

President Obama Orders New Limits on Solitary Confinement in Federal Prisons

By Jean Casella

Citing the “devastating, lasting psychological consequences” of solitary confinement, President Barack Obama announced a set of policy changes designed to significantly reduce the use of prison isolation. The changes, which apply only to the federal prison system, will have a limited initial impact on the total number of people held in solitary, but they set a powerful precedent for further reforms across the country.

In a commentary published on January 25 in the *Washington Post*, Obama begins by referencing the case of Kalief Browder, the young man who committed suicide after spending two years in pre-trial solitary confinement as a teenager on New York’s Rikers Island. Such “heartbreaking results,” the President writes, are the reason “why my administration is taking steps to address this problem.”

These steps include “banning solitary confinement for juveniles and as a response to low-level infractions, expanding treatment for the mentally ill and increasing the amount of time inmates in solitary can spend outside of their cells” within the federal prison system.

Mentioning his belief in “second chances” and “redemption” as well as “public safety,” Obama makes a powerful argument against solitary on both practical and moral grounds. “How can we subject prisoners to unnecessary solitary confinement, knowing its effects, and then expect them to return to our communities as whole people?” he asks. “It doesn’t make us safer. It’s an affront to our common humanity.”

In his reference to “unnecessary” solitary, however, the President clearly leaves the door open for some use of prison isolation. He acknowledges that “there are

circumstances when solitary is a necessary tool, such as when certain prisoners must be isolated for their own protection or in order to protect staff and other inmates. In those cases, the practice should be limited, applied with constraints and used only as a measure of last resort.”

The reforms announced by the President draw on a set of policy changes recommended by the Department of Justice. These resulted from a review of federal solitary confinement by a DOJ “Working Group” that included representatives of the federal Bureau of Prisons (BOP), Civil Rights Division, and various other bodies. Obama directed Attorney General Loretta Lynch to conduct the review last summer, when he first denounced solitary in a speech on criminal justice before the NAACP.

The Justice Department subsequently released the full report, which includes an overview of the use of “restrictive housing” in the federal system, followed by a set of 50 “guiding principles” and finally a series of “policy recommendations,” which are what Obama is codifying through executive action.

A close reading of the 123-page report reveals just how far these policy changes will go in reducing and reforming the use of solitary confinement, in the federal system and beyond.

Adding Up the Numbers

Obama’s op-ed is remarkable simply for its frank use of the term “solitary confinement.” Recently retired BOP Director Charles Samuels had repeatedly testified before Congress that restrictive housing in the federal system did not, in fact, constitute solitary confinement. (Samuels also, famously, had no idea of the size of a federal isolation cell.) In addition, in his reference to the “10,000 fed-

eral prisoners held in solitary confinement,” the President clearly included individuals in 23-hour-a-day lockdown in double cells in federal Special Housing Units (SHUs) and Special Management Units (SMUs).

To be precise, the review found that as of December 2015, the Bureau of Prisons held 9,914 people in solitary confinement, or “restrictive housing,” in BOP-run prisons, and an additional 924 in private contract prisons. This is slightly less than 6 percent of the total population of about 185,000 in all facilities. An unspecified additional number are held in isolation by the U.S. Marshals Service.

For a few specific categories of people, Obama’s policy changes will bring a near-complete ban on the use of solitary confinement by the BOP. This includes juveniles under the age of 18. In fact, however, very few children are held in federal custody—just 26 in December 2015, for example. Also virtually banned from solitary are women “who are pregnant, are postpartum, recently had a miscarriage, or recently had a terminated pregnancy.”

The policy recommendations also ban the use of Disciplinary Segregation for “low-level” disciplinary offenses, which include “Malingering/Feigning Illness,” “Abusive/Obscene Language,” and “Violating Visiting Regulations,” among others, as well as for first instances of “moderate-level” offenses. More significant are dramatic cuts in the length of time individuals can be placed in solitary in Disciplinary Segregation for more serious offenses, ranging from “Tattooing or Self Mutilation” to “Engaging in a Sex Act” to fighting, weapons possession, and assault. For example, the policy recommendations reduce the maximum amount of time in solitary for a first high-level offense from 365 days to 60 days.

Time cuts are also recommended for the men in the SMUs, mostly gang members going through a four-phase program meant to “correct inmates’ disruptive and violent behaviors.”

The policy recommendations call for something close to an eventual ban on the isolation of individuals with mental illness. Any people in solitary with “Serious Mental Illness” (SMI) are meant, under the new policies, to be rehoused in “Secure Mental Health Units.” To make this happen, the capacity of these units, which already exist, will need to be increased, and as the report notes, “Any expansion of these programs is contingent on increased funding.” The President’s 2017 budget includes a request for \$24 million to support these efforts.” However, a relatively small number of people held by the BOP are considered to have SMI, suggesting that federal prisoners are being underdiagnosed.

The policy changes also affect people in solitary for “Protective Custody,” which includes significant numbers of LGBT individuals, people convicted of sex offenses, and former gang members, among others. The new policies call for most of these people to be moved to Reintegration Housing Units—again, pending the expansion of these units, and the funds to pay for the expansion.

In one of its final policy recommendations, the report states: “Wardens at all BOP facilities will be directed to develop institution-specific plans for increasing the number of hours restrictive housing inmates spend outside of their cell, and allowing greater opportunities for rehabilitation and reentry services.”

The report further states that the DOJ “believes that reducing the total number of restrictive housing inmates will lessen the intense demands currently placed on officers assigned to SHU and SMU units, freeing up staff to provide additional programming and services for the remaining inmates in re-

strictive housing.” Nowhere, however, do the new rules set any minimum for out-of-cell time.

If all of the President’s directives are followed, and if they remain in place under a new president (since some will take years to implement), they stand to reduce the federal solitary population significantly. By the very roughest of estimates, they should eventually cut the number of people held in solitary by the BOP by perhaps a third. But as with all prison reforms, only implementation will tell the real story and yield the final numbers.

Reading Between the Lines

Opponents of solitary confinement have much to celebrate in Obama’s actions. The very fact that a sitting president chose to take on an issue that was all but invisible only five years ago is remarkable in itself. Advocates who have been working on the issue for years can be encouraged by the eloquence of the President’s denunciation, and by the spirit as well as the letter of the policy changes laid out by the DOJ.

The reforms Obama announced put the federal government at least in line with states like New York and California, which recently announced their own plans to reduce the use of solitary. But those states had their hands forced by lawsuits, whereas at the federal level change came as a result of Obama’s leadership. And if, as the President hopes, the reforms also “serve as a model for state and local corrections systems,” most of whom have still done little or nothing to reduce solitary, the impact on the approximately 100,000 individuals in isolation nationwide could be greater.

Yet if one accepts—as Obama himself seems to—that long-term solitary is at best inhumane and damaging, and at worst torture, then there are troubling aspects to these (and most other) solitary reforms.

For one thing, the changes leave much to the good faith of wardens and

other prison staff—a group not famous for its opposition to solitary confinement. For example, the lack of specific minimums for out-of-cell time, or other enforceable minimum standards for the treatment of individuals held in isolation, mean that the thousands of people who will remain in solitary confinement after the reductions take effect may experience no change whatsoever as a result of the President’s reforms.

This is because, by relying on an incremental approach, the reforms threaten to create two classes of people in prison. On one side are those who do not need or deserve to be in solitary and must be released: children, people with mental illness, other vulnerable populations, and individuals who committed only low-level violations of prison rules. On the other side are the rest, who, by implication, belong where they are.

The latter group tends to be left out of solitary reforms altogether. Yet in reality, those deemed least “deserving” of relief from the torments of solitary are often among the very people who need it most, because they have been in solitary the longest and in the most extreme conditions of isolation and sensory deprivation. In the federal prison system, 400 men live in such conditions in ADX federal supermax in Florence, Colorado, and Obama’s reforms seem to have little to offer them.

This is not to say that the President’s reforms are insignificant—only that they are incomplete. If Obama wishes to show further leadership on this issue, he will insist on humane conditions—and perhaps even “second chances”—for all people held in federal custody. In the meantime, the danger is that the public and policymakers will think that the work on this issue is done. Most advocates, on the other hand, know there is still a long road ahead, as do the tens of thousands of people who remain in solitary confinement in American prisons at this moment.

Voices from Solitary: A Breath of Air

By Judith Vazquez

There are things that people experience every day and take for granted. Things such as nature. Who would ever think that to be denied nature would be such a big deal? I had no open window in my solitary cell. My window was about four inches wide and maybe three feet tall. My view consisted of just bricks and barbed wire. If I could see maybe a dime-sized piece of the sky, it was a lot. As time went by, I noticed a little plant growing from between the bricks. I would look at that plant every day. It was the only view of nature I had. Oh boy, did I love that plant. It was my buddy, my pal. I would watch the breeze blow it from side to side and I would close my eyes and pretend that wind was blowing across my face. I never thought I would crave nature so badly.

As time passed, I started to resent the plant. I wanted to be the one feeling that breeze. One day I couldn't take it anymore, so I grabbed a plastic garbage bag and sealed it around the window, covering it completely. I refused to look at the plant enjoying the

breeze I craved. Months went by and the cell was dark all day long.

One day, I decided I had to tear down the plastic bag. I felt I had to find a way to get air! So I began to scrape the rubber seal that held the window



to the frame. I used by fingernails to scrape and scrape for days, weeks, and months. It got to the point that my fingernails began to bleed. They hurt so bad that I would cry. But I needed some air. I believe it took about six months of scraping and bleeding before I finally made a tiny little hole. Wow ... wait. ... Sorry, I had to stop writing, my tears started to come down as I remember what I went through in that room. At times, I feel it is just past and forgotten, but I guess not.

The hole wasn't big enough so that I

could feel a breeze come in, but it was big enough for me to hold my nose against it and inhale. Upon seeing this little opening, I acted savagely. I only had room to put one nostril at a time against the hole, and I would breathe in so hard. It gave me a sense of being human again. I had a secret in that room that the officers did not know about. It was my secret air supply, which was what kept me alive. I no longer felt jealous of the plant. If anything I sort of made the plant my friend again; it was all I had for company.

Thinking back about being in that cell brings tears to my eyes. Three years in a cell might not sound like so long to a civilian who has never been to jail. But I can tell you, those three years felt like a lifetime. It changes people. It turns you into someone you never thought you would be. Your life is just never the same. It's like when a soldier goes to war; there are things that will stay with that soldier forever, and he finds it hard to speak of, and he ends up having to live with PTSD. Well, being locked in a room for three years is just the same. It plays with your mind, with your emotions, with your life.

About Solitary Watch

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Solitary Watch (www.solitarywatch.com) is a web-based watchdog project aimed at bringing solitary confinement out of the shadows and into the light of the public square. Our mission is to provide the public—as well as practicing attorneys, legal scholars, law enforcement and corrections officers, policymakers, educators, advocates, and people in prison—with the first centralized source of background research, unfolding developments, and original reporting on solitary confinement in the United States.

The print edition of Solitary Watch is produced quarterly and is available free of charge to currently and formerly incarcerated people, to prisoners' families and advocates. To receive future copies, please send a request to the address or email above.

We also welcome accounts of life in solitary confinement, as well as stories, poems, essays, and artwork by people who have served time in isolation. Please send contributions to “**Voices from Solitary**” at the address above, and tell us whether you would like us to use your name or would prefer to remain anonymous.

Note: We regret that we cannot offer legal assistance or advice and cannot respond to requests for this type of help. Legal materials sent to us cannot be returned to the sender. We also cannot forward mail to others. Thank you for your cooperation.

News Briefs

LOUISIANA — In February, after spending 43 years in solitary confinement, Albert Woodfox of the “Angola 3” was released from prison at age 69. Woodfox’s 1972 conviction for the murder of a prison guard was overturned three separate times for a variety of constitutional violations. In 2015, a federal judge ordered Woodfox’s immediate release and barred his being tried again, but this decision was appealed by the state. Though he continues to maintain his innocence, concerns about his health and advancing age caused Woodfox to accept an agreement to plead “no contest” to lesser charges in order to ensure a speedy release.

ILLINOIS — In January, a major class action settlement was reached that promises to improve mental health care for people held in Illinois prisons. In the settlement, the Illinois Department of Corrections agreed to hire 300 new mental health workers, build new mental health care facilities, create 50 new hospital beds for individuals whose mental illness requires hospitalization, and to give 20 hours of out-of-cell time each week to persons with mental illness who are being kept in solitary confinement. The settlement will also release individuals with mental illness from solitary confinement if they were in solitary for minor reasons or as a result of behavior brought on by their mental illness. The lawsuit brought by the Uptown People’s Law Center stemmed from allegations of widespread mistreatment and under-treatment of mentally ill prisoners, including locking them in solitary instead of giving them proper care.

NEW YORK — A settlement reached in December promises incremental reforms to the use of solitary confinement in New York state prisons. The settlement between the New York Civil Liberties Union and the Department of Corrections reduced the number of violations punishable with solitary by more than half, and imposed a three-month maximum sentence of solitary confinement for most first-time offenses,

and a 30-day maximum sentence for almost all non-violent offenses. The proposed changes will bring a major shift to a state known for keeping people in solitary for long periods of time as punishment for minor infractions. The settlement will not affect those held in administrative segregation, whose presence in the general prison population is deemed to pose a risk. Those held in ad-seg include some individuals who have spent multiple decades in solitary, without breaking a single prison rule.

CALIFORNIA — The effects of the September 15th Pelican Bay settlement that promised to significantly curtail the use of solitary confinement in California prisons are beginning to be felt. The settlement ended indefinite solitary confinement, streamlined the process for getting out of solitary, and stopped the use of alleged associations with prison gangs as cause for putting an individual in solitary confinement. The settlement’s changes are poised to save California \$28 million in tax dollars. Since October, a third of those held in solitary have had their status reviewed, with a significant majority of them subsequently being cleared for release to the general population. However, not all recent changes in California prisons are positive. Since August, Pelican Bay prison has been doing “suicide checks” throughout the night on the men still held in solitary confinement, causing extreme sleep deprivation that prisoners’ rights activists say amounts to torture.

INDIANA — In February, a settlement was reached in a class-action lawsuit regarding the solitary confinement of individuals with mental illness in Indiana’s prisons. With some exceptions, the settlement prohibits solitary confinement for people with serious mental illness in Indiana state prisons, and requires a much more comprehensive mental health treatment plan for individuals who have been diagnosed.

This settlement agreement comes after a 2012 ruling that found the conditions and treatment provided for individuals with serious mental illness in Indiana state prisons to be in violation of the Eighth Amendment. Previously, the only regular assessments of incarcerated individuals by mental health professionals were conversations yelled back and forth through their closed, windowless cell doors.

OREGON — Choosing to forgo the costly litigation that other states have undergone, in January, the Oregon Department of Corrections agreed to reduce the use of solitary confinement of people with mental illness. The agreement includes requirements of 20 hours of out-of-cell time each week, significant improvements in mental health treatment, and more. These changes came after a damning May 2015 report issued by the Disability Rights Organization about the conditions of the units where mentally ill prisoners were held. Among other allegations, the report detailed a lack of mental health services and a “a culture that promotes unnecessary violence and retaliation by correctional staff.”

NEBRASKA — In January, the American Civil Liberties Union of Nebraska released a report that found frequent use of solitary confinement in the state’s juvenile detention facilities. Youths have apparently been sent to solitary for infractions as minor as note-passing. The report noted uneven policies regarding the isolation of juveniles in the nine detention facilities throughout the state. Some facilities frequently utilized solitary but would fail to document their use of the psychologically harmful practice. The report advocated for a ban on the use of solitary confinement with children, as well as increased transparency around the use of solitary confinement. Since the release of the report, lawmakers in Omaha have held hearings on juvenile solitary and introduced legislation to track and limit its use.

News Briefs by Jack Denton