



NYCLU

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Thematic Hearing of the Inter-American Commission on Human Rights on Solitary Confinement in the Americas

Written Testimony of the New York Civil Liberties Union Regarding the United States' Use of Solitary Confinement as Practiced in New York State Prisons

March 12, 2013

“I am writing your office concerning the death of a mental ill prisoner. The prisoner recently hung himself here in Upstate SHU. . . . They kept writing this prisoner up with misbehavior reports while he came to SHU on a minor incident years ago. Instead of giving him treatment, they chose to keep him suffering alone in a cell. This is definitely a case of abuse of human life.”—November 2012 letter from a prisoner subjected to punitive isolated confinement in a New York “Special Housing Unit” at Upstate Correctional Facility

The New York Civil Liberties Union thanks the honorable Commissioners for the opportunity to submit written testimony for the thematic hearing on solitary confinement in the Americas.

The New York Civil Liberties Union (“NYCLU”) was founded in 1951 as the New York affiliate of the American Civil Liberties Union and is a non-profit, nonpartisan organization with nearly 50,000 members across the state. Our mission is to defend and promote the fundamental principles and values embodied in the Constitution, New York laws, and international human rights law, on behalf of all New Yorkers, including those incarcerated in jails and prisons.

In October 2012, the NYCLU published *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*,¹ which is submitted as an attachment with this testimony. *Boxed In* contains the findings of an intensive year-long investigation by the NYCLU into the use of solitary confinement and other extreme isolation practices in New York State prisons.

We respectfully submit this testimony to inform the Commission about the United States’ use of solitary confinement, as practiced in state-run prisons in New York. As described below and detailed in *Boxed In*, state-level policies and practices allow solitary confinement to be a tool of first resort to discipline prisoners for breaking prison rules. In New York, of all the prisoners held in conditions of solitary confinement or extreme isolation at any time, nearly 90 percent are serving disciplinary sentences for violating prison rules. From 2007 to 2011, New York’s prisons issued approximately 70,000 punitive sentences to solitary confinement, with an average sentence of 150 days. New York’s practices cause severe pain and suffering, and mental and physical harm, including suicide, for no legitimate reason. We submit this testimony to highlight the urgent need for the issuance of guidance and recommendations to the United States to restrict the use of solitary confinement.

The Use of Extreme Isolation in New York State Prison

New York State operates 58 different prison facilities, composed of minimum-, medium-, and maximum-security prisons, across the state. Individuals incarcerated in New York State prisons are serving a sentence following a criminal conviction. Approximately 55,000 individuals, including men, women and juveniles, are incarcerated in the state prisons.

¹ *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*, New York Civil Liberties Union, Oct. 2012. In addition to this report, the American Civil Liberties Union and Human Rights Watch recently authored a joint report on the use of solitary confinement on young people (persons under the age of 18) nationally. This report, *Growing Up Locked Down*, includes a separate section documenting New York State policies and practices on solitary confinement of young people. See *Growing Up Locked Down*, ACLU & Human Rights Watch, Sept. 2012 at pp. 128-135.

New York’s solitary confinement or extreme isolation cells are known as “Special Housing Units” or “SHUs.” New York’s SHU cells are spread out over 39 different prison facilities, including two facilities—Upstate Correctional Facility and Southport Correctional Facility—which were built exclusively for the purpose of holding people in extreme isolation.

All individuals incarcerated in New York prisons are governed by the “Standards of Inmate Behavior,” a list of more than 100 rules that relate to every aspect of prisoner behavior, from personal grooming to personal interactions. Correction officials may “sentence” an individual to solitary confinement for violations of these rules. Prisoners may receive a sentence of solitary confinement for minor infractions, for non-violent misbehavior, for a simple misunderstanding between a prisoner and a corrections officer, or even for reporting a sexual assault that is disputed and deemed unsubstantiated by corrections staff.

On any given day, approximately 4,500 people or 8% of state prison population are confined in SHU. Once in SHU, conditions are governed by a uniform set of regulations and policies, regardless of the particular facility where the individual is confined in SHU. Prisoners are locked in 22 to 24 hours a day and are deprived of all meaningful human interaction and mental stimulation. Food is delivered through a slot in the cell door. No phone calls are allowed. No meaningful education, substance-abuse, re-entry or other programs are offered, and few personal possessions are permitted. Approximately half of the individuals held in SHU are kept in solitary confinement, completely alone, in cells about the size of an office elevator. The other half are held with another prisoner, a practice known as “double-celling,” forcing two prisoners to endure each other’s constant presence—including showering, defecating, eating, and sleeping—twenty-four hours a day.

The Findings and Recommendations of the NYCLU’s Study

Boxed In describes New York’s procedures for placing prisoners in isolation; provides a demographic and statistical overview of those confined in SHU; and documents the reasons for, and duration of, such confinement. The report also provides first-hand accounts by prisoners of the psychological impact of isolation and the conditions in SHU, including the lack of programming and difficulties individuals placed there have in obtaining appropriate and necessary medical and mental health treatment.

The report also incorporates accounts of corrections staff, who describe carrying home the negative consequences of working in SHU facilities, and the accounts of family members, who must cope with added emotional burdens of having loved ones in SHU. As well as documenting the findings of the NYCLU’s investigation, the report includes information on comparative experiences of other states within the United States where solitary confinement practices have recently been reformed, and makes concrete recommendations for reform of these practices in New York State.

The key findings of *Boxed In* include:

- 1) Solitary confinement and other forms of extreme isolation used in New York State prisons causes individuals severe physical and mental harm;

- 2) New York State lacks safeguards to ensure that prisoners are subjected to isolation only in exceptional circumstances and for the briefest period possible;
- 3) New York State fails to ensure that prisoners are not subjected to isolation for discriminatory purposes;
- 4) New York's use of solitary confinement and other forms of extreme isolation undermines rehabilitation by denying prisoners access to meaningful programming and by failing to provide for clear procedures to assess, treat and respond to underlying behaviors that prison officials claim justifies a punitive sentence to SHU;
- 5) Vulnerable prisoners, including juveniles, the elderly and prisoners with mental illness, may be subjected to extraordinarily lengthy periods of solitary confinement and extreme isolation.²

Case Study of Tonja Fenton

The risk of harm to prisoners caused by New York's arbitrary and unconstrained use of solitary confinement has not abated since the publication of the NYCLU's report. Below we describe the case of one individual who was confined in solitary confinement until March of this year and who is a plaintiff in the NYCLU's class action civil rights lawsuit in federal district court, challenging New York's isolation policies and practices. The facts that follow are contained in a legal complaint filed on March 6, 2013, attached to this testimony.

Ms. Tonja Fenton is a 39-year-old African-American mother of two teenage sons, who live in Queens, New York with Ms. Fenton's domestic partner. Ms. Fenton is incarcerated for a non-violent financial crime, and she will be released from prison within a year. During her incarceration, Ms. Fenton maintained her family ties by speaking to her family frequently, and she prepared for her upcoming release by participating in rehabilitative programming. However, these life-affirming activities were severely disrupted in 2012, when prison officials imposed three disciplinary sentences to solitary confinement, totaling approximately 730 days, all for alleged non-violent misbehavior. As a result of these sentences, Ms. Fenton's physical, emotional, and psychological health deteriorated severely.

First, New York prison officials sentenced Ms. Fenton to 365 days in solitary confinement in New York's SHU in response to allegations that Ms. Fenton helped another prisoner purchase a hair dryer, hair curling iron, and sneakers. A second disciplinary sentence of approximately 180 days to solitary confinement was imposed on Ms. Fenton for reporting a sexual assault that prison officials later deemed unsubstantiated. Finally, officials sentenced Ms. Fenton to another approximately 180 days of solitary confinement when Ms. Fenton sent a sample of food that she was served while in solitary confinement to a federal court in support of a civil rights lawsuit alleging retaliation and food tampering by corrections officers.

² For an analysis of New York's procedures relative to juveniles, *see Growing Up Locked Down*, *supra* note 1, at 1.

While in SHU, Ms. Fenton was held in a small, grimy cell for twenty-three hours a day. Ms. Fenton was deprived of meaningful social interaction, mental stimulation, and rehabilitative programming. Solitary confinement severely disrupted Ms. Fenton's ability to maintain her ties with her family: once locked in "the box," Ms. Fenton could no longer communicate regularly with her sons as she had been doing each day by phone before being removed from the general prison population and subject to solitary confinement. The inability to keep a watchful eye over her children, and to hear regularly from her sons and her domestic partner, caused Ms. Fenton great pain. To cope with the forced idleness and monotony of twenty-three-hour isolation, Ms. Fenton invented a game for herself that involved poking small holes in a paper folder. Corrections staff told her the paper game was "contraband." Ms. Fenton talked to herself just to hear a human voice.

Ms. Fenton's psychological health deteriorated significantly after being placed in SHU. She experienced panic attacks, rage, loss of impulse control, paranoia, severe and chronic depression, concentration deficits, difficulties with memory, social withdrawal, and confusion. For the first time in her life and as a result of her solitary confinement, Ms. Fenton contemplated suicide.

New York's Use of Solitary Confinement Violates International Human Rights Standards

New York prison officials, as a matter of policy and practice, subject thousands of individuals each year to solitary confinement and other forms of extreme isolation in a manner that is arbitrary and unjustified and that causes them severe physical and mental pain and suffering.³ These policies and practices contravene regional and universal human rights standards safeguarding, even and especially for the incarcerated, the right to be protected from torture and other forms of cruel, inhuman, or degrading treatment or punishment, the right to be free from discrimination, the right to health, and the right to family life.⁴

The United States' failure to adopt and enforce throughout the states the well-known principles and best practices established by the Commission—principles that would make the New York prison system safer and more humane—has allowed a human rights crisis to fester in New York's state prison system.⁵

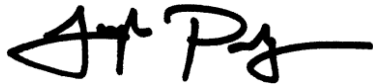
³ See *Report on Immigration in the United States: Detention and Due Process*, Inter-American Commission on Human Rights, ¶ 292, OEA/Ser.L/V/II. Doc. 78/10, Dec. 30, 2010 ("The Inter-American Commission must emphasize that solitary confinement takes a terrible mental and physical toll on the person, and would remind the [United States] that solitary confinement must be used as a measure of last resort, for very limited periods of time and subject to judicial review.").

⁴ American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, *adopted by the Ninth International Conference of American States* May 2, 1948, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L/V/1.4 rev. 13, June 30, 2010; U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *ratified by the United States* Oct. 21, 1994, S. TREATY DOC. NO. 100-20, 1465 U.N.T.S. 85; International Covenant on Civil and Political Rights, *ratified by the United States* June 8, 1992, S. EXEC. DOC. E, 95-2, 999 U.N.T.S. 171.

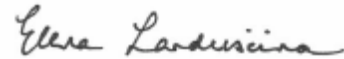
⁵ See Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXII.3, *approved by the Commission during its 131st regular period of sessions held from March 3-14, 2008, reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, *supra* note 4, at 166-

We thank the Commission for the opportunity to provide information related to the use of solitary confinement in the United States. We respectfully request that the Commission investigate and document the use of solitary confinement in the United States and issue guidance to ensure that the United States complies with international law and human rights standards, protecting the basic health, safety, and dignity of all individuals, including the incarcerated. We welcome the opportunity to provide you with additional information about this issue.

Thank you for your consideration.



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- APPENDIX A *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*, New York Civil Liberties Union, Oct. 2012.
- APPENDIX B Third Amended Complaint in *Peoples v. Fischer*, 11-CV-2694 (United States Federal District Court for the Southern District of New York).

67 (prohibiting solitary confinement in punishment cells, prohibiting solitary confinement for children deprived of liberty, and permitting solitary confinement “only . . . as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution’s internal security, and to protect fundamental rights”).