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Solitary By Any Other Name: Silence to Segregation in American Prisons

Chelsea van Aken
San Jose State University

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SOLITARY BY ANY OTHER NAME:
SILENCE TO SEGREGATION IN AMERICAN PRISONS

A Thesis

Presented to

The Faculty of the Department of Justice Studies

San José State University

In Partial Fulfillment

of the Requirements for the Degree

Master of Science

by

Chelsea D. van Aken

May 2016

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The Designated Thesis Committee Approves the Thesis Titled

SOLITARY BY ANY OTHER NAME:
SILENCE TO SEGREGATION IN AMERICAN PRISONS

by

Chelsea D. van Aken

APPROVED FOR THE DEPARTMENT OF JUSTICE STUDIES
SAN JOSÉ STATE UNIVERSITY

May 2016

DR. Edith Kinney

Department of Justice Studies

Dr. Danielle Harris

Department of Justice Studies

DR. Sara Benson

Department of Political Science

ABSTRACT

SOLITARY BY ANY OTHER NAME: SILENCE TO SEGREGATION IN AMERICAN PRISONS

by Chelsea D. van Aken

This thesis examined the United States' ability to circumvent international and constitutional law in regards to solitary confinement in American prisons. Drawing on scholarship examining inmates' rights and inmates' resistance movements, international human rights doctrine, United States constitutional law, activist led movements, and inmate testimony, the thesis demonstrates that the United States is able to simultaneously claim that it is meeting its human rights obligations while resisting reforms to both state and federal current policy of warehousing inmates in solitary confinement for decades at a time through two strategies. First, the United States utilizes framing strategies to deny the use of solitary confinement by framing it as a necessary housing policy to guarantee safety and security within the prison. Second, the United States uses continually changing rhetoric to label solitary confinement as segregation. These two strategies allow the United States to avoid both constitutional challenges to the use of solitary confinement and meeting its obligations under international human rights agreements.

This thesis is dedicated to
all those whose voices have been taken away,
I hear you.

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LIST OF ACRONYMS

AdSeg	Administrative Segregation
BOP	Bureau of Prisons
CAT	Committee Against Torture
CCPOA	California Correctional Peace Officers Association
CDCR	California Department of Corrections and Rehabilitation
CFASC	California Families Against Solitary Confinement
CPS	California Prison Focus
GAO	United States Government Accountability Office
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IGI	Institutional Gang Investigator
PC	Protective Custody
RCGP	Restricted Custody General Population Unit
RES	Reduced Environmental Stimuli Syndrome
SHU	Secure Housing Unit
SMU	Special Management Unit
SNY	Special Needs Yard
STG	Security Threat Group
UDHR	Universal Declaration of Human Rights

Chapter 1. Introduction: Incarceration in the United States

In 1831, Gustave de Beaumont and Alexis de Tocqueville traveled to the United States to study Eastern State Penitentiary in Pennsylvania. Two years later in 1833, they co-authored a report titled *On the Penitentiary System in the United States and Its Application in France* to determine what practices the French penitentiary system should adopt. One main practice they discussed during their study was Eastern State Penitentiary's use of severe isolation to house the inmate population. During the course of their study they noted, "This absolute solitude, if nothing interrupts it, is beyond the strength of man; it destroys the criminal without intermission and without pity; it does not reform, it kills" (Beaumont & Tocqueville, 1833, p. 5). *On the Penitentiary* clearly indicated that housing individuals in solitary confinement in prisons intentionally destroyed an inmate's mind; however, the United States has continued to utilize the practice. Similarly, Francis Gray, who studied over 4,000 inmates held in solitary confinement, reported in *Prison Discipline in America* (1847), "The system of constant separation...even when administered with the utmost humanity produces so many cases of insanity and of death as to indicate most clearly, that its general tendency is to enfeeble the body and the mind" (Gray, 1847). Nearly 200 years later, the use of severe isolation, or solitary confinement, in correctional facilities has expanded exponentially throughout the United States.

The United States has long considered itself the "gold standard" of human rights; however, at any given time it confines approximately 716 per 100,000 people inside cages—seven times the European Union average (Cloud et al., 2015). Out of those 2.3 million incarcerated bodies within the borders of the United States, 84,000 individuals are

housed in near complete isolation for approximately 22 hours per day for decades at a time (Cloud et al., 2015). Nationally, there are approximately 25,000 individuals housed in isolation in the United States on any given day, with 3,000 being housed in isolation in California alone (Amnesty International, 2012, p. 5; Earle, 2015).

Although the use of solitary confinement as a means to control incarcerated bodies is not unique to the United States, the United States government frames its use of solitary confinement as a necessity for the safety of the institution, rather than as a punishment for bad behavior. Governmental leaders have denied using solitary confinement as a means to house its incarcerated population in international human rights reviews. Instead, the United States utilizes specialized units within the correctional facility to control “unruly” and “dangerous” inmates who are unable to be housed with the general population. These specialized units are called Secured Housing Units (SHU), Administrative Segregation (AdSeg), Special Management Units (SMU), Restricted Housing (RH), or Protective Custody (PC) (Hresko, 2006; U.S. Department of Justice, 2016). More colloquially, these specialized housing units are called administrative close supervision, administrative confinement, administrative detention, administrative maximum, departmental segregation, disciplinary segregation, inmate segregation, lock down, seclusion, and security control (U.S. Department of Justice, 2016). The conditions within these units are remarkably similar to those which the United Nations *Convention Against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment* defines as prolonged solitary confinement. Each individual that is housed within SHU is confined to a cell the approximate size of an American bathroom, parking space, or king size bed for upwards of 22 hours per day, sometimes for

decades at a time. While the prison officials' rhetoric has shifted away from solitary confinement, the torturous conditions within these units have remained unchanged for the past 200 years. Scholars estimate that the United States currently incarcerates approximately 80,000 people in solitary confinement, 25,000 of whom are housed in super maximum facilities designed for long-term isolation (Glidden & Rovner, 2012; Steinbuch, 2014). The United States does not consider this to be a form of torture, citing the need to provide "security" to the facility, as well as a means of protection for both inmates and staff alike. The United States' framing tactics along with changing rhetoric regarding solitary confinement as a primary means to house inmates are intrinsically linked with their success at avoiding both constitutional and international human rights challenges to the practice.

This thesis examines whether the United States' use of solitary confinement in North American prisons meets international legal definitions of torture, and if so, how the United States has been able to avoid being held responsible for both constitutional and international law. The author utilized a discourse analysis of past academic research on prisons, legal filings, newspaper articles, international treaties and laws, as well as inmate testimony and advocacy campaign materials. Chapter 2 discusses the history of isolation within North American prisons and the impact of severe isolation on inmates housed in solitary confinement. Chapter 3 explains how the author gathered and analyzed academic documents, legal filings, international law, and inmate testimony. Chapter 4 analyzes international human rights treaties, such as the *Convention Against Torture*, to explain how the United States avoids being held responsible for violating international law. It also provides a chronological timeline to evaluate inmate litigation within the

U.S., challenging solitary confinement as violation of constitutional rights; analyzes how social movements both inside and outside correctional facilities unite to gain more traction; and explores inmate statements regarding the conditions of their solitary confinement across the United States. Finally, Chapter 5 discusses the impact that social movements and litigation have had on the California Department of Corrections and Rehabilitation's use and management of long-term solitary confinement.

Chapter 2. Literature Review

Isolation in American Correctional Facilities

Throughout the past two hundred years, Russia, China, Greece, Norway, and Austria, among others, were all members of a “sweating regime” which combined sensory deprivation and isolation in confined spaces in order to torture confessions out of people (Rejali, 2007, p. 98-104). The American black site in Guantanamo Bay, Cuba also utilizes similar tactics of sensory deprivation in order to coerce confessions out of individuals suspected of terrorist activities. However, the use of solitary confinement as a means of sensory deprivation seems to serve no purpose within correctional facilities other than torture. Correctional officers have utilized SHU to isolate inmates they believe to have prison gang involvement, and have forced them to “debrief”—to give up any and all information they had on the alleged gang’s activity—before being released back into general population. This method of obtaining information about alleged gang-related activity from inmates shares similarities to the torture techniques used in authoritarian governments; inmates involuntarily give up information that risks their physical safety in order to escape the torturous conditions in SHU. It is important to note that the use of solitary confinement is not limited to prisons; American jails also utilize segregation units to control populations (Prison Law Office, 2015). However, inmates housed in county jails are often waiting for their trial and therefore have not been convicted of a crime; pre-trial detainees may be subjected to solitary confinement for rule violations, or as a form of “protective custody” for vulnerable or mentally ill individuals. The lack of widely recognized differences between jails and prisons leaves jail populations at greater risk of having their constitutional and human rights violated than their counterparts in prisons.

The following section provides a chronological timeline reviewing the development of solitary confinement in the United States.

History of solitary confinement in the United States. North American prisons have utilized solitary confinement as a way to house individuals for centuries. Unknowingly, the Quakers created a monster when they established Eastern State Penitentiary (Cherry Hill) in Philadelphia in 1826 (Bennion, 2015; Vasiliades, 2005). Commonly referred to as the Pennsylvania Model, Cherry Hill was an “international sensation,” spreading the practice of housing individuals in complete isolation across the world (Bennion, 2015). By the early 1830s, inmates began reporting hallucinations, dementia, and monomania—“a single pathological preoccupation in an otherwise sane mind” (Goldstein, 2001, p. 155)—after being housed at Cherry Hill (Bennion, 2015). After advocates and observers highlighted the long-term effects of solitary confinement on an inmate’s mental and physical health, Eastern State Penitentiary closed in 1913 (Bennion, 2015; Herzing, 2015). Eventually, nearly “every state that tried the Pennsylvania model between 1820 and 1880 subsequently abandon[ed] it within a few years” (Hafemeister & George, 2012, p. 10). It is important to note that while the use of prolonged solitary confinement was discarded, the use of isolation as a means of punishment never fully disappeared. Prisons shifted towards using it as a “cooling off” period, restricting an inmate’s time within isolation to a few days at a time before re-entering the general population.

After assuming that the Pennsylvania Model was a failure, the practice of prolonged isolation was discarded globally. However, the shift away from housing individuals in isolation as a form of rehabilitation was short lived. In 1934, the United

States federal government soon opened United States Penitentiary, Alcatraz, an early maximum security prison, where many of the inmates were housed in dungeon-like conditions in solitary confinement for years (Cloud et al., 2015). According to the National Park Service, Alcatraz was built out of necessity after the end of Prohibition and the Great Depression. State officials made extreme punishments necessary to combat the types of crime the public was most concerned about. During the construction of Alcatraz, state officials began targeting mobsters or gangsters to fill the prison cells. This parallels the CDCR's current policy of framing gang membership as one of the leading threats to the security of the prison. The dungeon-like cell, and the use of solitary confinement as a punishment for disciplinary infraction, served as the model for Marion Prison in Illinois.

After the closure of Alcatraz Island in 1963, prisons across the United States moved away from housing individuals in isolation; however, the moral panic surrounding alleged gang activity in prison would shortly alter the course of history forever. In 1971, prison officials killed George Jackson, an inmate housed in Administrative Segregation (AdSeg), after he allegedly attempted to escape from San Quentin State Prison in California (Bernstein, 2007). According to the California Department of Corrections and Rehabilitation (CDCR), Jackson smuggled a gun from his attorney into the prison and then forced open thirty of the cells at San Quentin's solitary confinement unit, the "Adjustment Center" (Bernstein, 2007). The individuals Jackson released from AdSeg then killed three correctional officers and two inmates (Bernstein, 2007). As Jackson fled from AdSeg, he was shot and killed by a guard who was stationed in one of the towers surrounding the facility (Bernstein, 2007). Two weeks after Jackson's death, inmates housed at Attica State Prison in New York participated in a four-day prison takeover

citing Jackson's death as their inspiration (Reiter, 2014). The riot eventually ended when state troopers and National Guardsmen opened fire on the prison yard ending 39 lives, including inmates and guards (Reiter, 2014). As a result of both Jackson's death and the Attica prison riots, facilities across the United States instituted "lock downs," which included specific groups of inmates being housed in their cells "around the clock" (Reiter, 2014). Consequently, California prison officials began constructing plans to build technologically advanced super maximum prisons by the mid-1980s (Reiter, 2014).

The widespread use of solitary confinement was still relatively rare among correctional facilities until 1983, when Marion Penitentiary underwent a complete lock down following the death of two prison guards in separate incidents (Hafemeister & George, 2012; Smith, 2006). The Marion lock down was never lifted and soon became known as the Marion Model, designed after Alcatraz Prison, where individuals were housed in complete isolation without communal activities or programming (Bennion, 2015; Steinbuch, 2014). Each of these facilities had "segregation blocks" to house individuals who were perceived to be a threat to the safety of the prison (Cloud et al., 2015).

Across the United States, increasing numbers of correctional facilities embraced the use of solitary confinement. The construction of super maximum prisons facilitated the "total lockdown" of inmates. California's Pelican Bay State Prison (PBSP) opened its doors in 1989 as one of the United States' first "supermax prisons" (Reiter, 2014), 182 years after Eastern State Penitentiary was established (Herzing, 2015). PBSP houses a massive SHU, which consists of 1,056 windowless, concrete cells architecturally designed to keep inmates isolated from human contact at all times (Reiter, 2014).

Architects and the California Department of Corrections administrators toured super maximum prisons across the United States in order to design PBSP (Reiter, 2014). The SHU is made up of pods of eight cells, each equipped with fluorescent lights that remain on twenty-four hours per day, and an individual cement exercise yard dubbed the “dog run” (Reiter, 2014). Guards operate the highly advanced pod doors through a control booth isolated from inmates, further separating them from basic human contact. PBSP is a “factory of exclusion” designed to keep inmates absent of human contact (Bauman, 2000, 212), through being “entirely automated and designed so that inmates have virtually no face-to-face contact with guards or other inmates” (Corwin, 1990). The high-tech nature of PBSP indicates that the United States utilized architectural design and prison policy to ensure complete isolation of all inmates.

The average SHU stay in Pelican Bay is about two and a half years, with an estimated 500 inmates serving indefinite sentences, sometimes of twenty years or more (Earle, 2015; Reiter, 2012). Inmates can receive determinate terms in SHU for minor rule violations, but others can be sent to SHU for indeterminate terms for alleged gang activity. Pelican Bay houses 3,500 individuals total, with 1,500 housed in complete isolation inside SHU (Herzing, 2015). At PBSP in 2011, approximately 544 individuals had served between five and ten years in SHU; 513 had served more than 10 years, with an additional 78 people who had been confined in SHU for two decades or longer (Herzing, 2015; *Madrid v. Gomez*, 1995; Small, 2011). It is important to note that while only 2% of California inmates are housed in isolation, that 2% accounts for approximately 42% of all prison suicides from 2006 to 2010 (Bennion, 2015). Similarly, the United Nations’ *Committee Against Torture* reporting established that inmates housed

in SHU are more likely to develop acute mental illnesses, or exacerbate pre-existing conditions (Bennion, 2015). Due to the lack of progress made through litigation efforts by inmates' advocates, inmates from PBSP and later across the nation joined together to form a mass resistance movement to end long-term solitary confinement in the 2010s.

The increased rates in American prisons to utilize solitary confinement as a policy to control individuals, rather than a short-term punishment, can be attributed to a three interrelated factors. The first factor is the massive spike in prison populations that began during the late 1970s (Bennion, 2015). In 1978, the prison population was approximately 307,276 in both state and federal prisons—a number that was stable for almost fifty years; however, by the end of 2012, the population increased over 400% to 1,571,013 (Bennion, 2015). The second factor to the increase in solitary confinement was the widespread closing of public mental-health services that began in the 1960s (Bennion, 2015). As a result, the number of mentally ill incarcerated within American correctional facilities increased exponentially. The third factor was that during the 1970s the United States abandoned the rehabilitative ideal that had been the basis in Cherry Hill (Bennion, 2015; Hafemeister & George, 2012). The aforementioned factors inevitably led to the final precursor for the rise in solitary confinement within American prisons: violence (Bennion, 2015). Understandably, as correctional officers struggled to maintain control in increasingly overcrowded facilities with increasingly challenging populations, including the mentally ill, rates of violence increased. Moreover, court decisions advancing inmates' rights in the 1960s and 1970s limited the forms of punishment and control that prison officials had historically used, making solitary a new way to control 'unruly' populations. Correctional officials ultimately began using solitary confinement

as a way to control the troublesome populations under the guise of “prison security.” The growing fear of prison gangs created a moral panic, which led to the increase in building technologically advanced units to house the alleged leaders of the gangs. Currently, the Federal Bureau of Prisons controls 111 “Special Housing Units” (SHU) across the United States (U.S. Department of Justice, 2016).

Solitary confinement as an instrument of punishment. In the United States, solitary confinement is used for a variety of reasons. Eastern State Penitentiary used solitary confinement as a way to rehabilitate inmates through religious penitence; however, the practice was removed after inmates reported adverse affects (Bennion, 2015). Currently, prisons utilize solitary confinement as an instrument of punishment and control to subdue inmates from participating in inmate-led movements, political debates, or creating an inmate of inmates that violates the image the government wants the public to see. Incarcerated persons may be subjected to this form of isolation as a form of punishment for violating administrative rules, as a means of protection for inmates believed to be at risk in the general population, and to remove those who are believed to pose a risk to the security or safety of the prison (Steinbuch, 2014). Most prisons utilize solitary confinement as either disciplinary or administrative measures for persons believed to be at risk to themselves or the prison in general (Smith, 2006). The CDCR states that individuals can be placed in solitary confinement “if it has been determined by the Departmental Review Board that the inmate’s case factors are such that overwhelming evidence exists supporting an immediate threat to the security of the institution or the safety of others” (Gilna, 2015). In extreme cases, some people, particularly those vulnerable to violence or sexual assault from other inmates, may be

placed in “protective custody” involuntarily (Steinbuch, 2014), in order to avoid violence from others held within the prison. Prison officials use solitary confinement, or SHU, to deprive individuals identified by staff as troublesome or violent social interaction and sensory stimulation (Steinbuch, 2014) and as a way to deter further problematic behavior. Almost all prisons are built with a secure housing unit for rule violations or to house particularly dangerous individuals away from the general population, but there are also facilities built with the purpose to house all persons at the facility in isolation (Hresko, 2006). The process of housing inmates in isolation units creates a vicious cycle: on one hand people are at an increased risk to develop mental illness, and, on the other, isolation units serve as a common approach to manage those suffering from serious mental illnesses, even though solitary can exacerbate the effects of pre-existing mental illness (Metzner & Fellner, 2010). However, incarcerated persons can be placed in segregation for minor infractions, such as insolence, smoking, failure to report to work, refusing to return a food tray, or possessing a large amount of postage stamps (Cloud et al., 2015). Pregnant women; lesbian, gay, bisexual, transgender, and queer individuals; and juveniles are at a heightened risk of being housed in solitary confinement in both jails and prisons across the United States due to housing policies (Cloud et al., 2015).

In addition to housing inmates in solitary confinement as a protective measure, the United States utilizes solitary confinement to coerce individuals into providing potentially dangerous information about their alleged gang activity. Prison gangs have developed to such an extent that inmates entering the facility often ally with a particular racial group to protect themselves (Adam, 2016). However, many facilities cite membership in a prison gang as a severe risk to the safety and security of a prison (Bauer,

2012). According to Bauer, the California Department of Corrections and Rehabilitation Validation Manual cites the use of Spanish words like *tio*, uncle, or *hermano*, brother, as evidence of gang memberships (Bauer, 2012). Correctional officers examine individuals believed to have gang affiliation more closely. However, the process of validating someone as a gang member is extremely difficult. It is more likely that a person suspected of gang activity will serve long-term SHU sentences compared to an individual who kills a correctional officer, which brings a determinate sentence of five years in the SHU (Bauer, 2012). Inmates housed in SHU based on alleged gang affiliation cannot return to general population until they prove they are not members of a gang, or confess to all gang activity and provide specific information on their gang to prison officials. Tens of thousands of people are housed in segregation units based upon perceived gang affiliations because of tattoos, known associations, politically charged reading materials, or drawings (Cloud et al., 2015). The following section of the thesis examines the physical conditions of SHU.

The devils in the details: the box. Secure housing units (SHU) are designed to house people in complete or near complete isolation. Typically, solitary confinement cells consist of poured concrete walls without windows, a concrete bed, a stainless steel sink and toilet, and fluorescent lights, which the inmate may or may not be allowed to control (DeMarco, 2012). Each cell is approximately the size of an average American bathroom, parking space, or king sized bed. Due to the lack of natural light, many people cannot distinguish between day and night because of the constant fluorescent lighting and suffer sleep deprivation—any person who attempts to block out the artificial light risks being subjected to further punishment (Steinbuch, 2014). Prison is itself a form of social

isolation from the public; however, solitary confinement in prison is a different type of isolation with exceedingly different psychological effects and few procedural protections to guard against abuse. People housed in secure housing units are not allowed to leave their cells, while the general population has more freedom to move around the facility (Hresko, 2006). In addition, the cellblocks in secure housing units are designed specifically to isolate people and deprive them of social interactions (Reiter, 2014). Similarly, prison administrators actively chose individuals to be housed in solitary confinement because they violated an administrative rule in prison, not because of the severity of their original offense (Coid et al., 2003; Hresko, 2006). Inmates held in solitary confinement also have a difficult time making legal claims to challenge the conditions of their confinement or abusive treatment by guards (*Ashker v. Brown*, 2009; *Madrid v. Gomez*, 1995). Therefore, there is little oversight by the court system to provide protections for these people.

Once housed in solitary confinement, inmates are subjected to a very strict set of rules. People are housed within these cells for 23 hours a day leaving only an hour for recreation and showering per day (Haney, 2015). They are kept isolated during their one-hour of recreation in a slightly larger outdoor cell, typically called a “dog run” (Hresko, 2006). Individuals housed in segregation are also required to eat their meals within the confines of their cells (Shalev, 2009), while the general population is allowed to eat communally.

The United States condemns the use of sensory deprivation as torture by countries across the globe, but they utilize the same practices in domestic prisons in violation of its human rights obligations. Shane Bauer, former political prisoner held in solitary

confinement in an Iranian prison, visited California's Pelican Bay SHU to find similar, if not worse conditions (Bauer, 2012). Bauer noted that while held hostage in Iran he was allowed to have a lawyer present at the Revolutionary Court in Iran, while inmates in Pelican Bay are denied access to a lawyer when being placed in solitary confinement (Bauer, 2012). In many facilities, computerized locking and tracking systems are in place to ensure that inmates are constantly supervised without any human contact (Brownlee, 2013; Hafemeister & George, 2012). Inmates housed in these isolation units are also denied access to any work, rehabilitative, educational, or recreational programs or activities (Glidden & Rovner, 2012; Hafemeister & George, 2012). Most disturbingly, many mental health services, such as therapy sessions, are delivered through a small slit in their cell door (*Coleman v. Brown*, 1994; Hafemeister & George, 2012; Haney, 2003). Solitary confinement units are designed to isolate inmates from any contact with other inmates, correctional officers, or family.

Almost every prison or correctional facility in the United States, despite security classifications, has a form of solitary confinement available to the facility (Hresko, 2006). For example, California's San Quentin State Prison, a minimum security facility, houses one of the most dangerous solitary confinement units, known as the Adjustment Center. After Jackson's attempted escape and the killings of correctional officers and inmates, San Quentin requires correctional officers working in the AdSeg unit to be in full riot gear at all times. The next section of the thesis reviews how prison officials justify the use of SHU.

The Impact of Isolation of Incarcerated Persons

Administrative justifications of solitary confinement. Inmates may be subjected to prolonged isolation as a form of punishment for violating administrative rules, as a means of protection for inmates believed to be at risk in the general population, and to remove inmates who are believed to pose a risk to the security or safety of the prison (Steinbuch, 2014). In 2011, the United States responded the UN General Assembly's critiques of solitary confinement by justifying its use for solitary confinement as part of a five-pronged punitive management system:

- (1) To punish an individual (as part of the judicially imposed sentence or as part of a disciplinary regime);
 - (2) To protect vulnerable individuals;
 - (3) To facilitate prison management of certain individuals;
 - (4) To protect or promote national security;
 - (5) To facilitate pre-charge or pre-trial investigations.
- (UN General Assembly, 2011, p. 12).

Most prisons utilized solitary confinement as either a disciplinary or administrative measure for inmates believed to be at higher risk to themselves or the prison in general (Smith, 2006). The United States' official position argues that housing inmates in solitary confinement for their own protection violates any of their basic human rights. Instead, prison officials believe that housing inmates in SHU is necessary in order to protect inmates. In extreme cases, some inmates may voluntarily choose to be housed in solitary confinement, considered "protective custody", in order to avoid violence from other inmates (Steinbuch, 2014). Administrative officials may also house inmates in solitary confinement as a preventative measure to ensure the inmate cannot tamper with witnesses or coerce a confession (Steinbuch, 2014). Prison officials use SHU to deprive

troublesome inmates social interaction and sensory stimulation (Steinbuch, 2014), and as a way to deter further problematic behavior.

The use of SHU to protect inmates from hurting themselves or other creates a paradoxical effect on inmates who are mentally ill. Inmates with mental illness are disproportionately likely to accumulate disciplinary infractions than their non-disordered counterparts (Fellner, 2006). Thus, it is more likely for inmates suffering from a non-diagnosed mental illness to be housed in isolation as a punishment for breaking prison rules. Inmates who are housed in solitary confinement are always placed there by an administrative decision (Hresko, 2006). The process of housing inmates in isolation units creates a vicious cycle where on one hand inmates are at an increased risk of developing mental illness, and, on the other, isolation units serve as a common approach to manage inmates suffering from serious mental illnesses (Metzner & Fellner, 2010). In some cases, inmates housed in solitary confinement are never released from their isolation. At Ohio State Penitentiary, a supermax facility, there is a group of state designated “long-termers,” who will never be released from their 23 hour a day confinement (Lobel, 2008). Correctional officers are also ill equipped to discern the difference between inmates acting out and inmates experiencing psychological or psychiatric symptoms (Fellner, 2006). Therefore, correctional officers place mentally ill inmates having potentially non-threatening episodes in solitary confinement, which will ultimately worsen their condition. The following section will examine the psychological affects of housing inmates in SHU.

Mental deterioration among inmates in solitary confinement. Approximately 15-20% of people housed in United States prisons have a serious psychiatric disorder, including schizophrenia, bipolar disorder, or major depression (Galanek, 2012). In addition to the aforementioned Axis I disorders, a significant portion of incarcerated persons suffering from these conditions also have a co-occurring substance abuse problem and/or a form of personality disorder (Axis II), or “co-morbid medical conditions” (Galanek, 2012). Solitary confinement provides people with almost no human contact—aside from being handcuffed before leaving their cell for showers or exercise—which has shown to have detrimental effects on the mental health of otherwise healthy persons. Research suggests that anywhere from one-third to 90% of people housed in isolation report adverse symptoms and self-harm (Smith, 2006). Stuart Grassian, a psychiatrist studying individuals housed in super maximum SHU coined the term “SHU Syndrome” to describe the symptoms inmates demonstrate during their stay in isolation (Guenther, 2011; Haney, 2003; Haney, 2015; Jossey-Bass, 2000). These symptoms include anxiety, hyper-responsiveness and motor excitement, confusion, impaired memory, perceptual distortions, aggressive impulses, ideas of reference, and depersonalization (Jossey-Bass, 2000). Other symptoms that affect numerous individuals housed in secure units include despondency, hallucinations, self-mutilation, and in extreme cases, these symptoms lead to the inmate’s early death (Brownlee, 2013). The psychological effects of being housed in solitary confinement are so widespread that psychiatrists have associated these symptoms to the psychiatric syndrome Reduced Environmental Stimuli (RES), or isolation sickness (Steinbuch, 2014). According to

Grassian, these symptoms result from electroencephalogram (EEG) abnormalities in the brain, which are caused by the slowing down of brain waves (Grassian, 2006).

Inmates who already have pre-existing conditions with one or more of these symptoms are predictably at higher risk for their current symptoms to become exaggerated while being housed in the SHU. In some cases, the psychological and emotional deterioration affects the individuals long after their stay in isolation is lifted (Brownlee, 2013). These individuals must seek out mental health services in order to cope with their symptoms. However, even though all correctional facilities are required to provide mental health services to persons housed there, the majority of mentally ill individuals never receive treatment while incarcerated (Smith, 2012). Only 34% of state incarcerated persons and 24% of federally incarcerated persons with mental illness were given treatment during their incarceration (James & Glaze, 2006). In many cases, people housed in solitary confinement do not have access to the necessary mental health services: medical health professionals, individual or group therapy, or educational or therapeutic programs (Steinbuch, 2014). Therefore, it is reasonable to expect that these individuals will suffer from a continuing decline in their mental health, potentially resulting in long-term, severe psychiatric or psychotic illnesses.

Solitary confinement causes intense psychological trauma on inmates regardless of their mental state prior to their incarceration. Tommy Silverstein, who has been housed in a solitary confinement cell in federal prison for over twenty-five years, describes his stay in isolation as a “slow constant peeling of the skin, stripping of the flesh, the nerve-wracking sound of water dripping from a leaky faucet in the still of night while you’re trying to sleep... minutes hours, days, weeks, months, years, constantly drip

away with no end or relief in sight” (Lobel, 2008). In 2011, inmates participated in a hunger strike demanding simple changes to the conditions of confinement. One of these demands was to allow inmates to have wall calendars in their cells to determine the passing of time (Prisoner Demands, 2011), as without calendars inmates can suffer from sensory deprivation. Despite these documentations of the negative consequences of housing individuals in prolonged isolation, the practice is still extremely common in the United States.

The use of solitary confinement as a mechanism of control. The population that resides within correctional facilities is often very diverse. In addition to the institutionalization of extreme punishment like long-term isolation in supermax prisons, solitary confinement is used as a mechanism of control in local and county jails and youth detention centers. County level jails house a vast array of people, including increasing numbers of pre-trial detainees who cannot post bail and who have not yet been convicted of any crime. Jail staff utilize solitary confinement as a means to control an inherently chaotic environment due to the consistent nature of inmates’ constant movement between facilities for court appearances, serving their sentences, and transfers to state level prisons. As such, people who enter local jails may be subjected to harsh conditions in solitary confinement without being found guilty of a crime.

In one instance, sixteen-year-old Kalief Browder was housed in Rikers Island—one of the most notorious New York jails—for three years without ever standing trial or being convicted (Schwartz & Winerip, 2015). For two of those three years Browder was housed in solitary confinement as a juvenile—a common practice among correctional facilities that lack the resources to house juveniles safely (Schwartz & Winerip, 2015).

Browder explained, “a lot of times I’m by myself and I go through my thoughts, I catch a lot of flashbacks when I was on [Rikers] Island...it really brings out sad emotions and stresses me out” (HNL, 2013). After his release, Browder committed suicide after being unable to reintegrate into a normal life outside of solitary confinement. Inmates the facilities deem to be in danger are placed in protective custody (PC)—a form of solitary confinement the state justifies as a way to protect inmates. Inmates that are subjected to PC are often LGBTQ, juveniles, vulnerable gang members, and sexual offenders.

Jail staff may also use isolation and solitary confinement as a means to deal with mental illness within the facilities. In 2015, the Prison Law Office in Berkeley filed a class action suit against Santa Clara County Jail in California for the unconstitutional use of solitary confinement (Prison Law Office, 2015). According to the lawsuit, inmates housed at Santa Clara County Jail are housed in 6 by 7 foot cells and are only released for their cells for three hours a week (Davis, 2015). Brian Chavez and Brandon Bracamonte, both “trustees” for their good behavior, were indicted on gang charges in 2011 and pled not guilty; however, both men are still waiting for trial in solitary confinement (Davis, 2015). Chavez and Bracamonte’s gang charges are likely the reason they were moved into solitary confinement regardless of the fact that they have not been found guilty of a crime. In many cases, jails will house juveniles who are charged with adult crimes in solitary confinement, or protective custody, to keep them away from the adult inmates (Gordon, 2014). As a way to maintain control of the facility, jails will often punish inmates for disciplinary infractions by placing them in solitary confinement (Kaba et al., 2014). After state mental institutions began shutting down, correctional institutions such as jails and prisons began to be flooded with mentally ill inmates that had no access to

social services on the outside. Inmates with severe mental illnesses are not only more likely to be housed in solitary confinement, but they are also more likely to accrue new infractions, which will result in longer stays in solitary confinement (Kaba et al., 2014). Kaba et al. (2015) argued that inmates with mental illnesses who were housed in New York City's jails were more likely to be housed in solitary confinement prior to being diagnosed. Correctional officers in jail began relying on solitary confinement to house populations that they are either ill equipped or do not have the resources to manage safely.

Correctional officers must cope with a considerable inmate population that contains a variety of social, political, and mental challenges. Prisons house a large variety of people from all different backgrounds—race, ethnicities, and ages. Similarly, prisons house a sizeable number of individuals with varying degrees of mental illness. In the United States, 15-20% of inmates have a major psychiatric disorder such as schizophrenia, bipolar disorder, and major depression (Galanek, 2013). Persons with mental illness are incarcerated at higher rates than their non-disordered counterparts (Barrett, Slaughter & Jarrett, 2004). The Criminal Justice/Mental Health Consensus Project reported that mentally ill inmates are approximately three to four times more likely to be incarcerated when compared to the general population (Barrett, Slaughter, & Jarrett, 2004). All inmates housed in prisons are at a substantial risk for harm; however, inmates who suffer from mental illness are at a heightened risk to be victimized while incarcerated. Recent studies suggest that incarceration exacerbates mental illness in prison inmates (Metzner & Fellner, 2010; Smith, 2012). Mentally ill inmates are much more susceptible to physical and sexual assault in prison than non-ill inmates (Johnston,

2013). Mentally ill inmates are victimized at higher rates than non-disordered inmates are. One study found that approximately forty-two percent of inmates who were previously treated for schizophrenia or bipolar disorder reported being victims of physical assault by either an inmate or guard, compared to thirty-two percent of inmates without a mental illness (Johnston, 2013). On the other hand, 15% of mentally ill inmates reported sexual violence compared to eight percent of non-disordered inmates (Johnston, 2013). This trauma can often lead to an increase in the development of several mental illnesses—depression, posttraumatic stress disorder, and psychosis—that often leads to an increase in suicidal tendencies (Johnston, 2013). Similarly, inmates suffering from severe mental illness also lack the ability to cope with prison life (Johnston, 2013). A substantial group of the mentally ill population in prison has co-occurring substance abuse disorders or personality disorders (Galaneck, 2013), which can lead to a host of administrative problems.

Inmates who suffer from mental illness often accumulate a great number of disciplinary violations, resulting in prison officials housing them in solitary confinement (Johnston, 2013). Prisons in the United States generally function in an exceptionally structured environment with strict rules and schedules, which the average inmate can maintain; however, inmates suffering from cognitive deficiencies or inmates taking antipsychotic medications may struggle to adapt (Johnston, 2013). Prison administration faces a unique struggle to balance the needs of the mentally ill housed within the walls of the institution with the safety and security of the prison itself (Fellner, 2006). The way prisons are designed may also influence the likelihood of inmates developing mental illness or worsen pre-existing psychiatric conditions (Awofeso, 2010). Inmates with pre-

existing mental illnesses comprise up to 50% of the total population in solitary confinement (Johnston, 2013). However, inmates without a pre-existing mental illness also report having negative reactions to their confinement. Inmates who may not personally suffer from mental illnesses must watch individuals who are suffering in their units self-harm, which can be particularly traumatizing. Michael “Zaharibu” Dorrough explained:

I was diagnosed with severe depression several years ago. I don't know which is worse. At some point you must know that the isolation has affected you. Perhaps permanently. It involves so many different facts. Particularly the isolation itself. Over the years you have seen other people snap. Human beings cutting themselves. Eating their own waste. Smearing themselves in it. And sometimes throwing it at you. Human beings not just talking out loud to themselves, but screaming at and cursing themselves out. How could you not be affected by this kind of madness?! (Rodriguez, 2013).

It has been well documented that inmates housed in SHU are at risk of developing a potential mental illness; however, many inmates enter the facility with pre-existing conditions. The effects of being housed in solitary confinement are especially detrimental to inmates who have an existing mental illness (Steinbuch, 2014).

Approximately one-fifth to two-thirds of inmates housed in secure housing units has a pre-existing serious mental illness that was diagnosed prior to isolation (Steinbuch, 2014). These inmates experience isolation in a different way because they are prone to having symptoms that are further exacerbated by the isolation. In addition, these inmates will likely remain in solitary confinement for the duration of their incarceration because they continually violate prison rules (Metzner & Fellner, 2010; Steinbuch, 2014).

Housing inmates in continual isolation, without access to meaningful psychiatric services,

results in the inmates' mental health deteriorating and worsens their long-term diagnosis (Steinbuch, 2014).

Some researchers argue that solitary confinement does not manifest mental illness, but rather exacerbates pre-existing conditions. According to a longitudinal study of inmates housed both in general population and solitary confinement, inmates housed in secure housing units showed significantly higher levels of psychiatric disorders than inmates housed in the general population (Andersen et al, 2000). 28% of inmates housed in solitary confinement developed a psychiatric disorder compared to 15% of inmates housed in general population (Andersen et al., 2000). Inmates housed in isolation are much more likely to manifest a severe mental illness compared to their counterparts housed in general population (Andersen et al., 2000; Haney, 2015). Although general incarceration does lead to some inmates developing mental illness, there is a considerable difference when inmates are housed in solitary confinement.

Housing inmates in complete isolation leads psychological and psychiatric disorders to manifest in inmates. Inmates subjected to the harsh conditions of solitary confinement are more likely to suffer from mental illness. The conditions of solitary confinement cause a cycle of mental illness: inmates suffering from mental illness are more likely to be placed in administrative isolation, and symptoms of mental illness are much more likely to manifest in inmates housed in isolation both with a pre-existing condition and without. In conclusion, the administrative practice of housing "difficult" inmates in solitary confinement creates an unnecessary risk of mental illness amongst prison inmates, regardless of its potential deterrent value.

In conclusion, this thesis has demonstrated how solitary confinement has become prevalent within American prisons, how SHU are utilized by prison officials, and the negative impact these units have on both general population inmates and mentally ill inmates. The following section discusses the author's research methods.

Chapter 3. Methods

Hypotheses

The hypothesis of the present study is that the United States' government is able to circumvent both constitutional and international law through framing strategies and changing rhetoric. The current study argues that the United States' governmental response to both local and international critiques frames solitary confinement and administrative segregation as a necessity for the safety of correctional officers and inmates alike to defend its practices against national and international critiques of its use of solitary confinement inside correctional facilities. By adjusting the rhetoric surrounding the use of solitary confinement, the United States is able to violate both the constitutional rights of inmates and U.S. obligations under international human rights agreements without being held responsible in any substantive way.

Sample and Sources of Data.

The current study couples content analysis and secondary data analysis to utilize a mixed methods approach to analyze the use of solitary confinement and the growing social movement to abolish its use in jails, detention centers, and prisons. The thesis uses primary sources including United Nations' General Assembly 2008 and 2011 reports, Universal Periodic Reviews, American Civil Liberties Union shadow reports, and international treaties and agreements including the *Universal Declaration of Human Rights* (UDHR), the *International Covenant of Civil and Political Rights* (ICCPR), the *International Covenant on Social, Economic, and Cultural Rights* (ICESCR), and the *Covenant Against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment* (CAT). In addition, other primary sources of data for this study included

archival legal filings from twelve cases in the United States dating from 1890 to 2015 regarding the treatment of inmates in solitary confinement. The secondary sources of data for this study include newspaper articles from the *New York Times*, the *Washington Post*, *California Prison Focus*, and the *San Francisco Bayview Newspaper*. Other secondary sources of data include press releases from the California Correctional Peace Officers Association, California Families Against Solitary Confinement, and the Short Corridor Collective regarding the CDCR's methods of limiting the use of solitary confinement. The author also analyzed official reports from the United States Department of Justice, the California Department of Corrections, and the Federal Bureau of Prisons, as well as transcripts from past interviews with California prison officials and social movement activists.

Qualitative data were collected from both the primary and secondary sources to perform a content analysis. The content analysis reviewed documents for mentions of solitary confinement. In order to ensure continuity, the author coded for mentions of the following euphemisms for solitary confinement: administrative close supervision, administrative confinement, administrative detention, administrative maximum, administrative segregation, departmental segregation, restrictive housing, disciplinary segregation, inmate segregation, lockdown, segregation, security housing unit, protective custody, and special management units. The primary and secondary sources were read once in order to determine if any of the coded phrases were present, and if phrases were present, the author read the document a second time for content. In addition, the author classified the use of solitary confinement in four ways: preventative, safety-oriented, punitive, and investigative.

The United States' legal filings, and official federal and state documents, as well as the United Nations' official reports were essential in interpreting how the United States has shifted both its framing strategies and rhetoric surrounding the use of solitary confinement as a punitive measure in prisons. This changing rhetoric reveals strategic use of framing by the United States Department of Justice to retain the practice of housing individuals in long-term isolation despite the United Nations' harsh critiques of the practice. By framing the use of solitary confinement as "restrictive housing," the United States Department of Justice does not violate the letter of the law, oftentimes because inmates housed in this so-called "restrictive housing" are double-celled. This deliberate housing strategy allows the United States to deny any systematic use of solitary confinement, while keeping the practice available for correctional officers to utilize under their own discretion.

Ethics, Reliability, and Validity

Both primary and secondary data were collected from San José State University's online databases. Because the author used published transcripts of interviews, the chance of emotional trauma to participants was eliminated. All quotations provided in the analysis were transcribed verbatim from the original files in order to avoid any potential misrepresentation. The coupling of both primary legal filings and secondary official reports assured the validity and reliability of this study.

Chapter 4. Results

International Human Rights Treaties

The following section investigates how the United States violates international human rights law without any substantial consequences. Long-term solitary confinement as a punishment within correctional facilities has been condemned internationally for decades (Hresko, 2006). The prolonged isolation of people in solitary confinement can be framed as a violation of the basic human right against social deprivation (Brownlee, 2013). The right against social deprivation, while vitally important, is not recognized in international human rights agreements, such as the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR), and the *International Covenant on Economic, Social, and Cultural Rights* (ICESCR) (Brownlee, 2013). These treaties are often the core principles in international human rights law, but do not provide any direct protections against social deprivation. Article 25 of the UDHR examines the right to an adequate standard of living; however, Article 25 does not mention the significance of having opportunities for social interaction (Brownlee, 2013). The vast majority of human rights doctrines do not specifically provide protection against social deprivation in terms of personal interactions, but rather provide protections against economic disadvantages (Brownlee, 2013). There is no right against isolation because autonomous persons have the ability to choose isolation as a way of life—such as nun, monks, or astronauts (Brownlee, 2013). However, the self-chosen isolation of autonomous persons is immensely different than the prolonged isolation suffered by individuals in solitary confinement.

Unlike the right against social deprivation, the right to be free from torture is examined in over five international declarations or covenants (CAT, Article 1; UDHR; Article 5; ICCPR; Article 7 and 10; ICESCR, Article 12), in addition to the national constitutions of over sixty-five countries (Hresko, 2006). *The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment* both prohibits and defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person committed or is suspected of having committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. (CAT, Article 1)

The UDHR, the ICCPR, and the *Convention Against Torture* (CAT) are important when assessing to what extent the United States' use of solitary confinement violates international law. Article 5 of the UDHR states "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." It is important to note that although the UDHR is a declaration and not a binding legal contract, it is generally accepted as international customary law and an internationally agreed upon set of human rights norms to provide guidance to government policy (Hresko, 2006). Article 7 of the ICCPR prohibits "cruel, inhuman, or degrading treatment or punishment" (ICCPR, Article 7). Article 10 goes on to state, "[a]ll persons deprived of their liberties shall be treated with humanity and with respect for the inherent dignity of the human person" (ICCPR, Article 10).

The United States signed and ratified the ICCPR in 1992 making it legally binding under international law, as well as under the United States constitution (Vasiliades, 2005). However, the U.S. provided a reservation on Article 7 stating that the “cruel, inhuman, or degrading punishment” is already protected under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution, and therefore the United States does not need to provide further protections as offered in the ICCPR (Hresko, 2006; United Nations Officer of the High Commissioner on Human Rights, 2016; Vasiliades, 2005). The United States made a similar reservation on the Convention Against Torture’s Article 16 by clarifying that the treatment prohibited is only cruel, inhuman, or degrading punishment as the U.S. Constitution interprets it (Vasiliades, 2005). However, there are two fundamental flaws with the way the United States interprets the Eighth Amendment: (1) the Eighth Amendment prohibits “cruel *and* unusual punishment,” while international treaties protect against “cruel, inhuman, *or* degrading punishment;” (2) the Eighth Amendment protects against punishment not *treatment*, while all aforementioned international treaties and conventions protect against treatment, as well as punishments (Vasiliades, 2005). Lastly, Article 1 of the CAT prohibits state officials from purposefully inflicting severe physical or mental suffering on people for the purpose of punishment or coercion (Hresko, 2006). The United States signed on to the CAT in 1988, but did not make it legally binding until the Senate ratified the Convention in 1994 (Hresko, 2006). By ratifying the Convention, the United States assumed obligations to:

- (1) incorporate the international definition of torture into their domestic legal systems;
- (2) recognize the non-derogability of the prohibition of torture;
- (3) not extradite or return persons to a state where he or she will be in danger of torture;

- (4) extradite or prosecute those individuals alleged to have committed torture;
- (5) prohibit the use of confessions extracted through torture in any official proceedings,
- (6) provide reparation to victims; and
- (7) provide trainings to enforcement agencies. (Grossman, 2014)

However, the Convention Against Torture is not self-executing, which means it cannot provide substantive rights without domestic ratification (Nelinson, 2013). In order for any act to be considered torture under international law it must: cause a physical pain or mental suffering, it must be intentional and “done with a certain purpose or objective,” the perpetrator must specifically attempt to cause pain or suffering, and it must be performed by a person acting in an official capacity or under the consent of a public official (Hresko, 2006).

In the United States, solitary confinement violates all four features of torture. Prisons in the United States purposely use solitary confinement as a form of punishment and therefore violate the first three features of torture—causing physical pain intentionally with a specific purpose (Hresko, 2006). Similarly, the harsh side effects that inmates endure from being housed in prolonged isolation can be classified as severe mental suffering. Because placing an individual in solitary confinement is an administrative decision and inflicted by a public official, it also violates the fourth feature of torture (Hresko, 2006).

In 2013, the United Nations Special Rapporteur on Torture urged the United States to abolish the use of long-term solitary confinement and argued that any SHU stay lasting longer than fifteen days constituted torture (Bennion, 2015; Press Release, Office of the High Commissioner for Human Rights, 2013). Juan E. Méndez, the United Nations Special Rapporteur on Torture, urged the United States to “adopt concrete

measures to eliminate the use of prolonged solitary confinement under all circumstances” (United Nations Office of the High Commissioner on Human Rights, 2013). The American Correctional Association’s 1959 *Manual of Correctional Standards* similarly instructed correctional officers to limit the use of solitary confinement to fifteen days, and only as a last resort (Bennion, 2015). However, in practice, the use of solitary confinement in American correctional facilities is not limited to fifteen days, or as a last result. Rather, Correctional Officers rely on SHU so heavily that when the process was questioned internationally they dissented, citing the need for SHU to protect inmates and officers alike. On November 13, 2014, the Committee Against Torture combined the third to fifth periodic report of the United States (CAT/C/USA/3-5) and concluded,

The State party has indicated that there is no ‘*systematic* use of solitary confinement in the United States’, the Committee remains concerned about reports of extensive use of solitary confinement and other forms of isolation in U.S. prisons, jails, and other detention centers for purposes of punishment, discipline and protection, as well as for health-related reasons... The full isolation for 22-23 hours a day in super-maximum security prisons is unacceptable. (Committee Against Torture, 2014, p. 10)

However, a 2014 study done by the U.S. Government Accountability Office (GAO) found that the Federal Bureau of Prisons (BOP) housed 435 individuals in ADX—Florence, 377 additional inmates in other federal prisons across the nation, and 80,000 individuals in state funded facilities (ACLU, 2014). The Committee Against Torture further recommended that the United States:

Limit the use of solitary confinement as measure of a last resort, under strict supervision, and with the possibility of judicial review; prohibit any use of solitary confinement against juveniles, persons with intellectual or psychosocial disabilities, pregnant women, women with infants and breastfeeding mothers in prison; ban prison regimes of solitary confinement such as those in super maximum security detention facilities; and compile and regularly publish

comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm (Committee Against Torture, 2014, p. 10)

However, there have been no substantial changes made by the United States based off the international critiques, or the recommendations made by the Committee.

In the November 2014 CAT report the U.S. Department of State indicated that “[t]here should be no doubt, the United States affirms that torture and cruel, inhuman, and degrading treatment and punishment are prohibited at all times and in all places, and we remain resolute in our adherence to these positions” (Daugirdas & Mortenson, 2015, p. 192). However, the United States reservation to Article 16 to the Convention states that the United States “interprets the Article as prohibiting only conduct which would violate the Fifth, Eighth, and Fourteenth amendments to the U.S. Constitution” (Daugirdas & Mortenson, 2015, p. 193).

The United States relies heavily on the Constitution, as well as federalism, to avoid making substantive changes to the policies surrounding solitary confinement. The federal government avoids forcing changes at the state prison level because federalism allows the states to determine correctional policies. American exceptionalism allows the United States government to avoid making changes to current policies by framing the government as a golden standard for human rights. The United States argues that the U.S. Constitution “prohibits the use of solitary confinement in certain circumstances, especially with regard to persons with serious mental illness and juvenile detainees” (ACLU, 2014, p. 36). However, as a matter of policy, juveniles who are sentenced to adult facilities are placed in protective custody segregation until they become a legal adult. This completely undermines the statements made by the United States are a

response to the international critiques. In 2016, 187 years after solitary confinement began in Pennsylvania, President Barack Obama placed a ban on placing any juveniles in solitary confinement in a federal prison as a response to disciplinary infractions. As it stands currently, the United States has denied that the use of long-term solitary confinement violates any of the aforementioned amendments to the U.S. Constitution. This denial allows the United States to continue the systematic use and abuse of solitary confinement in correctional facilities without facing any real, tangible consequences by labeling units of the prison segregated housing, administrative segregation, disciplinary segregation, and protective custody. The next section analyses how the United States is able to circumvent constitutional law.

U.S. Supreme Court Cases

The United States has historically used litigation as a way to challenge the holding individuals in SHU that utilize isolation as the primary mode of housing. In 1890, the Supreme Court summarized the problem with housing people in solitary confinement in *In re Medley*, 134 U.S. 160, 168:

A considerable number of prisoners fell after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane, others, still, committed suicide, while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be any subsequent service to their community. (*In re Medley*, 1890)

Despite the Supreme Court's observation of cruel treatment of inmates housed in isolation in *In re Medley* (1890), there have been very few successful challenges to the practice of solitary confinement from an Eighth Amendment standpoint. Therefore, it is

important to look at different legal challenges that can be posed to end the use of solitary confinement as an administrative punishment in United States' correctional facilities.

Inmates have filed numerous cases within the courts to argue that their basic rights being are violated by the conditions of their confinement in prison, specifically in solitary confinement. In *Cooper v. Pate*, 378 U.S. 546 (1964), an individual challenged the denial of religious reading material under U.S.C. § 1983, which states, “no person may, under color of law, deprive another person of constitutional rights and privileges” (Smith, 2012). The U.S. District Court granted the defendant prison warden’s motion to dismiss the case because the incarcerated person’s claim did not offer the opportunity for relief, which the U.S. Court of Appeals for the Seventh Circuit affirmed (*Cooper v. Pate*, 1964). However, the United States Supreme Court reversed the decision of the lower courts, stating that the prison denying individuals religious publications and other privileges enjoyed by other persons violated their First Amendment rights (Smith, 2012). The *Cooper* decision ultimately created opportunities for individuals to bring challenges based on constitutional violations during their incarceration.

After *Cooper*, there have been multiple challenges to confinement in American prisons under U.S.C. § 1983. For example, the Supreme Court ruled in *Estelle v. Gamble*, 429 U.S. 103, 104 (1976) that any person in custody must have all basic necessities of life met, including medical needs (Smith, 2012). In 1978, the Supreme Court ruled in *Hutto v. Finney*, 437 U.S. 678, 685 (1978) that the punishment of housing individuals in an isolation cell is subject to scrutiny under the Eighth Amendment (*Hutto v. Finney*, 1978). In *Vitek v. Jones*, 445 U.S. 480 (1980), the Supreme Court ruled that a state statute permitting the prison director to transfer an individual to a mental hospital

involuntarily was unconstitutional, and required prisons to provide additional due process protections in order to fully comply with the Fourteen Amendment (*Vitek v. Jones*, 1980). This case was important for inmates because it is the first case that the Supreme Court acknowledged the problem in dealing with the mentally ill while in custody (Smith, 2012). Similarly in *Wilson v. Seiter*, 501 U.S. 294, 304 (1991), the court ruled that in the case of prolonged solitary confinement the objective requirement should be met by practical experience, as well as the overwhelming opinion of social science research (*Wilson v. Seiter*, 1991).

Despite widespread historical evidence, psychological and psychiatric research, and empirical observations that the practice of prolonged isolation causes serious mental illness in a significant percent of people housed in those conditions, the courts have not found that solitary confinement violates the Eighth Amendment (Lobel, 2008). In *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) the Supreme Court explained that prison officials only violated individuals rights if the deprivation was “objectively sufficiently serious” and the prison officials must be “deliberately indifferent” to their health and safety (*Farmer v. Brennan*, 1994).

Some prison policies have been altered in terms of solitary confinement. For example, in *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995) the court held that housing people in SHU violated the Eighth Amendment if they fell into one of two categories: someone who has a pre-existing mental illness or is at an unreasonably high risk of suffering from a mental illness (*Madrid v. Gomez*, 1995). Another landmark case in 1995, *Coleman v. Wilson*, 912 F. Supp. 1282, 1320 (E.D. Cal. 1995), was a class action alleging that California failed to provide adequate mental health care in its prisons,

thus violating incarcerated persons Eighth Amendment rights (Simon, 2014, p. 74). However, after the *Coleman* decision there has been very little progress in the availability and quality of mental health services in Californian prisons (Simon, 2014, p. 81). In fact, in 2006, eleven years after the *Coleman* decision, suicide rates among incarcerated persons in California were 80 percent higher than the general public's average out of custody (Simon, 2014, p. 82). Therefore, it is reasonable to conclude that inmates are still at a substantial risk of developing mental illness and potential self-harm while housed in American solitary confinement.

The housing of individuals in prolonged isolation has created an increase in collective action to end long-term solitary confinement. In 2011, 6,000 incarcerated persons participated in a hunger strike to protest the conditions of their confinement (Amnesty International, 2012), thus becoming one of the first movements for the rights of incarcerated populations to reach the public spotlight. The hunger strike was initiated by the Short Corridor Collective from PBSP-SHU in order to force the CDCR meet specific demands: access to personal items such as wall calendars to keep track of time, “watch caps” or outdoor headwear for when it rains, warm clothing such as sweat pants, basic in-cell art materials, and to have their photo taken annually to send to their families (Prisoner Demands, 2011). Some other widespread demands were for more nutritious food for people housed in the SHU, and for people with chronic health conditions to be moved to New Folsom Medical SHU facility (Amnesty International, 2012; Prisoner Demands, 2011). One of the PBSP Short Corridor Collective's key demands was the removal of the debriefing policy the CDCR currently utilizes (Prisoner Demands, 2011). The CDCR believes that inmates with alleged gang affiliations pose a significant risk to

the general population (CCPOA, 2015). However, to combat this ideology, the Short Corridor Collective issued a statement calling for the cessation of prison gang violence in all California correctional facilities (Agreement to End Hostilities, 2012). When the inmates' demands were not met quickly, the hunger strike resumed in late September 2011 (Amnesty International, 2012; Short Corridor Collective, 2013). While the original hunger strikers were given disciplinary infractions for coordinating a riot, the second waves of protesters were treated as "major rule violators" and had their personal property confiscated (Amnesty International, 2012). This hunger strike garnered national and international attention bringing the treatment of inmates into the public sphere.

Predominate media outlets like *The New York Times*, *The Los Angeles Times*, *The Washington Post*, *NPR*, and *BBC* covered the hunger strikes. However, despite the national attention that this movement has achieved, the prolonged use of solitary confinement and the systematic abuse of people in custody continues (Doyle, 2012).

In 2015, inmates housed in PBSP's SHU were finally able to make significant progress in reducing the prisons reliance on solitary confinement. *Ashker v. Governor of California* Case No. 4:09 CV 05796 CW, N.D. Cal. 2009 began with several of the leaders of the 2011 and 2013 hunger strikes joining together to form a class action suit against the CDCR. In July 2014, a federal judge ruled in favor of the class certification, which allowed inmates who have spent ten or more years in SHU in California to join the suit (Law, 2014). According to the Center for Constitutional Rights (CCR), 500 inmates in Pelican Bay SHU have been isolated for over ten years, with 78 being held for over twenty years (CCR, 2015). On September 23, 2015, the parties agreed to a settlement that included six reforms:

- (1) The settlement transforms California's use of solitary confinement from a status-based system to a behavior-based system;
- (2) Validated gang affiliates who are found guilty of a SHU-eligible offense will enter a quicker two-year SHU "step-down program" for return to general population after serving their determinate SHU term;
- (3) California will review all current gang-validated SHU prisoners within one year to determine whether they should be released from solitary under the settlement terms. It is estimated by CDCR that the vast majority of such prisoners will be released to general population. In addition, virtually all of those prisoners who have spent more than 10 years in solitary will be immediately released to a general-population setting, even if they have committed recent serious conduct;
- (4) California will create a new Restricted Custody General Population Unit (RCGP) as a secure alternative to solitary confinement;
- (5) Very prolonged solitary confinement will be severely limited and those confined provided significantly more out-of-cell time;
- (6) Prisoner representatives will work with plaintiffs' counsel and the magistrate judge to monitor implementation of the settlement. (CCR, 2015, p. 1-4)

In addition to these changes, the CDCR has begun reviewing gang "validated" inmates and approximately 71% of the 1,478 cases have already resulted in approval for inmates release into the prisons general population (Shourd, 2015). One of the greatest outcomes that have occurred as a result of these social movements is that inmates can no longer be placed in SHU based solely off "Security Threat Group-validation" (STG), previously referred to as gang validation (California Prison Focus, 2015). Instead, prison officials have to provide inmates with due process before being placed in SHU. California prisons must now also limit all SHU determinate sentences to a maximum of five years (California Prison Focus, 2015). There are still infractions punishable with indeterminate sentences, which are not covered in the terms of this settlement. For inmates with those infractions on their records may still be confined in SHU, regardless of the settlement. According to Jules Lobel, president of the Center for Constitutional Rights and the lead attorney that represented the inmates in the *Ashker v. Brown* case stated in an interview

with *Democracy Now!* that the CDCR's reforms are "disingenuous" explaining that while the CDCR is moving towards "behavior-based" policies, correctional officers continue to use "having political artwork or tattoos" as grounds to be labeled a STG-affiliate. In the same interview, Terry Thorton, the spokesperson from the CDCR, justified the use of solitary confinement for "security threat group associates" by stating "in this post-9/11 world we live in, there are all kinds of groups who threaten the safety of people, both inside of our prisons and in our communities." When discussing the 2013 hunger strike, Dr. Jeffery Beard stated, "[b]rutal killers should not be glorified. This hunger strike is dangerous, disruptive, and needs to end" (Beard, 2013). Dr. Beard believed inmates were using the hunger strikes as a way to gain entrance back into the general population in order to expand their gang activity (Beard, 2013). This comparison of inmates to terrorists is exemplary of the attempts of the CDCR to demonize inmates who are often nonviolent offenders as a way to gain public support of retaining the abusive practice.

A Mediation Team comprised of California Prison Focus (CPF) staff, attorneys, and other activists in 2012 examined the CDCR's STG policy proposal. The Mediation Team welcomed the Step Down Program (SDP) on a conceptual basis, but cited the SDP as not being a true alternative to the current debriefing policy used in the CDCR (Ahnen et al, 2012). They argued that the four-year SDP is not an incentive program as the CDCR has framed it, but rather a punishment program in disguise. The so-called incentives provided by the CDCR include a minimum of \$11/month in additional canteen money, one phone call a year, and a single deck of cards (Ahnen et al, 2012), an incentive so minimal in the grand scheme that it is almost no incentive at all. It appears that the CDCR applied these minimal incentives in order to frame the SDP as an

incentive program in order to keep the process in practice, while changing the title on the books. It is also important to note, that this new SDP does not include any limits to the amount of time an inmate can spend in SHU. Therefore, an inmate can still spend an indeterminate sentence in SHU regardless of the SDP or the change in STG- validations. In fact, PBSP SHU inmates who have “progressed” in the SDP are sent to Tehachapi State Prison, where inmates have less visitation privileges and overall worse conditions of confinement (Ashker, Castellanos, & Franco, 2014). Current PBSP inmates and main representatives of the PBSP-SHU Short Corridor Collective, Todd Ashker, Arturo Castellanos, George Franco and Sitawa Nantambu Jamaa, who was transferred to Tehachapi SHU, released a statement regarding the use of SDP stating that there is no logical reason for the mandatory journal entries required by the SDP, citing instead the therapeutic nature of being touched by loved ones (Ashker, Castellanos, & Franco, 2014). They similarly cite the CDCR’s use of vaguely defined STG and SDP policies as having limitless discretion to place non-violent inmates in SHU without oversight.

Challenges to litigation strategies. In order to achieve a successful Eighth Amendment claim that prison conditions are cruel and unusual, the individual must meet the qualifications of a two-pronged test with both objective and subjective components (Glidden & Rovner, 2012). For the objective test, they must prove that the condition in question is serious enough to review on the basis that it deprives the individual of a “basic human need” or because it presents a “substantial risk of harm” (Glidden & Rovner, 2012). On the other hand, the subjective test requires them prove “deliberate indifference” by prison staff (Glidden & Rovner, 2012). In *Wilson v. Seiter*, 501 U.S.

294, 304 (1991), the court ruled that in order for an incarcerated person to claim a violation of their Eighth Amendment protections they must be deprived of a “basic human need” such as food, warmth, or exercise. Similarly, in *Helling v. McKinney*, 509 U.S. 25, 35-38 (1993) the court ruled that “deliberate indifference” should be examined in relation to the prison authorities attitudes and conduct (Lobel, 2008). Mentally ill individuals housed in solitary confinement, must be able to prove through complaints that the conditions in a solitary cell violate the basic human need of social interaction, and that the prison staff knowingly and deliberately imposed the conditions on an individual inmate (Lobel, 2008). However, litigation often cannot make substantial changes without being coupled with activist movements as well.

In addition, it is important to note the United States’ dependency on the use of language in regards to Eight Amendment violations. In order for a prison official to be found guilty of violating an inmates Eighth Amendment protection the inmate must prove that the conditions in SHU are both cruel *and* unusual. While it might be cruel, with approximately 84,000 inmates being housed in SHU in American prisons (Cloud et al., 2015), it is hardly unusual for individuals to spend years in severe isolation. The next section of the thesis examines the success of hunger strikes in terms of creating change.

Inside Organizing Strategies: Inmate Hunger Strikes.

The movement to end long-term solitary confinement in California prisons began from inside Pelican Bay State Prison with the inmates themselves acting as social movement activists. In 2011, approximately 6,600 incarcerated individuals housed in California’s Pelican Bay SHU refused food for three weeks in July and September in the first widely publicized resistance movement protesting the use of long-term solitary

confinement (Earle, 2015; Reiter, 2014; Streeter, 2011). The strike spread to prisons located in Arizona, Mississippi, and Oklahoma that housed inmates serving sentences for crimes that occurred in California (Law, 2013). On April 3, 2011, the leaders of the hunger strikes, known as the Short Corridor Collective, listed five core demands:

- (1) End group punishment and administrative abuse;
- (2) Abolish the debriefing policy and modify active/inactive gang status criteria;
- (3) Comply with the US Commission on Safety and Abuse in America's Prisons 2006 recommendations regarding an end to long-term solitary confinement;
- (4) Provide adequate and nutritious food;
- (5) Expand and provide constructive programming and privileges for indefinite SHU status inmates. (Prison Hunger Strike Solidarity, 2011, p. 1)

Interestingly, the Short Corridor Collective did not demand that prisons abandon solitary confinement in its entirety. Rather, they requested relatively simple solutions to fix the main problems associated with prolonged isolation. Individuals who are incarcerated are limited to what tools they have to form successful resistance movements. Inmates at PBSP are limited to using their bodies as one of the only forms of social resistance. Prior to the hunger strikes, inmates were limited to solitary, isolated forms of resistance based on their surroundings (Reiter, 2014). However, the PBSP Short Corridor Collective was able to coordinate a collective struggle joining thousands of inmates together with a centralized goal. One of the Short Corridor Collective's main concerns was the prison's use of gang validation as a way to punish large numbers of inmates who have not committed violent crimes.

One of the major difficulties with the gang validation process inside California prisons is that in 2012 the CDCR moved from gang affiliations to Security Threat Groups (STGs), which vastly expanded the prison's ability to place individuals in isolation (Shourd, 2015). The CDCR's Recognized Disruptive Groups list from 2012, lists 1,500

potential Security Threat Groups (STGs), which includes “black-non specific” (Mother Jones, 2015). In introduction of STGs into the CDCR expanded the number of inmates that can be placed in isolation based on solely racial reasons. The CDCR defines a STG as “any ongoing formal or informal organization, association, or group of three or more persons” who have any identifying name or symbol, and who have collectively or individually planned, organized, or committed unlawful acts pursuant to Title 15 of the California Code of Regulations. In 2014 alone, the California prison system identified 2,832 individuals as STG’s, of those 2,281 were held in SHU, and the remaining 551 STG affiliates were housed in another isolation unit (AdSeg) (Rodriguez, 2015). As a result of the two hunger strikes that took place in 2011, the CDCR agreed to revise its gang validation process and to ultimately reduce the SHU population, as well as reducing the average SHU sentence and bettering the due process protections within the facility (Earle, 2015). However, by the end of the first 2011 strike inmates from 13 prisons across the state of California participated and were able to gain national and international support both inside and outside prison walls (Herzing, 2015). At the conclusion of the second 2011 strike, 12,000 Californian inmates participated by refusing food (Herzing, 2015).

The PBSP-SHU Short Corridor Collective, made up of SHU inmates at PBSP, joined together to stop prison gang violence in order to make “substantive meaningful change to the CDCR” (Agreement to End Hostilities, 2012), which contradicted the CDCR’s platform that gang-affiliated inmates are incapable of nonviolence and therefore must be housed in isolation for the security of the facility. In addition to the five core demands issued by the hunger strikers, the Short Corridor Collective issued a statement

dubbed the Agreement to End Hostilities, which stated, “[w]e can no longer allow CDCR to use us against each other for their benefit!! Because the reality is that collectively, we are an empowered, mighty force, that can positively change this entire corrupt system into a system that actually benefits prisoners, and thereby, the public as a whole” (PHSS, 2012, p. 6). According to the agreement, all hostilities between racial groups in SHU, AdSeg, General Population, and County Jails were officially ceased after October 10, 2012. This collective action of inmates across the California prison system impacted the movement against solitary in such a way because the CDCR could no longer argue, without challenges, that SHU was a necessity to control violent gang members. The Short Corridor Collective created a foundation for the movement “that is awakening the conscience of the nation to recognize that we are fellow human beings...the nation is turning against solitary confinement” (Statement of plaintiffs on settlement of *Ashker v. Governor of California*, 2015). While the CDCR and the CCPOA continue to argue for the continued use of SHU in California prisons, the public is slowly turning away from the practice.

After nearly 12,000 incarcerated persons joined the fight against solitary the CDCR agreed to review the conditions of all SHU inmates who were validated as gang members or associates (Law, 2013). However, when the CDCR failed to make adequate changes to comply with the inmates 5 Core Demands (Prison Hunger Strike Solidarity, 2011, 1), inmates housed inside SHU across California joined together on July 8, 2013 and began the third massive hunger strike (Law, 2013). This third strike garnered the support of approximately 30,000 incarcerated individuals across the country (Law, 2013), and lasted 60 days (Bennion, 2015). The original 2011 hunger strike served as a

mobilizing factor for families whose loved ones were serving time inside SHU across California to join the 2013 hunger strikes.

Outside Organizing Strategies: CFASC.

The movement within the prisons to end solitary confinement motivated the family members of inmates to create an organization to mobilize outside the prison walls. California Families Against Solitary Confinement (CFASC) is an organization that supports the hunger strikers' efforts to promote cross-racial solidarity and intersectional organization. CFASC was established in July 2011 to support their loved ones who were overwhelmingly housed in Pelican Bay's SHU in conditions that have been widely recognized as torture (Solitary Watch, 2015). Established in Sacramento, California—approximately a seven hour drive to Pelican Bay—CFASC works to compile the writings and stories of individuals housed in SHU and providing inmates with a voice outside the walls of the facility (Solitary Watch, 2015). Their mission is “to stop the inhuman treatment of prisoners within the California Penal System, especially those held in solitary confinement, by providing information to the public about the present existing conditions within the system. This includes supporting the prisoners and their families in the prisoners' endeavors to obtain better treatment for themselves” (CFASC, 2011). CFASC works together with inmates currently held in long-term isolation to shift the perspective the CDCR has perpetuated to the world. Instead of the 'worst of the worst', these families work towards making the public understand that the individuals being subjected to this form of isolation are parents, spouses, siblings, and friends. This outside resistance movement is still widely recognized as important to the overall cause as it sparked the class action Federal lawsuit, *Ashker v. Governor of California*. CFASC

provided the movement with visibility and organizing that aided the hunger strikers' original movement to succeed in pressuring the CDCR to make reforms.

CFASC also supports the Short Corridor Collective's *Agreement to End Hostilities* (2012), which called for the end of all violence and hostility in California correctional facilities—both state and local—between inmate groups. In addition to amplifying the voices of the Short Corridor Collective to reach a broader audience within the general public, CFASC works with the families of incarcerated individuals to organize buses from Los Angeles counties to Pelican Bay State Prison in Crescent City, California. These trips are costly and time consuming, as it can take over seventeen hours to drive from southern California to the Oregon border where the facility is located. CFASC is part of a coalition designed to end long-term solitary confinement and works closely with other grassroots organizations, formerly incarcerated people, lawyers, and family members. CFASC participates in lobbying strategies in the state's capital, Sacramento, as well as the nation's. The awareness-raising and media outreach efforts of CFASC drew increased attention to the plight of inmates in long-term solitary confinement, and helped support a class action suit against CDCR. Inmates housed in SHU across California were able to gain momentum in the courts with the recent *Ashker v. Brown* (2015) settlement, which aims to reduce the number of individuals housed in SHU, as well as the reduction of years spent inside isolation units.

CFASC utilizes a successful framing strategy by removing the CDCR's label of "the worst of the worst," and instead rehumanizes individuals placed in SHU by calling on the public to realize their true nature: husbands, brothers, sons, uncles, and grandfathers. Dolores Canales, co-founder of CFASC, explains, "[CFASC is] organizing

and mobilizing across the state of California, raising awareness to these conditions that our *loved ones* were enduring” (Goodman, 2015). The individuals tortured daily through isolation units are not sub-human creatures undeserving of respect and protection; rather they are family members who have loved ones waiting for them outside of the prison. CFASC aims to remove the stigma attached to inmates and to ultimately rehumanize them.

Official Positions Against the Removal of SHU.

Many individuals viewed the hunger strikes as definitive proof that the CDCR needed SHU to run safely. Press Secretary Terry Thorton argued that the widespread nature of the hunger strike revealed how powerful prison gangs were in influencing the inner workings of the prison (Lovett, 2011). There was similar resistance to the removal of SHU from within the prison from correctional officers. A 2015 press release by the California Correctional Peace Officer Association (CCPOA) rejected the reforms against solitary confinement:

The CDCR’s decision to abandon policies proven to reduce prison violence is deeply concerning. In reviewing the agreement, it appears little attention was given to the conditions underlying the violence and gang problems in our prisons that precipitated the need for secure housing units... Our prisons are even more crowded now than they were in the 1980’s... dangerously low staffing levels add to the challenges correctional officers face. CCPOA believes this settlement will further exacerbate gang activity and prison violence that threatens the security of our institutions, and exponentially increasing risks to the safety of both correctional peace officers and inmates. (CCPOA, 2015, p. 1)

The CCPOA believes that housing individuals in SHU creates a safer environment for the prison staff and inmates alike; however, inmates who are placed in long term SHU often develop severe psychological problems while housed in isolation. The CCPOA justifies housing individuals in severe isolation, regardless of the negative affects, as a way to

protect both inmates and correctional officers from violence and gang activities.

Correctional officers are often hesitant to make any changes to SHU policies because officers working in secured units receive higher pay and benefits (Jamaa, Castellanos, Ashker, & Guillen, 2012); therefore, it is easy to see why they will form their own counter movement against the shift in providing better conditions to inmates.

In the same respect, correctional officers also disagree with the use of the term solitary confinement. According to the U.S. Department of Justice 2016 report concerning the use of solitary confinement, correctional officers disapprove of the term solitary confinement because in many facilities, both federal and state, house two inmates in a single SHU cell. This process—known as “double-celling”—is common; however, there has been no substantial research indicating that this somehow curbs the levels of mental illness among inmates living in SHU. Arguably, placing two individuals in a small concrete box for 23 hours a day for years at a time would cause more rehabilitative issues.

Inmates housed in SHU have no opportunities to participate in rehabilitative programs, such as Alcoholics Anonymous, Narcotics Anonymous, or General Education classes to obtain their GED. In an extreme case, Harold W. Clarke, the director of the Virginia Department of Corrections, argued, “there is no such thing as solitary confinement—nowhere in this country. That went out the window a long time ago” (Kumar, 2012). The policy of calling solitary confinement “segregation” is a direct attempt by both the CDCR, and the federal government, to continue using a well-documented form of torture to house thousands of individuals without suffering repercussions. The CCPOA, and the BOP, cites gang violence as a reason to keep

individuals housed in isolation, but the leaders of the massively successful hunger strikes were from different rival gangs and were still able to work together peacefully to ensure better treatment for inmates housed in California prisons. In fact, California prison officials claimed that the leaders of prison gangs orchestrated the hunger strikes in order to achieve general population status to sell drugs and influence gang activity outside the facility (St. John, 2013). Inmates struggle to create substantial social movements from within the facility, but the 2011 and 2013 hunger strikes were widely successful in helping create outside organizing strategies with similar goals. This collaboration between activists and inmates created and continues to create a national movement towards more humane treatment of incarcerated individuals at both the federal and state levels. The hunger strikes garnered enough media attention to influence policy changes across the nation, including New York banning the use of solitary confinement for inmates under the age of 21 (Winerip & Schwirtz, 2015).

Inmate Testimony.

Inmates are often one of the most marginalized populations in the public sphere. Popular media utilizes dehumanizing rhetoric to discuss inmate struggles; words like criminal, murderer, terrorist, and convicted felons automatically instill a certain degree of fear in the public. This fear leads people to believe that incarcerated people deserve what has happened to them in prison. This lack of empathy for 2.3 million human beings becomes toxic, causing inmates across the nation to be overwhelmingly misrepresented by the state and ignored by the public. Wilbert Rideau, who spent 44 years in Louisiana State Penitentiary, described his experience in SHU to the Washington Post:

Deprived of all human contact, you lose your feeling of connectedness to the world. You lose your ability to make small talk, even with the guard who shoves your meal through the slot in the door. You live in your head, for there is nothing else. (Solitary Confinement: Cruel, 2013)

During his stay in SHU, Mr. Rideau counted the 358 rivets of his cell repeatedly (Solitary Confinement: Cruel, 2013). Anthony Graves, former Texas SHU inmate of 18 years, argued that solitary confinement was designed to drive men insane (Goode, 2012).

Graves explained,

I lived behind a steel door that had two small slits in it, the space replaced with iron and wire, which was dirty and filthy. I had no television, no telephone and most importantly, I had no physical contact with another human being. (Goode, 2012)

Another Texas SHU inmate, Steven Woods, told the *New York Times* “the only physical contact we’ll get until they kill us is when the [correctional officers] hold our restrained arms while escorting us” (Blumenthal, 2006). Graves described his time in SHU as “emotional torture,” explaining that even two years after he was exonerated and released, he still feels stuck in isolation (Guenther, 2012). Even more troubling, Alfred Sandoval, an inmate housed in PBSP SHU allegedly found an administrative memo titled “The Function of the Control/SHU Units,” which outlined the use of solitary confinement for administrators to follow:

The function [of SHU] is to reduce prisoners to a state of submission essential for their ideological conversion...that failing, the next step is to reduce them to a state of psychological incompetence sufficient to neutralize them as efficient self-directed antagonists...that failing, the only alternative is to destroy them, preferably by making them desperate enough to destroy themselves. (Rodriguez, 2011, p. 1; Strickman, 2011, p. 2)

Dr. Grassian’s 1982 interview of an inmate at Walpole Penitentiary confirms that the administrative memo achieved its goal. The inmate described his experiences in SHU: “I

can't concentrate, can't read...your mind's narcotized...sometimes can't grasp words in my mind that I know. Get stuck, have to think of another word. Memory is going. You feel you are losing something you might not get back" (Guenther, 2012). Willie Bosket, who is scheduled to remain in SHU until 2046, described his life in SHU as "just blank...Everything is the same every day. This is hell. Always has been" (Eligon, 2008). Reginald Akeem Berry, Illinois SHU inmate, described his eight-year SHU sentence as a "daily struggle to keep your mind from unraveling" (Pupovac, 2008).

The United States use of solitary confinement as a way to repress political movements within the facility is extremely calculated. Ashker, Castellanos, and Franco from the PBSP-SHU Short Corridor Collective explained the historical use of SHU being used for the 'worst of the worst' as "a long slow death in hellish conditions...originally designed and perfected for the purpose of destroying political prisoners and now extend to a policy of mass incarceration" (Ashker, Castellanos, & Franco, 2014). In 1981, Irish inmate Bobby Sands urged inmates to form a hunger strike framing themselves as political prisoners, rather than criminals in order to gain international publicity (BBC, 1981). The framing of inmates as political prisoners is essential in altering the public's perception of their struggles.

The PBSP-SHU Short Corridor Collective organized the hunger strikes to unify inmates across the United States in an attempt to bring their struggles into the public eye. However, the hunger strikes were not well received by correctional staff. Robert Dragusica aka "Validated Bigfoot" from Delano AdSeg described correctional officers responses to hunger strikers: "Staff went into our cells in back-to-back searches and took everything personal to us. They poured coffee on our photographs and then turned our

water and toilets off. It was ugliness, human contemptibility at its utmost worst” (California Prison Focus, 2012). Correctional staff and administrators believed that reducing the use of solitary confinement would result in an “[exponentially increased] risk to the safety of both correctional peace officers and inmates” (CCPOA, 2015, p. 1), however, the lack of violent incidences directly following the *Ashker v. Brown* settlement “reflects the Institutional Gang Investigator’s (IGI) heavy handed influence in placing and retaining prisoners there under the now discredited and empty rhetoric of safety and security” (Rohrback, 2015, p. 1).

Incarcerated people, especially those who are held within extreme isolation, often cannot make any significant movements toward resistance due to their lack of connection to the outside world. Generally, the population outside of prison has little interest in or incentives to address the human rights violations occurring within these facilities. Due to these constraints and limited access to traditional forms of political protest or organization, inmates are then forced to find means of resistance within the prison that are able to reach the greater public. The most successful form of resistance from the inside has been in the form of hunger strikes, most notably the 2011 and 2013 hunger strikes that originated inside PBSP—SHU. This radical act of resistance attracted significant media attention to the practice of long-term solitary confinement and prompted international critiques from human rights advocacy groups.

Inmates housed in solitary confinement are at a severe disadvantage when it comes to the creation of social movements. They are isolated from the general public, which they need to gain support from in order for their movement to gain traction. More disheartening, the public they require support from generally views them as the worst of

the worst or criminals that to suffer in prison. In addition to the lack of support from the public, these individuals are isolated within the walls of the prison. Being housed in SHU without human contact for decades makes mobilizing difficult to do—however it is not impossible. As shown by the 2011 and 2013 hunger strikes, inmates are able to garner international attention to their struggles by simply refusing food. This non-violent form of social resistance was able to aid in the creation of multiple social movements, including CFASC, as well as a federal class action suit that has prompted changes within the prison regime across the state of California.

Chapter 5. Discussion

The Impact of *Ashker v. Brown* on California

Due to the limited time between the *Ashker v. Brown* settlement and this analysis, it is unclear what, if any, substantial changes will occur in California. However, the settlement does provide a brief look into what minor changes have been made in terms of SHU in the California prison system. The *Ashker* settlement created the SDP that allowed inmates to be removed from SHU after a successful four-year period without gang activity; however, the SDP consists of gaining insignificant incentives annually for four years. Along with the SDP, the CDCR created Security Threat Group (STG)-validation to remove gang validation as a means to place inmates in SHU for lengthy periods of time. California Prison Focus (CPF) argues that the STG system was a ploy by the CDCR to gain more funding and staff in order to increase the IGI staff, and to allow the CDCR along with the CCPOA to receive more state funding after the mandatory population cap enforced by the United States Supreme Court in 2011 (*Ashker*, 2012, p. 9). Ron Ahnen, President of CPF, explains that the new SDP does not prohibit individuals from being housed in solitary confinement for longer than four years because correctional officers can determine an inmate is not ready for the next phase of the program and therefore will remain isolated without oversight (Ahnen, 2012). The Short Corridor Collective issued a statement about the new program citing,

The STG-SDP is a smokescreen intended to enable [prison officials] to greatly expand upon the numbers held in solitary confinement—indefinitely. Their STG-SDP policy and program is a handbook to be used with limitless discretion to put whoever they want in isolation even without dangerous or violent behavior. (Ashker, Castellanos, & Franco, 2014, p. 2)

Ultimately, the SDP, along with the new STG validation policies, does little to provide substantive changes to the CDCR. The CDCR argues that they are making substantial changes to the policies surrounding SHU. One SHU inmate explains:

The goals we are currently pursuing are objectively incorrect. To reform the validation process is good, but as an ultimate objective it is not a resolution. It's a peripheral manifestation of the SHUs themselves. It's secondary, like bedsores on a cancer patient. Bandages and topical treatment are necessary, as a reformation of the validation process, to cure the bedsores, which are peripheral to the cancer, but the patient needs to be cured of the cancer. We are not going to be cured of perpetual isolation with Band-Aids, by reformation of the process, but only by dealing with the principle source of the illness—the SHU itself. (California Prison Focus, 2012, p. 1)

However, the STG-validation program and the SDP are not the only problems plaguing inmates in the CDCR's SHU. According to Taeva Fhesler from CPF, correctional officers at PBSP have implemented “welfare checks” on SHU inmates every thirty minutes (Fhesler, 2015). These checks occur approximately forty-eight times per day and result in sleep deprivation and prolonged exposure to loud noise (Fhesler, 2015), which are common practices of torture throughout the world (Rejali, 2007).

The CDCR's implementation of these welfare checks is a result of the *Coleman v. Brown* (2013) settlement in which the court ordered welfare checks to be completed to protect mentally ill inmates. However, the CDCR's response to this order is detrimental towards inmates with mental illnesses because the checks deprive them both of sleep, a recognized form of torture (Rejali, 2007), as well as any potential programming scheduled during the day. In addition to these disturbances, prison schedules are being altered, causing a decrease in shower times, yard time, and visitation periods for inmates on the approved visitation list (Fhesler, 2015). The loss of visitation privileges is particularly damaging for inmates housed in SHU. Losing the ability to touch or talk to

their family members will undoubtedly cause significant mental health problems when they are already kept away from human contact for extended periods of time.

The Future of Solitary Confinement in California.

The movement against solitary confinement in the United States is far from over. However, the social movements originating inside and outside California prisons indicate a positive shift in the progress to end long-term solitary confinement. The collective action of the Short Corridor Collective, CFASC, and litigation within the courts has proven to be a useful in gaining increased national and international scrutiny of the United States government's use of solitary confinement.

The Short Corridor Collective and CFASC are cautiously optimistic about the possibility of ending the use of SHU across the nation. However, three factors must be addressed before any real tangible changes can be made. One, the CDCR must remove the stigmatization and criminalization of mentally ill individuals within their custody. Inmates who suffer from mental illnesses are being abused within correctional facilities both in SHU and in general population. The CDCR has failed to protect this vulnerable population to such a degree that numerous lawsuits have been filed against California specifically. By removing the stigma attached to mental illness, the CDCR can begin to make changes regarding the treatment of mentally ill inmates. Second, the CDCR must change the rhetoric of “the worst of the worst” in regards to inmates believed to have gang affiliations. The CDCR and the CCPOA both cited gang membership as one of the largest threats to the security of the prison, but as shown through the collective hunger strikes—organized by rival gang leaders—inmates with gang affiliations are not inherently dangerous to the security of the prison. The use of STG does not remedy this

problem either. Instead, STG-validations actually increase the number of inmates that can be placed in SHU because it expanded what constitutes a threat to the facility.

Third, the United States government should refer to the United Nations definition of torture, rather than the Eighth Amendment's language. By adopting the United Nations definition inmates, could successfully argue that SHU, as well as other prison conditions, are either cruel or unusual. The current model only allows arguments to be made if an act or policy is both cruel and unusual. The mere fact that every correctional facility across the United States has some variation of SHU removes an inmate's Eighth Amendment protections.

Beaumont and Tocqueville reported that Eastern State Penitentiary's use of solitary confinement as a primary method of housing inmates would ultimately destroy the mind and kill the victim, and yet, nearly 200 years later, prison researchers, advocates, and inmates continue to struggle to end the torture of tens of thousands of incarcerated individuals in the United States. In an attempt to end what Angela Davis calls the 200 year old drama, this paper sheds some light onto what the public has determined to be an insignificant matter of interest or public inquiry. If "the degree of civilization in a society can be judged by entering its prisons," as Fyodor Dostoevsky once wrote, then the United States is not a civilized nation, and like Sisyphus, we are bound to repeat this hell for another 200 years.

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