP has agreed to develop specific ADX internal monitoring procedures in line with GAO recommendations, Amnesty International believes there should be regular, external reporting and review of conditions at ADX and other isolation facilities.

The need for external scrutiny is heightened by information suggesting that ADX prisoners are held under more isolated conditions than before, including than at the time of Amnesty International's 2001 visit, and that the original purpose of the prison – to allow a clear route out of isolation within a defined period – has been eroded over the years. As described below, there are also conflicting accounts given by prisoners and their attorneys and ADX

administrators about aspects of the regime, such as the amount of contact prisoners have with staff and the value of programs provided.

LONG-TERM ISOLATION IN OTHER PARTS OF THE FEDERAL SYSTEM

The US Government has pointed out that only 0.25% of the federal prison population is held at ADX. This is less than the national average of around 2% of prisoners in state “super-max” facilities and significantly less than in states such as Arizona or Texas. However, other federal facilities also confine prisoners in prolonged isolation.¹⁷ Several BOP prisons operate Special Management Units (SMUs) in which prisoners are confined – usually with one other inmate -- to small cells for at least 23 hours a day for 18-24 month periods, terms which are frequently extended. According to figures provided by the BOP, the numbers in SMUs had risen from 144 prisoners when the first unit opened in Lewisburg Federal Penitentiary to 1,960 inmates as of February 2013.¹⁸ Conditions in the units are harsh, with prisoners allowed only five hours exercise a week, falling below the SMR. Although having a cell-mate may relieve some of the effects of isolation, confining two people in a small, enclosed space for 23-24 hours a day can lead to severe additional stresses. A lawsuit filed in July 2011 has challenged conditions in the SMU at Lewisburg Penitentiary as amounting to “cruel and unusual punishment”, citing, among other things, a series of assaults by prisoners on their cell-mates, including two murders and the punitive use of restraints, often for prolonged periods, for those who refuse a cell mate.¹⁹ Amnesty International believes there should be urgent review of conditions in the SMUs and that the current review of federal segregation policies should include units where prisoners are double-celled in an otherwise isolated environment.

The US government is reported to have reduced the overall number of prisoners in segregated confinement in the past year by nearly 25 percent (such confinement includes SHU cells situated in most prisons) and subsequently closed two of its segregated housing Special Management Units.²⁰ Despite this reduction, the BOP 2014 budget request to Congress includes a funding proposal to open Thomson Correctional Center, a former state maximum security facility in Illinois, purchased by the BOP in 2012, as a second federal “supermax” prison to “begin activating the facility as an Administrative-Maximum U.S. Penitentiary in Fiscal Year 2014”.²¹

The BOP explained the need to expand segregation cells at a time when the use of segregated confinement was declining with the following: “The reduction in our special housing unit population does not lessen the need for these beds...Special Housing refers to units within our prisons where inmates are placed on a temporary basis as a result of misconduct or as a result of circumstances that warrant their separation from the general population”. This response suggests that the new facility will house those held in long-term rather than short-term isolation.²²

While the exact conditions under which prisoners would be held in Thomson remain unclear, Amnesty International is concerned that the facility will replicate the regime at ADX, Florence. Any expansion of the use of long-term solitary confinement as seen at ADX, Florence, would be a retrograde move, contrary to international human rights standards²³. Such a move would also run counter to growing recognition among mental health, legal and correctional experts, of the harm caused by conditions in isolation units, and trends in other states towards reducing the numbers of prisoners in solitary or isolated confinement.

PRISONERS HELD IN SOLITARY CONFINEMENT IN PRE-TRIAL FEDERAL DETENTION

SYED FAHAD HASMI

Syed Fahad Hashmi has spent over seven years in conditions of near total isolation. A US citizen who grew up in Queens, New York, he was studying for a post-graduate degree in the UK when he was arrested in 2006 and accused of allowing an acquaintance to use his London apartment to store sock and ponchos intended for al-Qaida in Pakistan. While detained in the UK pending extradition, he was allowed to associate with other detainees without incident. However, on arrival in the USA he was placed in MCC SHU (see below), where he remained for nearly three years in pre-trial detention, confined to a small, solitary cell with no view to the outside and no association with any other inmate or access to outdoor exercise. He was placed under SAMs and had only limited contact with his immediate family (brother and elderly parents). In June 2010 he was sentenced to 15 years in prison after pleading guilty to one charge of providing material support to a terrorist organization. He was transferred to ADX in March 2011, where he remained in isolation, confined to a concrete cell for 22-24 hours a day until June 2014 when he was transferred to a Control Management Unit in USP Terre Haute, Indiana.

Prisoners may also be held in solitary confinement while awaiting trial in the federal courts. There is particular concern about conditions in the Security Housing Unit (SHU) on the 10th floor of the federal Metropolitan Correctional Center (MCC) in New York, where pre-trial detainees are confined for 23-24 hours a day to solitary cells which have little natural light and with no provision for outdoor exercise. Lack of access to natural light and fresh air are in clear breach of international standards for humane treatment. Detainees housed in the unit have included foreign nationals charged with supporting terrorism who have been extradited or subjected to a “rendition” to the USA; in addition to their harsh physical conditions of confinement, some have had only limited contact with their families and few or no social visits. Several prisoners have spent many months or years in the above conditions while awaiting trial.²⁴

Amnesty International considers that conditions under which detainees have been confined in the MCC SHU constitute cruel, inhuman or degrading treatment and are incompatible with the presumption of innocence in the case of untried prisoners whose detention should not be a form of punishment.²⁵ Lawyers who have represented detainees in the unit have described the negative impact of the conditions on their clients’ state of mind, raising concern that such conditions may impair a defendant’s ability to assist in his or her defence and thus the right to a fair trial.

FURTHER OBSERVATIONS ON CONDITIONS IN ADX

The United States Penitentiary (USP) Administrative Maximum Facility (ADX), situated in Florence, Colorado, opened in November 1994 as a purpose-built “super-maximum” security facility. It is currently the only level 6 (highest security designation) prison in the federal system.

The prison has eight units consisting of four General Population units (each with capacity to house up to 64 prisoners); the Special Security Unit (H Unit) for prisoners under SAMs; the Control Unit; the SHU (a disciplinary unit); and the Intermediate Unit for prisoners in the Step-Down Program (SDP). There is also an ultra-high security four-cell unit known as Range 13, where prisoners are held in conditions of extreme isolation. Only prisoners in the SDP, and a small number in phase 3 of H Unit, have any group association, which is limited to a few hours a week; the vast majority of the ADX population are held alone, confined to cells for 22-24 hours a day with only limited contact with staff and the outside world.

CONDITIONS IN GENERAL POPULATION UNITS

“Sitting in a small box in a walking distance of eight feet, this little hole becomes my world, my dining room, reading and writing area, sleeping, walking, urinating, and defecating. I am virtually living in a bathroom, and this concept has never left my mind in ten years.”

Mahmud Abouhalima, held under SAMs in H Unit, ADX, since 2005.

More than half the population at ADX (up to 256 prisoners) are held in the GP units, where they spend at least 22 hours a day in 87 square foot individual cells. The cells have solid concrete walls and all face the same way, so that prisoners cannot view other cells or have direct contact with inmates in adjacent cells. Each cell also has an interior barred wall with sliding door along the full width of the cell, followed by a small lobby with a solid steel outer door and window looking onto the corridor. As the living space is sited behind the barred interior wall, several feet from the corridor, prisoners are more cut off from human contact than in standard maximum security cells where inmates can stand at the cell door and watch or converse with anyone passing by. The cells have a narrow outside window at the back which allows entry of natural light but provides no view other than buildings and sky. Prisoners can control the lighting by a switch inside the cell. The cell furnishings are sparse, consisting of a fixed bunk, desk and stool made of reinforced concrete. Each cell also has a built-in shower and a metal toilet and sink unit.



The inside of a cell in a General Population Unit at ADX © Private

The vast majority of prisoners are allowed out of their cells for only a few hours a week, for exercise, occasional visits to a “law library” cell, social or legal visits, or for some medical consultations.²⁶ All meals are delivered to and eaten inside the cells. As Amnesty International has observed elsewhere, there is concern about the possible health risks from spending so much time in a confined space, and eating all meals in close proximity to the open toilet. Prisoners are placed in full restraints and are accompanied by two guards when being escorted out of their cells. Otherwise nearly all contact with staff takes place either remotely (e.g. through medical teleconferencing) or at the cell front.

EXERCISE



An outdoor recreation cage for prisoners in the Step Down Program at ADX © Private

GP prisoners are allowed up to ten hours out-of-cell exercise a week, in two hour slots five days a week, alternating between indoor and outdoor exercise. Prisoners always take indoor exercise alone, in a windowless room with only a pull-up bar. Outdoor exercise takes place either in an enclosed solitary yard attached to the unit or in one of five individual cages in a larger yard. The only time a prisoner can communicate directly with another inmate is when conversing with a prisoner in an adjacent cage, an opportunity which takes place, at most, on two or three days a week.

As shown in photographs, the exercise facilities are stark. The outdoor cages are only a little larger than the cells and have no equipment so that prisoners can do nothing other than walk a few paces. Both the individual yards and the larger concrete yard in which the cages are situated have high walls and a chain link roof, giving no view of the natural world other than sky. Lawyers have told Amnesty International that some prisoners decline to take exercise and remain in their cells all day due to depression or other illness (see section on Mental Illness, below).



An outdoor recreation area in the Control Unit at ADX © Private

According to BOP regulations, prisoners may have their exercise in the larger yards suspended for three months at a time for a single rule violation, with increased suspensions for further offences.²⁷ It is alleged that prisoners are sometimes punished for minor rule violations, such as in one case for feeding crumbs to birds.²⁸ The regulations list violations for which the yard exercise can be suspended as including “sexual acts or gestures, suicidal attempts or gestures, smearing or throwing human waste”.²⁹ Amnesty International is concerned that prisoners who have not committed serious violations, or whose behaviour may be indicative of mental health or behavioural problems, should have their outdoor yard exercise -- and thus their only limited association with other inmates -- withdrawn for such extended periods. It urges that this rule be reviewed.

The SMR state that “every prisoner not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits” (Rule 21 (1)). These are minimum standards applying to all prisoners without exception.

The opportunity to exercise is particularly important for the physical and psychological wellbeing of prisoners who are cut off from normal activities and are confined to cells for prolonged periods. Neither the cages nor the enclosed individual yards in Amnesty International’s view meet the standard of “suitable exercise in the open air” as provided under the SMR, nor, under the present regime at ADX, is outdoor exercise provided to each prisoner daily.



Indoor recreation area in the Control Unit at ADX © Private

Amnesty International is concerned that conditions for prisoners at ADX have become more isolated and restrictive in recent years. When the prison first opened, and at the time of the organization’s visit to ADX in June 2001, GP prisoners were allowed “12 hours or more” out of cell exercise a week which could be taken in small groups of up to 12 prisoners at a time; prisoners were also allowed balls and board games during this period.³⁰ Unit staff members told Amnesty International’s representative during her visit that one of the measures used to assess prisoners’ progress and suitability for the step down program was how they interacted with others on the recreation yard.

Group recreation was reportedly withdrawn after two prisoners were killed by other inmates in separate incidents in 2005, one occurring in the Transitional (Step Down) Unit, allegedly in full view of ADX staff members.³¹ Prison administrators have a clear duty to take all reasonable measures to prevent such deaths. However, the blanket ban on any form of group recreation in the GP, given the length of time prisoners are confined to the unit, is inconsistent with standards for humane treatment. In addition to the potential adverse mental health impact of prolonged confinement to solitary cells, it is difficult to see how a prisoner’s behaviour can be effectively measured in the absence of any meaningful social and

group interaction. As described below, prisoners in the step-down program also have significantly less association and out of cell time than previously. According to a lawsuit, more could be done to ensure the safety of prisoners in group recreation.³²



Outdoor recreation cages at ADX © Private

IN CELL ACTIVITIES AND PROGRAMING

Most prisoners in ADX are provided with televisions in their cells with around 60 broadcast channels, including news channels such as CNN and ABC and a range of cable and other network programs. Institutional programs are also provided to each cell through close-circuit channels; these include educational, religious and recreational programs as well as classes on psychology and issues such as anger management. There is no congregational prayer and religious services are conducted through close-circuit TV.

Prisoners also have access to books, newspapers and periodicals, art and hobby-craft materials, and may write and receive correspondence (although limits on the latter may be imposed on prisoners under SAMs, see below). Correspondence courses are also available to some prisoners (not for example, those under SAMs) and prisoners must be able to afford it which limits their reach further. Prisoners are also allowed access to religious materials.



Outer door of a cell in the Control Unit at ADX, picture take from the corridor © Private

A stipulated court agreement in 2008 provided that an Imam visit ADX four times a month to speak with inmates individually. Prison attorneys have reported that since there is no longer an Imam on site, inmates in the past few years have received far fewer visits from an Imam than the limit set in the court agreement.³³

The visits take place at the cell door, often, for only a few minutes at a time. It is alleged that most prisoners may confer with the Imam or other religious adviser only when both cell doors are closed with the minister standing in the hall outside, thus requiring inmates to speak at loud volume that renders private consultations impossible.³⁴ Prison advocates report that in the case of visiting priests or chaplains, they will generally be allowed beyond the solid steel

door to pray in the sally-port area, right up next to the inmate in the cell, but this does not happen in the case of most Imam visits with Muslim prisoners.

While Amnesty International's delegate recognized that there were a number of in-cell programs available at the time of her 2001 visit, these cannot compensate for the prolonged cellular confinement and social isolation experienced by ADX prisoners for many months or years, or even indefinitely. The value of in-cell programs becomes more questionable the longer a prisoner is held in isolation and unable to interact meaningfully with others. Prisoner advocates have also reported that, apart from some basic educational courses such as GED (which are required by a minority of inmates), there is not much structured educational or rehabilitative programing leading to formal qualifications or defined outcomes or goals.³⁵



Inner door of a General Population cell at ADX , picture taken from the corridor © Private

CONTACT WITH STAFF

The authorities have stressed in court filings that all prisoners have daily contact with unit staff and regular contact with correctional counsellors, medical and mental health and religious staff. However, lawyers representing prisoners report that there is little meaningful contact in practice between staff and inmates, and that prisoners routinely go days with only a few words spoken to them. According to testimony to the ECHR contact could be “as little as one minute per day”.³⁶ Advocates also reported that prisoners would need to call out proactively to seek attention from staff as they walk past cells doing their daily rounds, something many prisoners are reluctant to do. Contact when it does take place is usually at the cell door. A prisoner’s isolation is compounded by the fact that psychiatric and medical consultations may also in some cases take place remotely, through teleconferencing.

There is no interaction with the teacher during the classes, all of which are delivered remotely. Although Amnesty International was told during its visit that teachers may visit prisoners at the cell door to discuss their assignments, it was acknowledged that this could in some cases be only be for a few minutes per inmate. A lawyer who has represented a number of prisoners at ADX told the organisation that none of her clients to her knowledge had ever been seen by a teacher at the cell door.

VISITS AND COMMUNICATION WITH THE OUTSIDE WORLD

“We’re poor folk,” he says of his family, “and coming to visit is too expensive...from what I can tell very few people get visits...this place is too far from anyone’s family.”

Letter sent to website Solitary Watch from a prisoner in ADX who has not seen or spoken to his family in the last five years³⁷

Prisoners in the GP units may write letters and make two 15-minute non-legal phone calls a month (or, six hours per year in total to speak with their family). All social and legal visits at the facility take place in a non-contact setting, behind a thick plexiglass screen. Other than when being placed in restraints and escorted by guards, prisoners may spend years without touching another human being.

Prisoners are allowed five social visits a month for up to seven hours at a time, with a maximum of three visitors per inmate allowed in the visiting room at any one time. However, it is reported that prisoners at ADX generally do not have many visits, in part because of the remote location of the facility. ADX staff told Amnesty International’s representative in 2001 that it was usual for there to be only five or six visitors in total at the week-end. According to a court brief, three prisoners who were transferred to ADX from other prisons after September 2001 had no social visits for the entire time (six and seven years) they were held at the facility; a fourth prisoner named in the lawsuit had received only two visits from family/friends in 13 years.³⁸

Prisoners are routinely shackled during non-contact attorney visits which usually take place in booths where the plexiglass barrier has a small slot to allow the passing of documents.³⁹ Prisoners are placed in three-point restraint during visits, with their wrists and ankles attached to a belly chain and waist belt. The wrist cuffs may be further secured in a black box attached to the front of the belt; this severely restricts hand movement and can cause pain and discomfort, especially when the restraints are worn for an extended period.

One lawyer told Amnesty International that the shackles worn by his client during visits (belly chain and black box) restricted his hand movements and made passing documents difficult. He said the set-up in the visiting room was very uncomfortable, with his client having to sit up on the small table by the glass screen in order to communicate with him.

Another legal representative told the organization that prisoners may have their ankles shackled during social visits also.

Amnesty International believes the degree of restraint applied routinely during non-contact visits appear to be unnecessarily punitive, especially for prisoners who do not have a history of serious rule violations or acts of institutional violence within the facility, and for prisoners needing to communicate with attorneys. International standards provide that restraints should be applied only when “strictly necessary” as a precaution against escape or to prevent damage or injury.⁴⁰



The inmate side of the social visits compartment © Private

Recommendations

- Amnesty International recommends that conditions in the ADX General Population be improved so that prisoners are not held in conditions of severe isolation but have more opportunities for interaction with staff, including educational staff, as well as access to meaningful rehabilitation programs. The exercise facilities should be modified to allow more space and equipment; prisoners should be allowed daily outdoor exercise⁴¹.
- Amnesty International recommends that opportunities be reinstated for prisoners to have some social interaction with other inmates, even at the most restrictive levels of confinement, both to aid their rehabilitation and to allow their progress to be measured.
- The use of restraints should be prescribed by law and be restricted by the principles of necessity and proportionality. Prisoners should be placed in restraints only when strictly necessary; restraints should not be applied that cause pain or unnecessary discomfort.⁴²
- Facilities should be provided for prisoners to meet with their attorneys in a suitable environment that does not impede communication; when receiving visits from lawyers, prisoners behind barriers should not be restrained in such a way as to restrict their hand movement, making passing documents difficult.

THE STEP-DOWN PROGRAM (SDP)

Prisoners are assigned to ADX if it is determined that they “have demonstrated an inability to function in a less-restrictive environment” and would pose a serious risk to the safety of other inmates or staff or the public if held in a less secure setting.⁴³ Writing to the UN Special Rapporteur on Torture in 2011, the US Ambassador to the UN gave the primary reasons for referral to the facility as “murder or assault at another facility, escape behaviour or rioting”.⁴⁴ Prisoners may also be assigned to the facility if the offence for which the person has been convicted or profile prior to arrest is deemed to create a sufficient security risk; thus, some prisoners with particular connections outside prison or who have been convicted of involvement in or support of terrorism have been assigned to the facility without regard to their institutional behaviour.

The ADX mission is described as having a dual purpose: to 1) to maintain the safety of staff and inmates while eliminating the need to increase security in other institutions and 2) confine inmates under close controls while providing them with opportunities to demonstrate progressively responsible behaviour; participate in programs in a safe, secure environment; and establish readiness for transfer to a less secure institution”.⁴⁵

Prisoners may move into the SDP only after a minimum of 12 months clear conduct and “positive institutional adjustment” in the ADX GP. The SDP consists of an Intermediate Unit (IU), a Transitional Unit (TU) and a Pre-Transfer Unit (PTU) which is the final phase before a prisoner is ordinarily considered for transfer to an open population institution. Only the IU is currently sited at ADX (see below).

The IU at ADX (with capacity for up to 32 inmates): has standard single occupancy maximum security cells looking onto the unit range, with a narrow outside window providing natural light. The furnishings are the same as in the GP cells except that showers are on the range. The only difference between the GP and IU regime is that prisoners may associate in groups of up to eight prisoners on the range for an hour and a half a day five days a week, in addition to the 10 hours exercise as described above. They are also allowed three 15-minute telephone calls a month. All meals are eaten inside the cells and the same programs are provided as in GP.

Prisoners in the TU (capacity of up to 32 inmates) are assigned to groups of up to 16 inmates with whom they are allowed to associate on the range for up to three hours a day; they consume meals on the range with their assigned group. The Unit also provides outdoor group recreation and prisoners are allowed an additional 15-minute social phone call a month.

Prisoners in the PTU are usually double-celled, consume meals on the range, are unrestrained when out of their cells and participate in various work assignments.

PRISONERS IN ADX MORE ISOLATED THAN BEFORE

As with the GP (where there is no longer group exercise), conditions in the first two phases of the SDP have become more restrictive than when the prison initially opened. At the time of Amnesty International's 2001 visit to ADX prisoners in the IU were allowed out of their cells onto the ranges for several hours a day, with meals consumed in common areas located on the ranges. Recreation included use of a gymnasium. Prisoners in the TU had religious services and group recreation of up to 35 hours a week.

The TU and the Pre-Transfer Unit were both originally sited at the ADX facility but are now located at USP Florence, a high security prison which, like ADX, forms part of the Federal Correctional Complex (FCC) at Florence. ADX itself has therefore become almost entirely a "lock-down" facility in which prisoners are locked in solitary cells for all but a few hours a week. Amnesty International is concerned that, at a time when there is growing recognition of the damaging effects of isolation and moves to restrict such practice in some states, conditions in ADX have become more restrictive in recent years.



Inside of a cell in the Control unit at ADX © Private

LENGTH OF TIME IN ISOLATION/ACCESS TO THE SDP

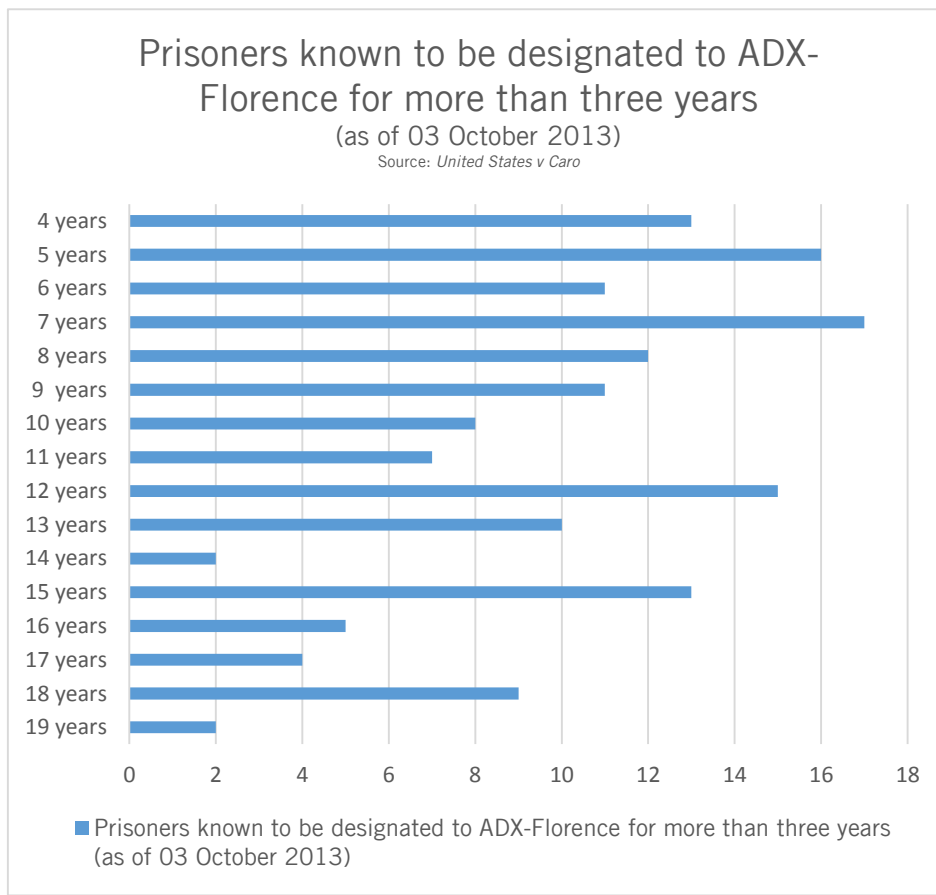
The SDP from GP to the PTU is described as a four-phased program, with prisoners expected to spend at least 12 months in the GP, six months each in the IU and TUs and 12 months in the Pre-Transfer phase before being considered for transfer to an open population institution.

It is clear from BOP policy as set out in the Institutional Supplements on General Population and Step-down Operations that the purpose of the program is to provide inmates with incentives and an opportunity to demonstrate conduct that will enable them to progress from GP through progressively less restrictive units. The Supplements state:

“Every inmate has the opportunity to demonstrate he may be housed in a less restrictive unit”.

While the minimum period from placement in the ADX GP to transfer from USP Florence to a less restrictive facility is 36 months, it is reported that, in practice, most prisoners take much longer than this to complete the program. Most disturbing are statistics indicating that most prisoners spend far longer than the minimum 12 months at the base-line level in the GP and thus in conditions of severe social isolation.

There is no publicly available breakdown of the length of time prisoners spend in each stage. However, in October 2011, following a request by the European Court of Human Rights (ECHR) in the Babar Ahmad extradition case, the Bureau of Prisons provided an analysis based on a random sample of 30 prisoners from the ADX GP and SDP, which showed that “an inmate was likely to spend three years at ADX before being admitted to the Step Down or Special Security Programs.”⁴⁶ Lawyers for the applicants submitted evidence based on a much larger sample of more than 100 ADX prisoners which identified an average solitary confinement length of 8.2 years (see chart below).⁴⁷ The US government reported to the ECHR that the numbers of prisoners moving into the SDP had increased since their survey was conducted. However, it appears that few prisoners pass through the system within the minimum period specified. Some prisoners have spent several years in isolation in GP despite reportedly having completing programs necessary to qualify for “consideration of” advancement. According to the GAO report on segregation, there were only 15 prisoners in the ADX SDP units located at USP Florence (the TU and PTUs) in February 2013.⁴⁸



LACK OF CLEAR CRITERIA OR SAFEGUARDS FOR PROGRESSIONS TO THE SDP

“My involvement in my reviews is usually just my presence and the time it takes me to sign the forms. However it is not uncommon for prison staff to slide my prison review form under my door when I am in recreation and expect me to sign them without speaking to me at all”.

Thomas Silverstein, confined for over 30 years in isolation, nine of which have been spent in ADX⁴⁹

Following litigation, all prisoners assigned to ADX now receive an administrative hearing prior to their placement at the facility, which provides some minimal procedural safeguards.⁵⁰ Prisoners assigned to the ADX GP also have six monthly Program Reviews which, according to BOP regulations, prisoners are expected to attend and can raise question and concerns about his placement in, advancement through, or transfer out of the program. Amnesty International has been told that this rarely happens. Instead, typically the review meetings take place at the cell doors, and the ‘program review report’ which has already been filled out by prison staff, is slid under the door for prisoners to sign. These routine reviews do not make decisions on whether a prisoner may proceed to the SDP.

The process for allowing a prisoner to move from GP to the SDP appears to be highly discretionary. There is no hearing and determinations on eligibility for, and advancement through, the SDP are carried out by an internal prison SDP Screening Committee (Committee) in consultation with the unit team, with the Warden having the final decision.⁵¹ If a prisoner is determined to be “eligible” for the SDP (listed criteria for eligibility including, for example, 12 months’ clear conduct in GP and active participation and completion of programs), this does not mean that he will necessarily be considered for entry into the SDP.⁵²

Prisoners take no part in the SDC Committee review of placement/advancement determinations and are not present at such reviews. Even if admitted to the SDP, prisoners may be sent back at any time, including, it has been alleged, for minor incidents.

PB, a developmentally disabled and severely depressed inmate, in the phase 2 in of the SDP in USP Florence received an incident report for a “minor rules infraction” and was returned to ADX where he was placed in the SHU. The following month, after he learned of the death of his mother and after pleading for psychiatric help for several hours, he attempted suicide. Guards who witnessed the incident gave him an incident report for “tattooing or self-mutilation”. Although this incident report was subsequently expunged after intervention by his lawyer, he remained at ADX having to accrue again a sustained period of clean conduct.

Although decisions may be appealed through an administrative remedy process, this has been described by attorneys as an ineffective remedy in practice, given the discretionary nature of the process and the wide deference afforded to prison administrators in decisions relating to institutional security⁵³. The process has been described in court documents as “meaningless because no administrative remedy challenging a Step-Down denial has ever been successful”.⁵⁴ In reporting on the practice of solitary confinement, the UN Special Rapporteur on Torture has stressed the importance of procedural safeguards when assigning prisoners to segregation, stating inter alia that prisoners “must be provided with a genuine opportunity to challenge both the nature of their confinement and its underlying justification through a process of administrative review”.⁵⁵

BOP regulations state that each inmate will receive written notification of the decision to deny entry to, or advancement through, the SDP, which will include “The reason(s) for the denial, *unless it is determined that the release of this information could pose a threat to individual safety or institutional security*” (Amnesty International emphasis). Advocates report that within the past year, prisoners have not been told that they have been considered and rejected for the SDP as they have not received any documentation at all. As a result, there is no actual “decision” that they have access to that they could challenge via the grievance process. It is alleged that some prisoners have been repeatedly denied entry to the SDP for years without being given any specific or detailed explanation, and thus without knowing what they can do to advance through the program. This has included prisoners with no history of serious misconduct, or with clear conduct records, some of whom have remained in isolation at the base-line level of ADX for many years.

- Mohammed Saleh, Ibrahim Elgabrowni and El-Sayyid Nosair were transferred to ADX without a hearing following the September 11th 2001 attacks.⁵⁶ While convicted of terrorism-related offences, all three had previously spent six years confined without serious incident at high security open population prisons, where they had jobs, were out of their cells for most of the day and could move freely with other inmates. According to court documents, once in ADX they were held in isolation in the GP and were repeatedly denied access to the SDP without explanation, apart from notices containing formulaic language such as that their “reasons for placement have not been mitigated” and/or that “safety and security” prevented them from being progressed.⁵⁷ The prisoners were placed into the SDP (in 2007 and 2009) only after filing lawsuits and following several years of unexplained denials, without any change in their conduct. They were later transferred to other prisons while the case was still in litigation and before completing the SDP. Omar Rezaq, another prisoner named in the lawsuit, spent over 12 years in isolation in the ADX GP before being placed in the SDP.⁵⁸
- While detailed information is lacking on the length of time prisoners currently in ADX have spent in the GP, cases of long-term isolation continue at the prison, with prisoners continuing to be denied access to the SDP despite reportedly having clear conduct

records.⁵⁹ According to a lawsuit filed in 2012, some prisoners with mental illness had spent more than a decade at ADX without adequate treatment or admission to the SDP or, if admitted to the SDP, were returned to the ADX GP for failure to complete the program (see section on Mental Illness, below).

- Norman Matthews, convicted for a number of criminal offences, died last year in ADX after being held for 18 years in the GP unit without being admitted to the SDP.
- John Powers, incarcerated in 1990 after conviction for bank robbery, was sent to ADX in 2001 and suffering from mental health problems spent years being transferred between the special mental health prison facility in Missouri and the Control Unit in ADX. During his 11 years in ADX he was never placed in the SDP.
- Ralph Gambina, serving a life sentence, was transferred to ADX in 1995 from the Control Unit at USP Marion and has spent 21 years in solitary confinement without being entered into the SDP.
- Syed Fahad Hashmi was transferred to ADX in March 2011 after being convicted of one count of providing material support for terrorism after nearly three years in pre-trial solitary confinement (see box) and a further period in isolation in another federal prison. He was initially placed in H-Unit under SAMs but was moved to the ADX GP in January 2012, after his SAMs expired and were not renewed. More than two years on, without being granted access to the SDP, and with no history of any serious institutional misconduct involving physical violence, nor having been convicted of any direct involvement in acts of violence or terrorism he was eventually transferred on 17 June 2014 to the Control Management Unit in Terre Haute, Indiana.
- According to a US government declaration in the Babar Ahmad case, “mitigation of the original reason for placement at ADX” is no longer an explicit factor used to determine entry to the SDP; however, it acknowledged that the SDP Committee could still have regard to the initial reasons for placement at ADX in making its decision.⁶⁰ The criteria listed in BOP procedures for placement into or advancement through the SDP are extremely broad and include such vague wording as “the inmate’s conduct while housed at the ADX” and “overall institutional adjustment”, “the institution’s safety and security needs”, as well as “The reason(s) the inmate was designated to the ADX” and criminal history. Amnesty International has been told that a number of prisoners remain confined indefinitely to the ADX GP based solely on their committal offence, and without access to the SDP.
- Thomas Silverstein, 62, originally convicted of armed robbery, and serving life without parole for the murder of two inmates and a correctional officer has been confined for 30 years in isolation, nine of which have been spent in ADX. During this time, despite a clean conduct record for 22 years, he has been denied access to the SDP on the basis of the nature of his convictions. On the 10th May, 2014, the US Circuit Court of Appeals ruled that his 30-year confinement in isolation does not violate his rights. The Judges noted that the nature of Silverstein’s convictions make it reasonable to keep him in solitary confinement. “In this case,” the ruling states, “the risk of death and physical or psychological injury to those exposed to Mr Silverstein must be balanced with the psychological risk he may face if left in administrative segregation.”

Some margin of appreciation may be necessary when officials are assessing complex factors relating to behavioural and security needs. However, the organization shares the concerns expressed by advocates about the lack of clear criteria for enabling prisoners to work their

way through the ADX SDP, and the very broad grounds that can be used to deny progress, including the original reason for assignment. This has meant prisoners spending years – or in some cases being held indefinitely – in conditions of severe isolation.

Recommendations

■ Amnesty International recommends that clear criteria be established for SDP placement decisions, with a fair process and meaningful review. Prisoners should be provided with detailed reasons if they are denied advancement through the SDP, with an opportunity to participate in, and challenge, decisions, with clear guidance on how they can progress through the system. No-one should be held continuously in isolation based solely the original reason for placement in ADX. Rehabilitation programs should be meaningful and ensure behaviour can be measured. There should be a presumption that prisoners who are eligible for the SDP will progress at the earliest opportunity.

SPECIAL SECURITY UNIT (SSU) - H-UNIT

“The longer I spent in this period of segregation, the worse it gets on my efforts to survive, to maintain my state of mind and my mental capacity. I lost fifty pounds from being on hunger strike in H-Unit and hunger strikes became a regular occurrence in the unit, with medical staff coming every weekend to weigh each inmate. This was the first time in my life that I experienced the brutality of force feeding.”

Mahmud Abouhalima, held under SAMS in H Unit, ADX, since 2005.

ADX prisoners who are under Special Administrative Measures (SAMS) are housed in the SSU, commonly known as H-Unit. SAMs are special restrictions that may be imposed on an inmate under the direction of the Attorney General, when it is determined that such measures are “reasonably necessary” to “prevent disclosure of classified information” or to “protect persons against the risk of death or serious bodily injury” (28 C.F.R. Section 501.3 (a) (2008). The restrictions under SAMs may include housing an individual in administrative segregation and/or limiting privileges such as correspondence and visits. The measures may be renewed annually on the basis of written notification from the DOJ to the BOP that there remains a “substantial risk” that “a prisoner’s communications or contacts with persons could result in death or serious bodily injury to persons or substantial damage to property that could entail the risk of death or serious bodily injury to persons”.

Prisoners in H-Unit are held in single cells similar to those in the SDP with a narrow window to the outside and solid door with a window looking onto the range. Showers are sited on the range rather than inside the cells. Otherwise the basic regime is identical to that in the GP, with prisoners locked in their cells for 22-24 hours a day with 10 hours out of cell exercise a week, alone or in individual cages with up to five other prisoners. They have access to the same in-cell programs delivered through close-circuit TV as the GP as well as to most books⁶¹ and other TV channels.⁶² Most prisoners under SAMs have severe restrictions placed on their communication with the outside world, compounding their isolation. Visits and correspondence are typically limited to approved attorneys and immediate family members only; lawyers may further be prohibited from reporting on their clients’ conditions of confinement.⁶³ Correspondence to or from approved contacts, which is monitored along with the twice-monthly non-legal phone calls allowed, may be limited to only one letter a week.

In February 2014 it was reported that between 8 to 10 prisoners in H Unit were being force fed after initiating a hunger strike in protest against their restrictive conditions of confinement.⁶⁴ BOP records, seen by CBS News “60 Minutes,” indicate that this is not an isolated incident, according to the program, “there have been as many as 900 of what the Bureau calls ‘involuntary feedings’ of terrorists in H unit since 2001”.⁶⁵

"I have engaged in two hunger strikes while on H Unit. Both of them were my decision and had nothing to do with other people. No one I corresponded with encouraged me to strike. I did not strike because other prisoners were doing it. I felt like an animal – just eating and sleeping. I decided to stop eating to object to my treatment".

Nidall Ayyad placed under SAMS in 2005 and held in H unit between 2006 and 2012. A few months after his SAMS were removed in 2012 he was transferred to a CMU where he remains today.

Prisoners assigned to H-Unit have no opportunity to enter the GP SDP – the only clear route out of ADX for most prisoners - other than through the lifting of the SAMs which is a decision made by the DOJ rather than the prison administration. However, in May 2008, the prison instituted a separate, internal step-down program for H-Unit. This consists of three "phases" each lasting a minimum of one year. At phase 2, prisoners are allowed certain limited additional privileges, while remaining confined to solitary cells for 22-24 hours a day. Only at phase 3 are H-Unit prisoners allowed some group association, with up to four other prisoners on the range for one and a half hours a day. Decisions on whether a prisoner is eligible for progression through the phases are made by an H Unit Review Committee; decisions are based on criteria relating to safety concerns, the inmate's conduct and participation in programs.

In practice, progression to phase 3 of the H-Unit program is conditional upon modification of the prisoner's SAMs restrictions, a decision which rests with the DOJ and may not depend upon the prisoner's institutional behaviour but on more general security considerations, including the committal offence. Amnesty International does not have a breakdown of the current numbers of prisoners in each phase of H-Unit or the length of time spent at each phase. However, litigation documents describe how some prisoners spent several years in H-Unit without progressing to phase 3 because their SAMs had not been modified, despite clear conduct records. The only way out of H-Unit altogether is generally for the SAMs to be lifted. At least one prisoner remains confined to H-Unit indefinitely, in conditions of severe isolation.

- Ramzi Yousef is serving two life sentences plus 240 years for his role in two terrorist attacks, including the 1993 World Trade Center bombing in New York City in which six people died. He has spent more than 15 years in solitary confinement. He is currently confined in H-Unit under SAMs; he has spent over two years on step 2 of the phased program, and despite a clear conduct record for 5 years, and an orderly appointment which allows him out of cells for few hours a week to clean cells, he continues to be denied access to phase 3. When his SAMs come up for renewal he will have a meeting with his counsellor to discuss, but he is not told when the SAMs will be renewed, nor given the opportunity to refute anything in the decision. According to a lawsuit filed in 2012, his SAMs are renewed every year based on his original conviction, without regard to his institutional behaviour and without a finding that he continues to pose any specific threat behind bars. In May, the Judge in his case ruled that there was no liberty interest under the Constitution in challenging SAMs.
- Mahmud Abouhalima was sentenced to 240 years for his role in the 1993 World Trade Center bombing. Between 1992 and 2001 he was held in GP in USP Lompoc and USP Leavenworth; on September 11 2001 he was placed in segregation and transferred to ADX in 2003 and held in GP unit for two years until his transfer to H Unit in 2005 when he was placed under SAMs. In 2008, Mahmud Abouhalima was placed in the H-Unit step-down program. Despite progress records that reportedly indicate he had positive behaviour and interactions with staff and inmates, as well as participation in education and psychology programs, in June 2011 he received a written denial for phase three of the program and was subsequently returned to phase one. He is now in phase three.

Amnesty International has joined other human rights advocates in expressing concern about the lack of transparency and fairness in the way in which SAMs have been applied in some cases.⁶⁶ Lawyers have reported that prisoners are not always provided with the reasons SAMs are imposed or renewed, and that they do not have adequate opportunity to contest the decision or know what they can do to have them lifted. As shown in Ramzi Yousef's case, SAMs have been imposed and extended on the basis of the original offence, rather than any specific or ongoing threat posed by the prisoner while incarcerated.

Any measure which imposes significant restrictions on an inmate's living conditions and access to the outside world should be subject to a rigorous and accountable review process. All prisoners, regardless of their security classification, must be provided with humane conditions.

International standards provide that prisoners should not be subjected to any hardship beyond that inherent in the deprivation of liberty and maintenance of discipline.⁶⁷ In line with this principle, they should be held in the least restrictive conditions practicable, consistent with humane treatment and the aim of rehabilitation.

Recommendations

- Amnesty International recommends that prisoners in H-Unit be afforded more out of cell time, better exercise and recreational provision, and an opportunity for some association with other inmates in the unit at all stages of their confinement rather than, as presently, only after progression to phase 3.
- Prisoners should be provided with a meaningful opportunity to challenge the imposition of SAMs. In any event, consistent with international standards, restrictions should be limited to the minimum necessary and ensure that a prisoner is not subjected to undue hardship. No prisoner should be held in indefinite solitary confinement.
- As a general rule, hunger strikers should not be forcibly fed. Any decision whether to carry out non-consensual feeding of a hunger striker should be made only by qualified health professionals and any such feeding should be done only by medically trained personnel under continuing medical supervision, and only after assessing the individual's health needs and mental competence. The authorities must never require health professionals treating hunger strikers to act in any way contrary to their professional judgment or medical ethics.

CONTROL UNIT, SHU AND RANGE 13



The SHU range in ADX © Private

The Control Unit (CU), together with the SHU and Range 13, are the most isolated units in ADX as prisoners recreate alone and have no contact with anyone other than staff. Prisoners are assigned to the CU for fixed terms for serious offences, usually committed in other prisons, after a hearing which is similar to a disciplinary hearing. The fixed terms can be as long as six years or more,⁶⁸ and may be extended if further offences are committed while the prisoner is in the Unit.

The cells are the same as in the GP, with showers and double-doors cutting off direct contact with anyone on the range or in adjacent cells. CU prisoners have access to TVs and the same

in-cell programs as GP inmates. However, they are allowed exercise for only seven hours a week, and they do not have even the limited contact that GP inmates may have with prisoners in adjacent cages. Contact with the outside world is more restrictive in that they are allowed only one 15-minute non-legal phone call a month.

Prisoners in the CU have no access to the SDP but they can receive monthly credits for positive behaviour which can reduce their terms; they may also lose credit for disciplinary offences or failure to adjust. ADX regulations require that all prisoners receive monthly reviews by a CU Team attended by a psychologist. An Executive Panel reviews each CU case every 60-90 days to determine an inmate's readiness for release (to another prison or to the ADX GP).⁶⁹



Interior of a SHU cell at ADX © Private

BOP regulations exclude prisoners with serious mental illness from being housed in the CU, and all inmates are supposed to undergo mental health screening before being assigned to the unit and assessed at the monthly reviews. However, according to an ongoing lawsuit (*Cunningham v Bureau of Prisons*, see below) prisoners with serious mental illness have been held in the CU, sometimes for years, with some prisoners having their terms extended for behaviour caused by their illness, including incidents of extreme self-mutilation. Factors used in awarding good conduct credits, or in evaluating a prisoner's readiness for release from the unit, include "Self-improvement Activities", "Personal Grooming and Cleanliness" and "Quarters Sanitation".⁷⁰ Lawyers have described how some prisoners are too ill or depressed to maintain personal hygiene and smear their cell walls with excrement; as they fail to meet positive conduct criteria they too can remain in the unit for extended periods. According to a prison mental health expert, behaviour such as self-harm and smearing excrement is often a symptom of mental health or behavioural disturbance stemming from, or exacerbated by conditions of isolation.⁷¹ While some changes have been instituted as a result of the lawsuit, Amnesty International is concerned that prisoners with mental or behavioural problems may remain in isolation, in the CU or elsewhere at ADX, effectively punished for behaviour they are unable to control, in conditions that are liable to make them worse.

Prisoners in the SHU live in similar conditions of isolation as in the CU, confined to the same double-door cells, with solitary recreation. Many prisoners in the SHU are serving fixed terms for disciplinary offences; some are held there pending investigation of an incident. ADX prisoners usually spend at least a few days in the SHU upon their arrival at the institution. Most inmates in the SHU (those confined for disciplinary reasons) are denied televisions and radios or access to programs. Although prisoners generally spend shorter periods in the SHU than in other units, prisoners' terms can be extended for repeated disciplinary infractions. According to the *Cunningham* lawsuit, seriously mentally ill prisoners have been confined in the SHU for many months, and in some cases for years, due to disturbed behaviour exacerbated by their conditions of confinement.

Range 13

"The outdoor recreation area was a concrete pit surrounded by high, featureless walls on all sides. It felt like being inside of a deep, empty, swimming pool. I couldn't see any of the mountain, even though I knew they had to be close by. I also couldn't see a single tree, a blade of grass, or any sign of nature".

Description of outdoor recreation area on Range 13⁷²

The most isolated section of the facility is a small high security unit known as Range 13. The cells have no view of the outside and light comes from a small window at the top of each cell too high to see through. Cameras are positioned on the cells 24 hours a day. Amnesty International was told during its 2001 visit to ADX that very few inmates were ever held there, and for no more than 12-30 days at a time. However, the organization has received information indicating that in recent years prisoners have spent significantly longer periods in Range 13.

- Thomas Silverstein, 62, convicted in 1975 for armed robbery, and implicated in the murder of a guard and two inmates, was held on Range 13 for almost three years between 2005 and 2008. He has had a clean conduct record for over two decades. Held under a "no human contact" order issued by the Director of the BOP in 1983 he was moved to ADX GP in 2008 after he filed his lawsuit. According to court documents, Mr Silverstein, while incarcerated on Range 13, was given no information from prison officials about the 'behavioural standards that were being applied to him and the "program" he would need to follow to have his extreme level of isolation reduced". It was

'unclear what if any objective or clear standards the BOP applied in making the decision to transfer him out of Range 13 and into D Unit'.⁷³ Even after the move to GP, he still was, and has been, treated differently from other GP prisoners in the sense that for the majority of the time he has been in GP, he has been forced to recreate alone, not even being able to interact with other prisoners in the outdoor cages.

- Ramzi Yousef, was held for seven years and eight months on Range 13.

Several H-Unit prisoners were also placed there in response to initiating hunger strikes.

Amnesty International has seen documents in which an H-Unit prisoner appealed his placement in Range 13 through the Administrative Remedy procedure, alleging that he was placed there in retaliation for having gone on hunger strike in September 2010. In a letter dated 5 January 2011, the Warden replied to the prisoner denying his appeal, stating that "On October 4, 2010, while you were engaged in the hunger strike, you were removed from H-Unit and placed on Range 13, in SHU, for medical observation and monitoring".⁷⁴ The letter goes on to state that "The decision was then made that upon completion of your hunger strike and your monitoring/observation by the Clinical Director, we would continue to house you on Range 13, in the SHU, with other H-Unit inmates". Thus, he was still in Range 13 nearly four months after being placed there, and no longer for observation or monitoring purposes.

Although the Warden states in his letter that H Unit prisoners in Range 13 were afforded "all of the same privileges and restrictions as H-Unit inmates", given the extremely isolated conditions on Range 13 it is hard to see this as other than a punitive measure taken to deter prisoners from going on hunger strike. Amnesty International opposes the imposition of punitive measures against prisoners for going on hunger strike, and is particularly concerned that where a prisoner is on hunger strike in protest against their isolated conditions of confinement, such measures place them in conditions of even more severe isolation.

Recommendations

- Prisoners with mental illness, mental disabilities or severe behavioural disorders should not be housed in ADX but should be treated in an appropriate therapeutic setting. All prisoners in ADX should be regularly monitored by mental health professionals.
- All prisoners, wherever they are housed, should have access to adequate provision for outdoor exercise and recreation and, to the maximum extent possible, opportunities for social contact with other inmates. No prisoner should be confined for prolonged periods in the conditions of severe isolation as exist in the CU or SHU.
- Given the very severe conditions of isolation in Range 13 cells, and the risk of psychological harm that can result from even short periods in isolation, Amnesty International considers that Range 13 should be discontinued for use.

MENTALLY ILL PRISONERS AT ADX

"The minds of some prisoners are collapsing in on them. I don't know what internal strife lies within them, but it isn't mitigated here. One prisoner subjected to four point restraints (chains, actually) as shock therapy, had been chewing on his own flesh. Why is a prisoner who mutilates himself kept in ADX? Is he supposed to improve his outlook on life while stripped, chained and tormented"

Excerpt from a letter written by Raymond Luc Levasseur a prisoner held in ADX⁷⁵

There is a significant body of evidence that confining individuals in isolated conditions, even

for relatively short periods of time, can cause serious psychological and sometimes physiological harm, with symptoms including anxiety and depression, insomnia, hypertension, extreme paranoia, perceptual distortions and psychosis. This damaging effect can be immediate and increases the longer the measure lasts and the more indeterminate it is.⁷⁶ Isolation has been found to have negative effects on individuals with no pre-existing illness and to be particularly harmful in the case of those who already suffer from mental illness.⁷⁷

In recognition of such effects, international and regional human rights bodies, mental health organizations and others have called for strict limits on the use of solitary confinement and an absolute prohibition of the practice in the case of prisoners who are mentally ill.⁷⁸ In 2012, the American Psychiatric Association approved a policy opposing the prolonged segregation of prisoners with serious mental illness.⁷⁹ There is a growing consensus among US courts that housing prisoners who are seriously mentally ill in “super-maximum security” conditions is “cruel and unusual punishment” in violation of the Eighth Amendment to the U.S. Constitution.

BOP policy also prohibits housing prisoners who are seriously mentally ill in ADX. Its written procedures for transferring prisoners to ADX state that prisoners “currently diagnosed as suffering from serious psychiatric illnesses should not be referred for placement at ... ADX.” (BOP Program Statement 5100.08, “Prisoner Security Designation and Custody Clarification”, Chapter 7).

However, in declarations presented to the ECHR asserting that inmates considered seriously mentally ill would not be housed at ADX, the US government stated that “The main mental health disorders such as bipolar affective disorder, depression, post-traumatic stress disorder and schizophrenia would not preclude a designation to ADX and could be managed successfully there”.⁸⁰ Thus, it appears that, in practice, BOP has taken the position that prisoners with a diagnosis of serious mental illness need not be excluded from assignment to ADX and placement in isolation if they can be managed and are not actively psychotic. This position and definition of when a person is seriously mentally ill has been challenged as contrary to accepted practice in other systems and with recommendations and findings of the US Department of Justice Civil Rights Division investigations into other jurisdictions.⁸¹

"I heard the head of the BOP in Congress (on radio) saying that they do not have insane inmates housed here...I have not slept in weeks due to these non-existing inmates beating on the walls and hollering all night. And the most "non-insane" smearing feces in their cells"

Letter sent to the website Solitary Watch by an inmate confined in ADX who has spent the last 12 years in solitary confinement⁸²

A lawsuit filed in 2012 and still in litigation (*Cunningham v BOP*) has presented evidence that a significant number of inmates suffering from serious mental illness have been confined at ADX without adequate screening, diagnosis or treatment, in violation of BOP's own policies and the Eighth Amendment to the US Constitution.⁸³

While all prisoners are required to be screened upon arrival at the prison, the lawsuit described the process as consisting of “perfunctory interviews that are wholly inadequate as a form of screening or diagnosis”.⁸⁴ It further stated that, even where prisoners were identified as having a serious mental illness, many were not given appropriate treatment or monitoring.

Because of the particularly severe conditions in the CU, BOP policy provides that, even if referred to ADX, any prisoner with evidence of a serious mental disorder or physical disability for which they require to be medicated should not be placed in the CU. However, cases cited in the lawsuit include several prisoners who had spent years in the CU, despite histories of

mental illness and actively psychotic behaviour, including acts of self-mutilation. Some had been taken off their prescribed psychotropic medication in order to be assigned as “eligible” for placement in the unit. The lawsuit claimed that the 30 day evaluations were in practice “rarely performed on inmates in the Control Unit”.⁸⁵

JP, a prisoner with a history of mental illness, was transferred to ADX in 2001 and placed in the CU to serve a 60 month sentence imposed after he escaped from a medium security prison.⁸⁶ The lawsuit describes how he was repeatedly transferred for brief periods to the federal medical facility at Springfield for psychiatric evaluation after a series of incidents of self-harm, only to be returned to the CU after being “stabilised” with medication. The self-harming incidents included lacerating his scrotum with a piece of plastic (2005); biting off his finger (2007); inserting staples into his forehead (2008); cutting his wrists and being found unconscious in his cell (2009). He finally completed his CU term in 2011, ten years and five months after his original term would have expired had he been able to comply with the behavioural requirements. According to the lawsuit, he continued to be deprived of mental health care after being placed in the ADX GP. In January 2012, he reportedly sliced off his earlobes and in March 2012 sawed through his Achilles tendon with a piece of metal; after he again mutilated his genitals in May 2012 he was placed on the anti-psychotic medication Haldol but had no access to other treatment such as mental health counselling. In August 2013, he left ADX on an emergency mental health transfer to Springfield, Missouri. In October 2013, he was sent to USP Tucson but was transferred back to Springfield in about March 2014 after he rammed his head into an exposed piece of metal in his cell, causing a skull fracture and brain injury, for which he refused most treatment. Since arriving at Springfield he has inserted metal into his brain cavity through the hole that remain in his skull, which BOP says cannot safely be removed.

MW had been treated for mental illness since childhood and was also diagnosed with mental retardation. He was transferred to ADX despite a history of self-harming and attempted suicide at another prison. While in the CU, he twice cut his wrist with a razor blade; he allegedly received no mental health treatment for his behaviour but was punished with seven days loss of TV. He filed an administrative appeal against his placement in the CU which was denied.⁸⁷

According to the lawsuit, many prisoners housed in the SHU also suffer from chronic mental illness and some routinely smear themselves and their cells with their own faeces, howl or shriek continuously or bang their metal showers at all hours of the day or night. Mentally ill prisoners have also been housed in the ADX GP. One prisoner, who had been stabilised with regular psychotropic medication in another federal facility, deteriorated after being transferred to ADX; after cutting a blood vessel in his neck he was treated in hospital then returned to ADX where he was reportedly placed in the same cell and given a pail of water to clean up the blood.⁸⁸

The lawsuit further alleges that, as of the time of filing, there was inadequate mental health staffing at ADX. The prison reportedly had only two mental health professionals – both psychologists – serving around 450 inmates, assisted by a psychiatrist who spent only half a day a week at the facility. It was alleged that psychotropic medication was inconsistently or incorrectly administered; that correction officers were not adequately trained to recognize symptoms of serious mental illness crises; and that counselling sessions with mental health staff almost invariably took place at the cell door, in the presence of correctional staff, rather than in an appropriate private setting.

In 2013, two years after the lawsuit was filed, and following rejection by a federal judge of BOP appeals to dismiss the case, both sides entered into a structured settlement process overseen by an assistant federal judge. While at the point of writing no definitive agreement

had been reached, prison authorities have reportedly taken steps to address the concerns raised, although, according to the lead attorney in the case, the BOP remains “far from righting chronic treatment gaps”.⁸⁹

- In September 2013 a prisoner with a history of serious mental illness hanged himself in his cell in the ADX GP. He had reportedly spent more than a decade at ADX with only intermittent mental health care, having been transferred to a medical facility at least six times to be medicated only to be returned to ADX where each time he deteriorated; he suffered psychotic symptoms which had allegedly been ignored in the days before his death.⁹⁰ According to his lawyer, the BOP refused to allow the coroner to interview other prisoners, enter prisoner cells or take witness statements. They also took the reportedly unprecedented step of having three representatives attend the autopsy.

The changes under the above settlement negotiations are reported to include the creation of two new long-term residential programs to treat high security prisoners with serious psychiatric problems: the first in Atlanta, Georgia, opened in September 2013 with capacity for 30 patients –all but one of whom were transferred from ADX. In addition, a number of mentally ill prisoners have been transferred to a federal medical facility in Springfield, Missouri.

Other improvements include a new policy statement on SMI; some improvement in staff training; an increase in the size of mental health staff from two psychologists to four, and a psychiatric nurse; an improved pre-admission evaluation for inmates entering prison; and the employment of an outside consultant to evaluate all prisoners at ADX. Additionally, a change has been made to the policy that previously prohibited the administration of psychotropic drugs to inmates in the CU so that some prisoners in the unit may now receive such medication. While Amnesty International recognizes this latter change as an improvement on withholding medication from mentally ill prisoners, it is deeply concerned that prisoners with SMI should be held at all in the CU given its severe conditions of isolation.

According to information provided to Amnesty International by plaintiff’s attorneys, a number of critical objectives are being sought through the settlement process, including better evaluation and diagnostic processes for those being referred to ADX, effective treatment for mentally ill prisoners in an appropriate therapeutic setting, routine monitoring and psychological services for all prisoners at ADX and, for all prisoners, a reduction in extreme isolation time with monitoring and enforcement mechanisms to ensure changes are properly introduced.

International standards, and those set by US professional organizations, require careful monitoring of all prisoners held in isolation due to the negative impact this can have on the psychological health of individuals even without pre-existing illness. The SMR require daily monitoring of prisoners placed in “close confinement” (Rule 32). The National Commission for Correctional Health Care (NCCHC) in the USA has observed that conditions in super-maximum security isolation facilities “Even for the most stable individuals ... may precipitate mental health or health difficulties” and that “daily contact by medical staff and at least weekly contact with mental health staff is required”, noting that such contacts “must be meaningful and allow sufficient interaction for such assessments to take place”.⁹¹ Although the standards are not binding on non-accredited facilities, they represent best practice.

Recommendations

- Amnesty International recommends that prisoners who are mentally ill are not housed at ADX; and that all prisoners in isolation have an opportunity for meaningful consultation with mental health staff on at least a weekly basis as recommended under NCCHC and

international standards.

- Prisoners with a diagnosis of mental illness, mental disability or severe behavioural disorders should not be housed in ADX and should have access to treatment in an appropriate therapeutic setting.
- All prisoners in ADX should be regularly monitored by mental health professionals.
- Health care staff should report to the prison authorities if a prisoner's health is being put at serious risk by being held in isolation.
- No prisoner with a history or risk of mental illness should be housed in ADX

OVERVIEW OF US OBLIGATIONS UNDER INTERNATIONAL LAW AND STANDARDS

The USA has ratified the United Nations (UN) Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment and the International Covenant on Civil and Political Rights (ICCPR) both of which affirm the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment (articles 1 and 16 of the Convention against Torture and article 7 of the ICCPR). Additionally, the ICCPR in article 10, requires that “all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person”, an obligation the UN Human Rights Committee (the treaty monitoring body) has stated is a “fundamental and universally applicable rule”⁹².

The Human Rights Committee has further emphasized that the prohibition of torture and other cruel, inhuman or degrading treatment under international law “relates not only to acts that cause physical pain but also that acts that cause mental suffering” and has stated, specifically, that prolonged solitary confinement may breach this prohibition (Human Rights Committee General Comment 20 on article 7).

The Human Rights Committee and the Committee against Torture (CAT) (the monitoring body of the Convention against Torture) have criticised conditions in US “super-maximum” facilities as inconsistent with the USA’s obligations under the above treaties. In 2006, the Human Rights Committee reiterated its concern that “conditions in some maximum security prisons are incompatible with the obligation in Article 10(i) to treat detained persons humanely”, citing, in particular, prolonged cellular confinement, lack of adequate exercise and the “depersonalized environment” found in such units.⁹³ The Committee also observed that such conditions “cannot be reconciled with the requirement in article 10(3) that the penitentiary system shall comprise treatment the essential aim of which shall be the reformation and social rehabilitation of prisoners”.⁹⁴ The CAT has urged the USA to review “the regime imposed on detainees in supermaximum prisons, in particular the practice of prolonged isolation”, noting the effect of such treatment on prisoners’ mental health.⁹⁵

Most recently, the Human Rights Committee issued its Concluding Observations following its consideration of the USA’s Fourth Periodic Report in March 2014. It again expressed

concern about holding prisoners in prolonged isolation, including in pre-trial detention, and recommended that the USA monitor conditions with a view to ensuring that persons deprived of their liberty be treated in accordance with the requirements of article 7 and 10 of the ICCPR and the SMR. The Committee recommended that the USA “impose strict limits on the use of solitary confinement, both pre-trial and following conviction, in the federal system, as well as nationwide, and abolish the practice in respect of anyone under 18 and prisoners with serious mental illness”.⁹⁶

The USA has sought to limit its obligations under article 7 of the ICCPR and Article 16 of the Convention against Torture, by entering reservations upon ratification of the treaties stating that it considers itself bound by the articles 7 and 16 only to the extent that “cruel, inhuman or degrading treatment or punishment” means the “cruel and unusual punishment” prohibited under the US Constitution. Amnesty International has repeatedly called on the USA to withdraw its reservations as defeating the object and purpose of the treaties and therefore incompatible with international law.⁹⁷ The Human Rights Committee has also noted with concern the restrictive interpretation made by the USA of its obligations under the Covenant, as has the Committee against Torture. In any event, the USA has made no similar reservation to Article 10 of the ICCPR which requires that all prisoners must be treated humanely, without exception.

As noted above, Amnesty International has found conditions in ADX, and in some other pre-trial or post-conviction federal facilities, to be in specific breach of standards under the SMR. They include standards on access to adequate outdoor exercise and fresh air, conditions essential to health and quality of life. The SMR, although not as such having the legally binding force of a treaty, set out minimum standards which the UN Special Rapporteur on Torture has said are “widely accepted as the universal norm for the humane treatment of prisoners”.⁹⁸ They have also been cited by the Human Rights Committee in its General Comment on Article 10 and, as shown above, in assessing state parties’ reports. Key standards for the treatment of prisoners are also set out in the Basic Principles for the Treatment of Prisoners, adopted by the UN General Assembly (GA) in 1990, and the Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment adopted by the UN GA in 1998.

International norms also provide, as an abiding general principle, that imprisonment should not impose hardship or constraint other than that resulting from the deprivation of liberty or restrictions that are unavoidable in an enclosed environment.⁹⁹ While acknowledging the need for heightened security measures for some prisoners, Amnesty International considers that the conditions of prolonged isolation and other deprivations endured by many prisoners in ADX are unnecessarily harsh and breach the above principle.

International and regional human rights treaty bodies and experts have consistently called on states to restrict their use of solitary confinement, in recognition of the physical and mental harm and suffering this can cause even when imposed for limited periods.¹⁰⁰ This was reiterated by the UN Special Rapporteur on Torture in a detailed report issued in August 2011 in which he called on states to apply solitary confinement “only in exceptional circumstances and for the shortest possible period of time”.¹⁰¹ He defined solitary confinement as “the physical and social isolation of individuals who are confined to cells for 22-24 hours a day”. He called for the abolition of solitary confinement in the case of children under 18 and people with mental disabilities on the ground that its imposition in such cases, for any duration, constitutes cruel, inhuman or degrading treatment. He stressed the importance of safeguards for prisoners placed in segregation, including regular monitoring and review of prisoners’ mental and physical condition by qualified, independent medical personnel, and a meaningful opportunity for prisoners to challenge their confinement

through a process of administrative review and through the courts. In a statement issued on 7 October 2013, the Special Rapporteur urged the US government to take “concrete steps to eliminate the use of prolonged and indefinite solitary confinement in US prisons and detention facilities”.¹⁰²

US LAW AND STANDARDS

As outlined in this report, there is concern that the federal system (as well as many state jurisdictions) has failed to put in place the safeguards called for above, including an effective system to enable prisoners to challenge their confinement through administrative review. US courts also provide only a limited remedy for prisoners held in isolation, generally deferring to prison administrators in deciding what restrictions are necessary on security grounds. The US Supreme Court has not ruled that solitary confinement, even when imposed indefinitely, is per se a violation of the Constitution.¹⁰³ It has set a high threshold for judging when prison conditions violate the Eighth Amendment prohibition of “cruel and unusual punishment”, holding that they must be so severe as to deprive inmates of a “basic necessity of life” – interpreted to mean the physical requirements of food, clothing, shelter, medical care and personal safety – and that the authorities must have shown “deliberate indifference” to a risk of harm.¹⁰⁴ The courts have been less willing to consider mental and psychological pain or suffering as sufficient to render conditions unconstitutional, a situation where US jurisprudence falls short of international human rights law (see Human Rights Committee General Comment 20, above).¹⁰⁵

While the US courts have generally allowed prison administrators broad leeway in housing prisoners in isolation, other US bodies have been more robust in calling for rigorous standards and safeguards on the use of solitary confinement.

In its 2006 report *Confronting Confinement*, the Commission on Safety and Abuse in America’s Prisons called for an end to conditions of isolation in US prisons.¹⁰⁶ The report stated that “Separating dangerous or vulnerable individuals from the general prison population is part of running safe correctional facility”. However, it found that in some systems, the “drive for safety, coupled with public demand for tough punishment, has had some perverse effects”, with prisoners who were justifiably separated from the general prison population locked in cells with little opportunity to be productive or to prepare for release, and others who were not a serious threat confined under the same conditions.

The Commission recommended making segregation a last resort, for as brief a period as possible, with tighter admissions criteria and segregated prisoners given an opportunity to engage in productive activities. Noting higher recidivism rates from prisoners released directly from segregation, the Commission also recommended that inmates should spend time in a normal prison setting before being released to the community. The Commission called on US jurisdictions to “End conditions of isolation” and “Ensure that segregated prisoners have regular and meaningful human contact and are free from extreme physical conditions that cause lasting harm”.¹⁰⁷

In 2010, the American Bar Association (ABA) promulgated standards on the treatment of prisoners which included standards on segregation.¹⁰⁸ These state that segregated housing “should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner” (Standard 23-2.6). The standards state that segregation for more than one year should be imposed only if the prisoner poses a “continuing serious threat” (23-2.7); that “conditions of extreme isolation should not be allowed regardless of the reasons for a prisoner’s separation from the general population” (23-3.8 (b)); and that all prisoners in segregated housing should be provided with “meaningful forms of mental, physical and social stimulation”,

including, where possible, more out-of-cell time and opportunities to exercise in the presence of other prisoners (23-3.8 (c)). The standards also recommend a number of procedural protections for prisoners placed in segregated housing, including a hearing at which the prisoner has a reasonable opportunity to present witnesses and information and to participate in the proceedings, with regular, meaningful review (23-2.9).

RECOMMENDATIONS

GENERAL RECOMMENDATIONS ON USE OF ISOLATED CONFINEMENT

- In line with international human rights law and standards, all jurisdictions should ensure that solitary or isolated confinement, whether imposed for administrative or disciplinary purposes, is imposed only as a last resort and for the minimum period possible.
- No prisoner should be held in prolonged or indefinite isolation.
- All prisoners in segregated confinement should have access to meaningful therapeutic, educational and rehabilitation programs.
- Conditions in all segregation facilities should provide minimum standards for a humane environment so that prisoners even in the most restrictive settings have adequate facilities for outdoor exercise, access to natural light, and meaningful human contact both within the facility and with the outside world.
- There should be adequate opportunities for some group interaction and association for prisoners at all stages of segregated confinement, both to benefit their mental and physical health and to allow their behaviour to be measured and to encourage their progress to less restrictive custody.
- Children - that is those under 18 - should never be held in solitary confinement. All youthful offenders should receive treatment appropriate to their age and developmental needs with the primary goal of rehabilitation as required under international standards.
- No prisoner with mental illness, mental disabilities or severe behavioural disorders or who is identified as being at risk of developing these conditions should be held in solitary or isolated cellular confinement.
- There should be adequate mental health monitoring of all prisoners in segregation, with frequent opportunities for prisoners to consult with mental healthcare professionals in private.
- Prisoners who have developed serious health care problems as a result of their isolated confinement (whether physical or mental) should be removed and have access to treatment in to an appropriate therapeutic setting.
- Placement in segregated confinement should be made only after an impartial hearing at which the prisoner has a fair and meaningful opportunity to contest the assignment and the right to appeal. Prisoners should be provided with regular, meaningful review of any continued segregation through a similar impartial proceeding, with clear criteria to enable them to move to less restrictive settings within a reasonable time frame.
- There should be regular, external review of conditions in segregation facilities and of the procedures and operation of such facilities.

PRISONERS IN PRE-TRIAL DETENTION

- All detainees in pre-trial detention should be held in conditions consistent with their status as untried prisoners and the presumption of innocence. They should be held in the least restrictive circumstances possible, with regular access to medical care and adequate

facilities for the preparation of their defence and communication with their lawyers and family members.

- Amnesty International urges that the current review of federal segregation policies include conditions under which prisoners are isolated during pre-trial detention, especially in high security facilities such as those in the MCC SHU.

ADDITIONAL RECOMMENDATIONS SPECIFIC TO ADX

- Conditions for all prisoners in ADX Florence should be improved so that prisoners are not held in conditions of severe isolation and have more opportunities for social interaction with staff and other inmates as well as access to meaningful rehabilitation and recreational programs. The exercise facilities should be modified to allow more space and equipment; prisoners should be allowed daily outdoor exercise¹⁰⁹.
- Opportunities should be reinstated for ADXGP prisoners to have group recreation even at the most restrictive levels of confinement, both to aid their rehabilitation and to allow their progress to be measured.
- Amnesty International recommends that clear criteria be established for SDP placement decisions, with a fair process and meaningful review. Prisoners should be provided with detailed reasons if they are denied advancement through the SDP, with an opportunity to participate in, and challenge, decisions, with clear guidance on how they can progress through the system. No-one should be held continuously in isolation based solely on the original reason for placement in ADX.
- Amnesty International recommends that prisoners in H-Unit be afforded more out of cell time, better exercise provision, and an opportunity for some association with other inmates in the unit at all stages of their confinement rather than, as presently, only after progression to phase 3.
- Prisoners should be provided with a meaningful opportunity to challenge the imposition of SAMs. In any event, consistent with international standards, restrictions should be limited to the minimum necessary and ensure that a prisoner is not subjected to undue hardship. No prisoner should be held in indefinite solitary confinement.
- Amnesty International recommends that prisoners who are mentally ill are not housed at ADX; and that all prisoners in isolation have an opportunity for meaningful consultation with mental health staff on at least a weekly basis as recommended under NCCHC and international standards.
- Prisoners with a diagnosis of mental illness, mental disability or severe behavioural disorders should not be housed in ADX and should have access to treatment in an appropriate therapeutic setting.
- All prisoners in ADX should be regularly monitored by mental health professionals.
- Health care staff should report to the prison authorities if a prisoner's health is being put at serious risk by being held in isolation.
- No prisoner with a history or risk of mental illness should be housed in ADX
- Range 13 cells should be discontinued.
- The BOP should provide publicly accessible information on ADX programs and operating policy. It should also report regularly on the number of prisoners in ADX and in the various

units and step down programs and the time spent in each program or unit.

RECOMMENDATIONS TO THE FEDERAL GOVERNMENT AND CONGRESS

- Congress should require, and the federal government institute, reforms to the use of solitary and isolated confinement in all BOP facilities so that they meet with the above standards and fully conform to international law and standards for humane treatment.
- The US Government should allow visits by human rights groups and the media and invite the UN Special Rapporteur on Torture to investigate the use of solitary confinement in US prisons, including through on-site visits under the terms requested by the Special Rapporteur.
- A national reporting system to the Bureau of Justice Statistics should be established under which state and local prison and detention facilities, including juvenile facilities, are required to provide data on their use of solitary confinement, including statistics on the numbers of prisoners held in segregated facilities, the length of confinement, the effectiveness of programs instituted, the costs of confinement and the impact on prisoners, on institutional safety and on recidivism.
- The above data and input from experts, including mental health experts and penal reformers, should be studied to provide guidance on best practice and effective measures to reduce the use of solitary or isolated confinement.
- National guidelines should be drawn up to limit the use of solitary and isolated confinement based on international standards, the ABA standards and best practice.
- Amnesty International urges that Thomson Correctional Center not be funded or designated as a super-maximum isolation facility and that the federal government take steps to reduce and provide alternatives to its use of isolated confinement.

ENDNOTES

¹ Silverstein v. Federal Bureau of Prisons et al, Civil Action No. 07-cv-02471-PAB-KMT, Exhibit 1 (Silverstein v. BOP).

² Juan E. Méndez, “Interim report prepared by the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment”, A/66/268, 2011, para 26.

³ No exact current figures are available. However, a survey by the Urban Institute found that, as of 2004, 44 states had “supermax” facilities housing some 25,000 inmates (Daniel P. Mears, *A Critical Look at Supermax Prisons*, Corrections Compendium, 2005). Few US jurisdictions use the term “supermaximum” custody nowadays: maximum custody isolation facilities which fit that description are known by various terms including Special Management Units (SMUs), Security Housing Units (SHUs) or Administrative Segregation Units (ASUs).

⁴ A census of state and federal prisons in 2005 conducted by the US Department of Justice’s Bureau of Justice Statistics found there were 81,622 prisoners held in some form of “restricted housing” at that time.

⁵ Written Testimony of Professor Laura Rovner, University of Denver, Before Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights, June 15, 2012 available at <http://www.law.du.edu/documents/student-law-office-clinical-programs/laura-rovner-university-of-denver-sturm-college-of-law.pdf> (accessed 08 July 2014).

⁶ Letter from Eileen Chamberlain Donahoe, US Ambassador to the United Nations Human Rights Council, Geneva, 30 November 2011.

⁷ The case of Babar Ahmad and Others v The United Kingdom, 10 April 2012 (Babar Ahmad and Others v. UK) before the European Court of Human Rights, an appeal against the extradition from the UK of five individuals to the USA on claims including that they would risk being subjected to cruel, inhuman or degrading treatment if confined in ADX. In a judgment in April 2012, the Court rejected this claim on finding that isolation at the facility was “partial and relative” (noting that while ADX prisoners had no physical contact with others, they could communicate through the air vents in their cells; and during limited exercise); that they had TVs and access to programs in their cells; and that the applicants had a “real possibility” of gaining to the SDP or its equivalent in H-Unit. The ruling was criticized by US human rights lawyers and NGOs as giving too much weight to the evidence submitted by the USG (which they claimed grossly understated the amount of time a prisoner spends at the facility), in the face of other evidence presented on behalf of the applicants on the extent and duration of isolation at the facility. Amnesty International also expressed concern about the reasoning that led to the decision (Amnesty International, *USA must respect rights of individuals extradited from the UK*, 8 October 2010, Index: AMR 51/086/2012). The Court itself stated in its ruling that “solitary confinement, even in cases entailing relative isolation cannot be imposed indefinitely” and that “If an applicant were at real risk of being detained indefinitely at ADX the it would be possible to reach the minimum level of severity required for a violation of article 3” and that “Indeed, this may well be the case for those inmates who have spent significant periods of time at ADX”. (Babar Ahmad and Others v. UK Judgment, 10 April 2012, para 223.)

⁸ A survey for the litigants in Babar Ahmad and Others v. UK, found 43 inmates at ADX had spent eight years in isolation (including, in some cases, periods spent in solitary confinement in other prisons before transfer to ADX); similar findings were revealed from a larger sample of 110 ADX prisoners.

⁹ Silverstein v. BOP.

¹⁰ Cunningham v BOP, Case 1:12-cv-01570 (formerly Bacote v BOP), filed 06 June 2012. At the time

of writing the case was pending a decision on a motion to have it certified as a class action. The case is one of a number of lawsuits filed in recent years on behalf of inmates mentally ill in ADX including Jose Martin Vega, who committed suicide by hanging in his ADX cell in 2010 (*Cunningham v. BOP*).

¹¹ The BOP awarded the contract for the 'Special Housing Unit Review and Assessment' to CNA Corporation. The review will include an operational assessment of 8 BOP special housing units; the Bureau's mental health assessment process; and inmate due process rights. It will not include inmates under SAMS, H Unit, or prisoners held in pre-trial isolation. For further information, see James Ridgeway & Jean Casella, "Federal Bureau of Prisons details limited audit of solitary confinement practices", Solitary Watch, <http://solitarywatch.com/2013/11/22/federal-bureau-prisons-details-limited-audit-solitary-confinement-practices/> (accessed 08 July 2014).

¹² Lisa Dawson, "Funding Approved for Activation of ADX/USP Thomson, New Federal Supermax Prison", Solitary Watch website, March 2014, <http://solitarywatch.com/2014/03/14/funding-approved-for-activation-of-adxusp-thomson-new-federal-supermax/>.

¹³ According documents obtained under Freedom of Information Act requests in 2007, from January 2002 through May 2007, officials denied every single media request for face-to-face interviews with ADX prisoners, or tours of the facility (source: *Fortress of Solitude*, by Alan Pendergast, 16 August 2007. (<http://www.westword.com/2007-08-16/news/fortress-of-solitude/full/>). Prior to this, some journalists had had regular access to the facility. Following criticism of lack of access, the BOP arranged a restricted tour of the facility in September 2007 for some major media: the Washington Post, the Los Angeles Times, CNN, FOX News, CBS 60 Minutes and two local papers. No similar tours are believed to have been arranged since then.

¹⁴ http://www.aclu.org/files/assets/coalition_letter_to_department_of_state_re_juan_mendez_visit.pdf (accessed 08 July 2014).

¹⁵ GAO report, "Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing", May 2013, p. 2. The GAO is the audit, evaluation and investigative arm of the US Congress and examines and reports on the use of public funds and federal programs and policies (GAO report).

¹⁶ GAO report, p 18.

¹⁷ Amnesty International uses the term "solitary confinement" and "isolation" interchangeably to describe circumstances in which prisoners are confined to small, usually single (but sometimes double) cells for 22 hours or more a day, with no group activities and only limited contact.

¹⁸ GAO report, p 15.

¹⁹ *Richardson v Kane*, filed December 2011 (*Richardson v. Kane*).

²⁰ According to the GAO report some 7% of federal prisoners were in some form of segregated confinement as of February 2013; they included prisoners in SMUs as well as in SHUs where prisoners are often confined for fixed terms for rule violations; for their own protection; or while awaiting classification on entry to the prison system. The GAO found this constituted an increase in use of segregation over five years which exceeded the rate of increase in the prison population as a whole, mainly due to the expansion of SMUs. However, a press release issued from Office of Dick Durbin, US Senator for Illinois, 4 February 2013, *Durbin Statement on Federal Bureau of Prisons Assessment of Its Solitary Confinement Practices*, noted the BOP has reduced its segregated population by nearly 25 per cent in the past year. It is unclear how far this reduction is due to closure of some SMU units or relates to short-term isolation (e.g. as short fixed penalties or short periods in administrative detention while awaiting classification or during an investigation) or applies to those held for long periods in administrative or disciplinary segregation.

²¹ <http://justice.gov/jmd/2014factsheets/prisons-detentions.pdf> (accessed 08 July 2014).

²² Jean Casella & James Ridgeway, "Feds to Open New Supermax Prison Cells at 'Gitmo North'", Solitary Watch website, 8 February 2013, <http://solitarywatch.com/2013/02/08/feds-to-open-new-supermax-prison-cells-at-gitmo-north> (accessed 08 July 2014)

²³ Basic Principles on Treatment of Prisoners state that "7. Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged."

²⁴ They include Syed Hashmi who spent nearly three years in solitary confinement in MCC SHU and Oussama Kassir and Victor Bout who spent 18 months and 15 months respectively in solitary confinement at MCC, all confined to cells 23 or 24 hours a day with only one hour a day exercise in a small inside room not much larger than their cell.

²⁵ Amnesty International, *Cruel conditions for pre-trial prisoners in US federal custody*, 12 April 2011 (Index: AMR 51/030/2011); *Open Letter to US Attorney General Eric Holder on Special Housing Unit in the Metropolitan Correctional Center, New York*, 16 February 2011 (Index: AMR 51/2011/27).

²⁶ The only job available is a three-month position as an orderly, cleaning the unit tiers. It is alleged that some prisoners have repeatedly applied for this coveted position and been turned down. *Rezaq v Nally*, 11-1069, 10th Circuit Court of Appeals (*Rezaq v Nalley*).

²⁷ BOP Institutional Supplement, October 8, 2009, 6a-5 (BOP Institutional Supplement 2009). The ruling of the ECHR in the case of *Babar Ahmad and Others v UK* also noted information in the declarations of General Population Unit Manager Patricia Rengel that "Restrictions on outdoor recreation were in three-month increments (three months for a first offence, six for a second offence and so on)". *Babar Ahmad Judgment*, 10 April 2012, para 88.

²⁸ Lawyers for the plaintiffs in *Babar Ahmad and Others v. UK* submitted testimony that some ADX prisoners were placed on "single recreation status" for minor violations. In one case, a prisoner was denied outdoor exercise for 60 days for trying to feed crumbs to birds; when he challenged this through the internal grievance process, it was increased to 90 days (Judgment in the case *Babar Ahmad and Others v the United Kingdom*, ECHR 10 April 2012, para 101.)

²⁹ BOP Institutional Supplement 2009 6a

³⁰ Information from Amnesty International's representative Angela Wright. Institutional Supplement No. FLM 5321.1B, May 26, 1995 on General Population and Step-Down Unit Operations: Procedures for General Population Units state inter alia that "These units have multiple and single occupancy exercise areas ... Inmates will ordinarily be afforded twelve (12) hours or more out of cell exercise per week." (4.A). (see also *Design Meets Mission at New Federal Max Facility*, by John M. Vanyur, *Corrections Today*, July 1995, a detailed description of the operation of the facility at that time, noting, inter alia that General Population inmates "are fed in their cells but are permitted to recreate in small groups of up to 12 inmates for 12 hours per week".

³¹ *Cunningham v. BOP*, p. 14. The lawsuit alleges that two prisoners in K Unit (the Intermediary Unit) "stomped and beat a third prisoner to death over a period of many minutes in full view of ADX staff members, who made no effort to intervene until the victim was lying still...".

³² *Cunningham v. BOP*. The lawsuit alleges that, while inmates in the TU are grouped so that they are separated from hostile inmates (e.g. rival gang members) during recreational periods, guards often fail to take adequate precautions, for example, opening cell doors unexpectedly so that hostile inmates have sometimes gained unauthorized access to others in the day room.

³³ As with a number of current privileges as ADX, inmates were provided with access to religious materials only after extensive litigation. According to a Stipulated Agreement dated December 2008 in *Saleh et al v BOP*, inmates ADX inmates may meet with the prison approved Imam at least weekly, and may communicate with him in Arabic or English at the cell door from within their cells without restraints. The agreement stipulates that if he opens an ADX cell door, the Imam must be accompanied by a BOP

official.

³⁴ Nidal Ayyad et al v Nalley, Third Amended Complaint, April 2009, p. 13-14

³⁵ Examples have been given in litigation documents of programming consisting of shows broadcast on TV, from parenting shows to those on Greek history such as the Peloponnesian wars (Rezaq v Nalley, 11-1069, 10th Circuit Court of Appeals).

³⁶ Laura Rovner, testimony to ECHR, Babar Ahmad and Others v. UK Judgment para 101.

³⁷ Sal Rodriguez, 'Profile of an ADX prisoner: "Just half crazy and trying to hold on to the other half"', Solitary Watch website, <http://solitarywatch.com/2012/12/09/profile-of-an-adx-prisoner-just-half-crazy-and-trying-to-hold-on-to-the-other-half/> (accessed 8 July 2014)

³⁸ Rezaq v Nalley and Saleh, Nosair et al v Federal Bureau of Prisons, Appellants Brief May 2011.

³⁹ According to a letter Amnesty International received from the Warden at ADX in 2012, in response to the organization's concerns about the conditions of Syed Fahad Hashmi at ADX, Hashmi was allowed to visit with his attorney unrestrained through a telephone handset, rather than in a room where there was a slot in the barrier and through which correspondence could be exchanged..

⁴⁰ UN Standard Minimum Rules for the Treatment of Prisoners (SMR) stipulate that: "Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. They further provide that restraints may only be used when other measures are ineffective and only for so long as is "strictly necessary". (Rules 31, 33 and 34)

⁴¹ International standards require that prisoners not engaged in outdoor work should have at least an hour of suitable exercise in the open air daily (SMR 21 (1)). The SMR further provide that "Young prisoners and others of suitable age and physique shall receive physical and recreational training during the period of exercise" and that, to this end, "space, installations and equipment should be provided" (SMR 21 (2). While the time allowed in the yard meets the above minimum standard, if adhered to daily, Amnesty International does not believe that conditions in the exercise yards at ADX are adequate to qualify as "suitable outdoor exercise", particularly for prisoners otherwise confined to cells for long periods. The need for adequate exercise is particularly important where prisoners are cut off from normal activities and spend long periods in their cells, and in view of the detrimental effects on health of lack of exercise.

⁴² The use of restraint techniques and/or instruments may amount to ill-treatment when they are applied unnecessarily or in a degrading manner See also report of the Special Rapporteur on Torture E/CN.4.2004/56 (2003), para 45

⁴³ Inmate Security Designation and Custody Classification, Fed. Bureau of Prisons, 92 (12 September 2006).

⁴⁴ Letter from Eileen Chamberlain Donahoe, US Ambassador to the United Nations Human Rights Council, Geneva, 30 November 2011.

⁴⁵ This language has been repeated in a number of documents, including letter from Ambassador Eileen Chamberlain Donahoe, US Representative to the Human Rights Council, in her letter to the UN Special Rapporteur on Torture on 30 November 2011, in which she refers to the "penological missions" of ADX. See identical language used also in the Declaration of Mark Collins, Unit Manager for the General Population of ADX on the missions of ADX in Reid v Wiley et al, Civil Action No. 07-cv-01855-PAB-KMT, US District Court for the District of Colorado, November 2009; and Rezaq v Nalley, et al, 10th Circuit Court of Appeals, April 2012.

⁴⁶ Judgment in Babar Ahmad and Others v. UK, para. 96. The 30 prisoners in the sample were almost entirely from the GP and SDP but also included two prisoners from the Special Security Unit (housing prisoners SAMs) where a separate step down program had been recently instituted.

⁴⁷ Judgment in *Babar Ahmad and Others v. UK*, para 101, noting a survey by lawyer Mark Donatelli which found that at least 43 inmates of ADX had spent eight years or more in “lock-down” conditions there and at previous institutions. Also included in the defence team’s rebuttal evidence was a chart using a sample of 110 ADX prisoners which identified an average solitary confinement length of 8.2 years.

⁴⁸ GAO report, p. 13

⁴⁹ *Silverstein v. BOP*.

⁵⁰ These safeguards are less than would be required if a prisoner was facing removal to a disciplinary segregation unit. The procedures for transfer to ADX provide that the inmate has at least 24 hours’ notice of, and an opportunity to appear before, an administrative hearing at which he make an oral statement and provide documentary evidence (but without legal representation or an opportunity to present witnesses); is provided with a written summary of the reasons for transfer; has right of administrative appeal of the Regional Director’s decision by BOP General Counsel.

⁵¹ While the Institutional Supplement (October 2009) states that the unit team’s review of the eligibility of a prisoner to enter into, or advance through, the SDP will “ordinarily” be “conducted in connection with” the regularly scheduled Program Reviews which the inmate can attend and “raise questions and concerns” about his situation, this is not the same as participation in the SDC review itself. Furthermore, as already noted, “eligibility” does not mean that the prisoner will be considered for advancement through the Program. It has also been reported that the regular Program Reviews themselves often consist of nothing more than a visit to the cell door and a few minutes discussion with the prisoner.

⁵² The Institutional Supplement setting out the review procedure states, “Eligibility for consideration does not equate to appropriateness for placement into or advancement to the next phase of the Program”, FLM 5321.061(1) CN-01, C1(d).

⁵³ Admission and Orientation Handbook, USP Administrative Maximum Facility Florence, Colorado, November 2008. The first step in the Administrative Remedy procedures is for the inmate to informally resolve his complaint documenting the procedure using an Informal Resolution form. Should this not succeed, the second step is for the inmate to file a formal complaint, an ‘Institution Administrative Remedy’, which a staff member will review and the decision approved by the Warden. Inmates may appeal the decision within 20 calendar days to the Regional Director, FBOP, in Kansas City. The Regional Director will normally respond within 30 days. This decision can then be appealed to the General Counsel who will have a further 30 days to respond.

⁵⁴ *Saleh v Federal Bureau of Prisons*, Objections, ECF No. 352, at 12.

⁵⁵ Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the United Nations General Assembly, 5 August 2011 (A/66/268), hereafter referred to as the Interim Report of the SR.

⁵⁶ Following lawsuits, they were given retroactive hearings some years after placement at ADX

⁵⁷ *Omar Rezaq v Nalley* (Case No. 11-1069) and *Mohammed Saleh, Ibrahim Elgabrowni, and El-Sayyid Nosai v Federal Bureau of Prisons* (Case No. 11-1072), Appellants’ Opening Brief before US Court of Appeals for the Tenth Circuit, 31 May 2011, at p. 13

⁵⁸ *Omar Rezaq v Nalley et al*, Case No. 11-1069

⁵⁹ See Written Testimony of Professor Laura Rovner, University of Denver, Before Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights, June 15, 2012, pointing to lack of clear guidelines for moving to SDP available at <http://www.law.du.edu/documents/student-law-office-clinical-programs/laura-rovner-university-of-denver-sturm-college-of-law.pdf> (accessed 08 July 2014).

⁶⁰ Judgment in Babar Ahmad and Others v. UK, para 88.

⁶¹ Staff can reject books if they believe they present a risk; One of the books they rejected for a man under SAMS was President Obama's autobiography. See <https://www.prisonlegalnews.org/news/2009/oct/15/news-in-brief/> (accessed 8 July 2014)

⁶² Initially H-Unit prisoners had severe restrictions imposed on access to news channels, journals and other materials but these were largely lifted following litigation.

⁶³ Prisoners under SAMs have their communications, including social calls and visits, monitored; there have reportedly been delays at times in receiving communications due to these needing to be translated.

⁶⁴ James Ridgeway & Lisa Dawson, 'ADX H-Unit on Hunger Strike, Prisoners Being Force-Fed', Solitary Watch website, 25 February 2014, <http://solitarywatch.com/2014/02/25/adx-h-unit-hunger-strike-prisoners-force-fed> (accessed 8 July 2014)

⁶⁵ CBS News, 60 Minutes, 'Supermax. A Clean Version of Hell'. 21 June 2009 <http://www.cbsnews.com/videos/a-clean-version-of-hell/>

⁶⁶ See Center for Constitutional Rights, "Rights Groups Issue Open Letter on Upcoming Trial of Syed Fahad Hashmi and Severe Special Administrative Measures", 23 April 2010, <http://ccrjustice.org/newsroom/press-releases/rights-groups-issue-open-letter-upcoming-nyc-trial-syed-fahad-hashmi-and-sev> (accessed 8 July 2014)

⁶⁷ See section on International Standards and reference inter alia to UN Human Rights Committee General Comments. The SMR also state as a guiding principle that: "Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation." (Article 57)

⁶⁸ During her 2001 visit to ADX, Amnesty International's representative was told the longest fixed term assignment on the unit at that time was 104 months; the prisoner in question had his term extended still further after a serious assault on a staff member.

⁶⁹ Institution Supplement, Control Unit Programs, May 17, 2010

⁷⁰ Institution Supplement, Control Unit Programs, May 17, 2010

⁷¹ Kupers, Terry A, "How to Create Madness in Prison", David Jones, Ed; Humane Prisons, Oxford: Radcliffe Publishing, 2006.

⁷² Silverstein v. BOP, Exhibit 1.

⁷³ Silverstein v. BOP

⁷⁴ BP-229 Response, Case Number:614359-F1, attached as Exhibit B to Declaration of Edwin P. Aro, Cunningham v BOP, Plaintiffs' Response to Motion to Dismiss, filed 11/21/12.

⁷⁵ "Trouble Coming Every Day: ADX-The First Year", a letter written by Raymond Luc Levasseur a prisoner held in ADX, republished on the Solitary Watch website, <http://solitarywatch.com/solitary-voices/trouble-coming-every-day-adx-the-first-year/> (accessed 8 July 2014)

⁷⁶ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 21st General report, 11 November 2011, para. 53. The European Committee for the Prevention of Torture has also pointed to the higher rate of suicide among prisoners subjected to solitary confinement than that among the general prison population

⁷⁷ Findings of studies published in numerous articles, e.g. Grassian, Psychiatric Effects of Solitary Confinement, Wash U.J.L. and Policy (2006) and in court rulings and testimony. See generally Peter

Scharff Smith, The Effects of Solitary Confinement on Prison inmates: A Brief History and Review of the Literature, 34 Crime and Just. 441 (2006).

⁷⁸ See for example, Istanbul Statement on the use and effects of solitary confinement, Adopted on 9 December 2007 at the International Psychological Trauma Symposium, Istanbul (Istanbul Statement on the use and effects of solitary confinement); Interim Report by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 5 August 2011, United Nations General Assembly A/66/268, para 46.

⁷⁹ <http://www.psych.org/advocacy--newsroom/position-statements> (accessed 8 July 2014)

⁸⁰ Babar Ahmad and Others v. UK, ECHR Judgment, 10 April 2012, para.90 (citing information from Dr Paul Zohn, psychologist assigned to ADX).

⁸¹ The Federal Bureau of Prison's Abuses of Solitary Confinement, testimony of Deborah M. Golden, Washington Lawyers' Committee, submitted to hearing before the Senate Judiciary Sub-committee on the Constitution, Civil Rights and Human Rights, 25 February 2014
http://www.washlaw.org/pdf/testimony_wlc.pdf (accessed 08 July 2014) (Testimony of Deborah M. Golden)

⁸² "Loneliness Is a Destroyer of Humanity" article written by Jesse Wilson an inmate who has spent 12 years in isolation at ADX. Published by Sal Rodriguez as part of the 'Voices from Solitary' series on the Solitary Watch website <http://solitarywatch.com/2012/07/07/voices-from-solitary-loneliness-is-a-destroyer-of-humanity/>

⁸³ Cunningham v. BOP

⁸⁴ Cunningham v. BOP p.20.

⁸⁵ Cunningham v. BOP p.22.

⁸⁶ According to the Cunningham v. BOP lawsuit he had spent time in protective custody after testifying against three inmates he had witnessed murder another prisoner; he reportedly escaped from a medium security prison after learning that he was to be placed back in the prison's general population.

⁸⁷ Cunningham v. BOP p. 77.

⁸⁸ Cunningham v. BOP p.94.

⁸⁹ "Lawyer: Supermax inmates moved amid lawsuit", *The Denver Post*, 9 December 2013, http://www.denverpost.com/news/ci_24689930/lawyer-supermax-inmates-moved-amid-lawsuit (accessed 8 July 2014)

⁹⁰ Andrew Cohen, *A Handwritten Letter the Prison System Doesn't Want You to See*, The Atlantic, 18 September 2013, <http://www.theatlantic.com/national/archive/2013/09/a-handwritten-letter-the-prison-system-doesnt-want-you-to-see/279751/> (accessed 08 July 2014) describing the case of Robert Gerald Knott, diagnosed with schizophrenia and other severe mental disorders, found hanged on 7 September 2013. See also Testimony of Deborah M. Golden.

⁹¹ 2008 NCHC Standard for Health Services for Jails and Prisons, Standard E-09

⁹² Human Rights Committee General Comment 21

⁹³ Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, 2006, (CCPR/C/SR.2395, 27 July 2006), para 36

⁹⁴ Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee, 2006, (CCPR/C/SR.2395, 27 July 2006), para 32

⁹⁵ Conclusions and recommendations of the Committee against Torture on the second report of the USA,

para 36, CAT/C/USA/CO/”, 18 May 2006.

⁹⁶ Concluding Observations, Adopted by the Committee at its 110th Session (10-28 March 2014).

⁹⁷ Under treaty-based and customary rules of international treaty law, states may not enter reservations which are incompatible with the object and purpose of a treaty (Vienna Convention on the law of Treaties, adopted 22 May 1969, entered into force 23 May 1980).

⁹⁸ Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 5 August 2011, United Nations General Assembly A/66/268/, para 46 (hereafter referred to as the Interim Report of the SR).

⁹⁹ Human Rights Committee General Comment 21; similar provisions are affirmed under the UN Standard Minimum Rules (Article 57) and the Basic Principles for the Treatment of Prisoners (Principle 5).

¹⁰⁰ E.g. the Basic Principles for the Treatment of Prisoners states under Principle 7 that efforts to abolish solitary confinement as a punishment, or to restrict its use, should be undertaken and encouraged. The European Prison Rules, adopted by the Council of Europe in 2006, state that solitary confinement should be imposed as a punishment “only in exceptional cases and for a specified period of time that shall be as short as possible”. See also the Istanbul Statement on the use and effects of solitary confinement

¹⁰¹ Interim Report by the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 5 August 2011, United Nations General Assembly A/66/268, para 46.

¹⁰² “US: ‘Four decades in solitary confinement can only be described as torture’ – UN rights expert”, 07 October 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13832> (date accessed 08 July 2014)

¹⁰³ The Court has held only that some due process is required where prisoners are assigned to isolated custody under conditions which impose “an atypical or significant hardship” in relation to the “ordinary incidents of prison life” (*Sandin v O'Connor*). While courts have found that conditions in some US supermax facilities constitute “atypical or significant hardship”, the Tenth Circuit Court of Appeals (the judicial circuit covering Colorado where ADX is situated) has ruled more narrowly than some other jurisdictions in rejecting a claim that conditions at ADX constituted “atypical or significant hardship; this was based in part on the court’s finding that confinement at ADX was not indefinite because prisoners had regular reviews, despite its acknowledging that the applicants had spent years at the facility; the court also compared ADX conditions to those in other isolation facilities rather than the general prison population, and it took into account the administration’s legitimate penological interest when assessing the harshness of conditions (as opposed only to decisions on assignment) and whether these amounted to atypical hardship, a ruling which has been criticized by human rights lawyers as contrary to constitutional interpretation elsewhere. (US Court of Appeals ruling in *Rezaq v Nally et al*, April 20, 2012.)

¹⁰⁴ *Wilson v Seiter*, 501 U.S. (1991) and *Farmer v Brennan* 511 U.S. (1994)

¹⁰⁵ As noted above, one exception is that US courts have repeatedly ruled in recent years that housing prisoners who are seriously mentally ill in isolation in super-maximum facilities is in violation of the Eighth Amendment of the US Constitution. Some courts have specifically noted that isolation in extreme conditions is likely to inflict some degree of psychological trauma on most inmates, but that this did not under US law bring conditions to the level of constituting deprivation of a “basic necessity of life” (*Madrid v Gomez* (1995)). A further obstacle to prisoners bringing claims on grounds of mental injury or suffering is the Prison Litigation Reform Act (PLRA) passed by Congress in 1995 which 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. section 1997e (e).

¹⁰⁶ The Commission on safety and abuse in America's prisons, “Confronting Confinement”, Vera Institute of Justice, 08 July 2006, <http://www.vera.org/content/confronting-confinement> (accessed 08 July 2014) (Confronting Confinement). The Commission was established by the Vera Institute of Justice in 2005 and conducted a year-long inquiry which included public hearings. It was co-chaired by former US Attorney General Nicholas B. Katchenbach and the Hon. John Gibbons, former Chief Judge of the US Court of Appeal for the Third Circuit. Its 20 members included prison administrators, prisoner rights advocates, religious representatives and members of both main political parties..

¹⁰⁷ Confronting Confinement p. 57

¹⁰⁸ ABA Criminal Justice Standards on Treatment of Prisoners, approved by the ABA House of Delegates, February 2010. ABA standards are not binding but are “grounded in legal and constitutional principles” and have “guided the development of law and practice in the American criminal justice system” (Statement submitted to Hearing before the Senate Judiciary Committee, 19 June 2012).

¹⁰⁹ International standards require that prisoners not engaged in outdoor work should have at least an hour of suitable exercise in the open air daily (SMR 21 (1)). The SMR further provide that “Young prisoners and others of suitable age and physique shall receive physical and recreational training during the period of exercise” and that, to this end, “space, installations and equipment should be provided” (SMR 21 (2)). The need for adequate exercise is particularly important where prisoners are cut off from normal activities and spend long periods in their cells, and in view of the detrimental effects on health of lack of exercise.



**I WANT
TO HELP**

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

☐ I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

☐ I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my

Visa ☐

Mastercard ☐

number

expiry date

signature

Please return this form to the Amnesty International office in your country.

For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites
If there is not an Amnesty International office in your country, please return this form to:

Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom

amnesty.org



ENTOMBED

ISOLATION IN THE US FEDERAL PRISON SYSTEM

The USA incarcerates thousands of prisoners in long-term or indefinite solitary confinement. This report describes Amnesty International's concerns about conditions of severe isolation at the United States Penitentiary, Administrative Maximum (ADX) facility in Colorado, currently the only super-maximum security prison operated by the federal government. It also examines conditions in Special Management Units (SMUs) and Security Housing Units (SHUs) operated at other federal prison facilities.

Since Amnesty International toured ADX prison in 2001 subsequent requests to return to the facility have been denied. The organisation is concerned that as conditions of isolation within federal prisons have become more severe, external oversight of the facilities has declined.

With prisoners held in their cells for 22-24 hours a day in severe physical and social isolation, Amnesty International believes the conditions described in this report breach international standards for the humane treatment of prisoners. Many have been held in isolation for prolonged or indefinite periods - without a means to change their circumstances – amounting to a violation of the prohibition against cruel inhuman or degrading treatment or punishment under international law. The report also details disturbing evidence of prisoners with serious mental illness being detained in harsh isolated conditions without adequate screening, treatment or monitoring.

amnesty.org

Index: AMR 51/040/2014
July 2014

AMNESTY
INTERNATIONAL

