

October 20, 2021

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Delivered via email, facsimile, and first-class mail

Re: Request for Immediate CRIPA Investigation of Solitary Confinement Practices and Security Threat Group Classifications in Texas Prisons

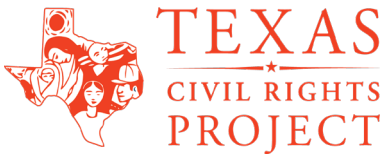
Dear Chief Rosenbaum:

We write on behalf of thousands of Texans currently incarcerated in the custody of the Texas Department of Criminal Justice (TDCJ) to report longstanding abuses of their federal civil rights. Approximately 4,500 people currently in TDCJ’s “restrictive housing”—in actuality, solitary confinement—suffer and are at risk of suffering severe and irreversible physical and psychological harm. Texas’s solitary confinement population is disproportionately Hispanic. Texas is a far outlier in the United States—in the number of people it subjects to solitary confinement, in the average length of time it imprisons people in solitary, and in the especially cruel conditions it layers on top of that social isolation. Pursuant to its authority under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 *et seq.*, we ask the United States Department of Justice Civil Rights Division to open an investigation into TDCJ’s solitary confinement practices and, if necessary, to institute an enforcement action to compel Texas to cease violating the federal constitutional rights of the people in its custody.

We are encouraged by DOJ’s commitment to protecting the constitutional rights of people incarcerated in Texas, as demonstrated by your recent decision to open a CRIPA investigation into the conditions at five juvenile facilities.¹ Indeed, Texas’s adult facilities warrant federal attention.

Texas incarcerates thousands of people in solitary confinement, in filthy, mold-infested cells that are smaller than an average parking space. Many people are not allowed to leave their cells for months at a time, and none are permitted human contact beyond the occasional touch from TDCJ staff when placed in handcuffs. TDCJ has subjected more than 1,000 people to these conditions for six or more years, more than 600 for ten or more years, and more than 100 for *twenty or more years*. This near-total social isolation wreaks havoc on the mental and physical health of

¹ *Justice Department Announces Investigation into Conditions at Five Juvenile Facilities in Texas*, Department of Justice Office of Public Affairs, Oct. 13, 2021, <https://www.justice.gov/opa/pr/justice-department-announces-investigation-conditions-five-juvenile-facilities-texas>.



those subject to it and stands in stark violation of the United States Constitution. Moreover, these people's day-to-day existence is subject to the arbitrary, ad-hoc, and often sadistic whims of TDCJ staff; in addition to the prohibition on human contact, they are regularly denied basic needs such as medical and mental health care, hygiene, adequate food and water, exercise, and environmental stimulation. Chronic understaffing only exacerbates these conditions. Although Texas is well aware of these facts it has taken no meaningful steps to remedy its practices. For example, while TDCJ did eliminate the use of "solitary confinement" for *punitive* reasons in late 2017, allowing it to claim a public relations victory, that decision affected only about 75 people.

Once relegated to solitary confinement it is often impossible for a person to make their way back to the general population. Hundreds of people have spent years in isolation based on little more than an escape attempt at the beginning of their sentence or TDCJ's unilateral determination that they are affiliated with one of several "security threat groups"—a label that discriminatorily and disproportionately punishes people of Hispanic or Latin descent and is also applied less severely to women. And because TDCJ does not provide any meaningful way to challenge one's placement, or to seek removal from solitary, the length of time spent in isolation is both indeterminate and indefinite. The uncertainty and stress caused by this broken system only adds to the trauma inflicted by the isolation itself.

The above description of TDCJ's solitary confinement practices and the conditions in its solitary confinement cells derives from a multi-year long investigation into TDCJ's practices carried out by TCRP staff and volunteers. We have sent and received hundreds of detailed surveys describing what life in solitary confinement is like in Texas, conducted and documented dozens of in-person interviews in TDCJ units across the state, and obtained thousands of pages of relevant information, primarily written policies, procedures, and incarcerated people's records, through Texas Public Information Act requests. We also published two widely-circulated reports detailing the cruelty of solitary confinement in Texas, as well as met with TDCJ's General Counsel and Deputy General Counsel to discuss the harm caused by solitary and ways to eliminate its use in Texas prisons.

Our investigation shows that Texas is an outlier in the United States—in the number of people it subjects to solitary confinement, in the average length of time it keeps those people in solitary, and in the especially cruel conditions it layers on top of that social isolation. But it is also apparent that we have uncovered only the tip of the iceberg. TDCJ has refused to produce much of the information we have requested, and our ability to dig deeper is necessarily hampered by our limited manpower as a small non-profit organization.

This letter therefore sets out our investigation in greater detail in the hope that the Department of Justice, which is on a more even footing with TDCJ, will open a similar investigation into TDCJ's solitary confinement practices. We begin by setting out pertinent background regarding Texas's prison system writ large, the state's familiarity with federal litigation over its unconstitutional practices, and the state's general solitary confinement policies. We then detail the expert consensus that solitary confinement constitutes torture and that Texas's solitary confinement practices buck the national trend towards reducing its use. Finally, we set out

our factual findings with respect to the particular harms suffered by individuals held in solitary confinement by TDCJ, the fact that TDCJ knows of and refuses to mitigate these harms, and the procedural morass that renders it near-impossible for any individual person, once assigned to solitary confinement, to return to the general population.

I. BACKGROUND

TDCJ will manage over \$3.4 billion in Fiscal Year 2021² and as of late 2019 operated more than 100 facilities³ with over 142,000 people incarcerated throughout the state.⁴ Of those held in TDCJ custody, an overwhelming majority (nearly 92%) are men, with Black, Hispanic, and White individuals each making up roughly one-third of the imprisoned population.⁵ On average, each person will spend nearly 20 years of their life imprisoned in TDCJ facilities.⁶

TDCJ is no stranger to the federal courts and has shown itself willing to waste taxpayer dollars to fight tooth and nail in order to avoid complying with the United States Constitution. For example, in 1980 and after an historic trial in *Ruiz v. Estelle*, the Southern District of Texas held that a panoply of conditions in TDCJ facilities, including extreme overcrowding and the failure to provide health care, violated the Eighth Amendment.⁷ This resulted in decades of federal oversight as the Court continued to find that TDCJ practices, particularly solitary confinement—the “almost total deprivation of human contact, mental stimulus . . . and human dignity” which laid bare a “frenzied and frantic state of human despair and desperation”—violated the Constitution.⁸ More recently, in 2017, the Southern District of Texas found it likely that TDCJ had violated the Eighth Amendment by failing to provide air conditioning to hundreds of vulnerable people in TDCJ’s Pack Unit who were affected by Texas’s sweltering, deadly summer heat.⁹ Texas Attorney General Ken Paxton responded to this ruling by arguing that “taxpayers shouldn’t be on the hook for tens of millions of dollars to pay for expensive prison air conditioning systems”¹⁰ despite the lawsuit

² Texas Department of Criminal Justice, *Operating Budget for Fiscal Year 2021* (Sept. 2020), https://www.tdcj.texas.gov/documents/bfd/Main_Operating_Budget_by_Goal_FY2021.pdf.

³ Texas Department of Criminal Justice Unit Directory, https://www.tdcj.texas.gov/unit_directory/index.html (last visited Aug. 31, 2021).

⁴ Texas Department of Criminal Justice, *Fiscal Year 2019 Statistical Report* at 1, available at https://www.tdcj.texas.gov/documents/Statistical_Report_FY2019.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ See generally *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff’d in part, rev’d in part*, 679 F.2d 1115 (5th Cir. 1982), *amended in part, vacated in part*, 688 F.2d 266 (5th Cir. 1982); <https://www.clearinghouse.net/detail.php?id=960> (summarizing the thirty year history of *Ruiz v. Estelle* and providing links to relevant docket entries).

⁸ See, e.g., *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 913 (S.D. Tex. 1999), *rev’d and remanded on other grounds sub nom. Ruiz v. United States*, 243 F.3d 941 (5th Cir. 2001); <https://www.clearinghouse.net/detail.php?id=960> (summarizing the thirty year history of *Ruiz v. Estelle* and providing links to relevant docket entries).

⁹ Jolie McCullough, “*The stakes could not be higher*”: Judge threatens to lock up Texas prison officials over air conditioning violation, THE TEXAS TRIBUNE, (Sept. 6, 2010), <https://www.texastribune.org/2010/09/06/texas-prison-officials-threatened-prison-air-conditioning/>.

¹⁰ Jolie McCullough, “*After sweltering temperatures killed Texas people, lawmakers vote to install air conditioning*,” THE TEXAS TRIBUNE, (May 14, 2021), <https://www.texastribune.org/2021/05/14/texas-prison-air-conditioning-legislature/>.

itself costing Texas taxpayers \$7.3 million in legal fees and ending in a settlement in which TDCJ agreed to provide air conditioning for an estimated cost of less than \$4 million.¹¹ TDCJ then violated the terms of the settlement in 2019, prompting the Court to hold an emergency hearing in which it remarked that perhaps the only way to ensure TDCJ’s compliance was to “have prison officials in prison at the same temperature.”¹²

It is against this backdrop that, according to data obtained by TCRP, TDCJ incarcerates around 4,500 individuals across at least 18 prison units¹³ in what it refers to as “restrictive housing.”¹⁴ According to TDCJ policy, a person is “considered to be in restrictive housing any time the [person] is separated from the general population by confinement, by themselves, in a cell for 22 hours or more each day.”¹⁵ This form of extreme isolation easily fits within the United States Department of Justice’s definition of “solitary confinement,”¹⁶ which is the more accurate term, along with “isolation,” that we use in this letter.

The vast majority of people confined to isolation are categorized as being in “security detention.”¹⁷ According to TDCJ policy, an incarcerated person is subject to placement in “security detention”—at least on paper—when they pose “a current escape risk,” a “threat to the physical safety of other offenders or staff, to include volunteers and contract staff,” a “threat to the order and security of the prison as evidenced by repetitive serious disciplinary violations,” or are “a confirmed member of a security threat group (STG).”¹⁸ As discussed in greater detail below, these subjective criteria are rife for abuse, with people reporting being put in isolation for transgressions as minor as spilling food on a TDCJ officer’s feet.

¹¹ *Id.*

¹² Jolie McCullough, “*The stakes could not be higher*”: Judge threatens to lock up Texas prison officials over air conditioning violation, THE TEXAS TRIBUNE, (Sept. 6, 2010), <https://www.texastribune.org/2019/09/06/texas-prison-officials-threatened-prison-air-conditioning/>.

¹³ As of June 2020, the Allred, Clements, Coffield, Darrington, Eastham, Ellis, Estelle, Ferguson, Hughes, Huntsville, Lewis, McConnell, Michael, Mountain View, Murray, Polunsky, Robertson, Stiles, and Telford Units had dedicated security detention wings. Another 31 units had “additional beds for Restrictive Housing.” TDCJ Response to TCRP Request for Public Information, June 29, 2020 (on file with TCRP).

¹⁴ Email from Patrick Vollmer, Asst. General Counsel, TDCJ, to Christopher Rivera, Paralegal & Office Manager, TCRP (Jun. 29, 2020); TDCJ Response to TCRP Request for Public Information, July 7, 2020 (on file with TCRP).

¹⁵ TDCJ Restrictive Housing Plan, August 2019 at 4.

¹⁶ “[T]he state of being confined to one’s cell for approximately 22 hours per day or more, alone or with other people, that limits contact with others.” U.S. Department of Justice, *Investigation of State Correctional Institution at Cresson*, at 5 (May 31, 2013), https://www.justice.gov/sites/default/files/crt/legacy/2013/06/03/cresson_findings_5-31-13.pdf (last visited Aug. 31, 2021); cf. *Wilkinson v. Austin*, 545 U.S. 209, 214, 224 (2005) (describing isolation as limiting human contact for 23 hours per day); *Tillery v. Owens*, 907 F.2d 418, 422 (3d Cir. 1990) (21 to 22 hours per day).

¹⁷ TDCJ policy sets out three categories of “restrictive housing”: “security detention,” “pre-hearing detention,” and “transient status pending the outcome of an Offender Protection Investigation.” TDCJ Restrictive Housing Plan, August 2019 at 4–5. The latter two, however, are both temporary statuses used for relatively short periods of time pending permanent assignment or release, which means most people in solitary fall under the label of “security detention.” See *id.* at 5, 9–10.

¹⁸ *Id.* at 4. As discussed in greater detail later, TDCJ policy defines an STG as “a group of offenders with a well organized structure, who routinely use violence, fear, and intimidation to further the group’s prohibited activities, and who the TDCJ [Correctional Institutions Director] determines poses a threat to the physical safety and security of staff, offenders, or the public.” TDCJ Security Threat Group Plan, April 2015 at 3.

Once placed in solitary, most incarcerated people’s only hope of returning to general population is that the State Classification Committee (SCC) approve their removal. However, the SCC only reviews each person’s placement once every six to twelve months. These reviews are perfunctory and often done without the incarcerated person’s participation and without any notice, notwithstanding written policy to the contrary. Some people report years and sometimes decades of clean disciplinary records without any change in their confinement; others that a single escape attempt decades earlier, without any disciplinary action in the intervening years, is still flagged in their review paperwork as the sole justification for their continued placement. Furthermore, those held in solitary due to purported membership in an STG are required to participate in a lengthy process during which they must publicly renounce their affiliation with the STG—even when TDCJ has inaccurately “confirmed” their membership—and undergo nine months of additional programming. Given the potentially violent consequences of public renunciation, it is no surprise that many people held in solitary due to a supposed STG affiliation do not pursue this avenue.

II. FACTUAL AND LEGAL ALLEGATIONS

There is broad expert consensus that the extreme isolation inherent in the concept of solitary confinement both causes, and implicates a substantial risk of, harm to the mental and physical health of those subject to it. While many states have recognized this fact and begun to limit their use of solitary confinement, Texas remains an outlier, holding more people in isolation, for longer periods of time, than any other reporting state.

Moreover, TCRP’s on-the-ground investigation demonstrates that Texas’s solitary confinement practices are especially cruel beyond the already unconstitutional harm caused by isolation in and of itself. As described in greater detail below, the mental trauma and risk of trauma inflicted by extreme isolation is exacerbated by TDCJ’s failure to provide those incarcerated in solitary with adequate medical and mental health care, or even such basic human needs such as hygiene, adequate food and water, and environmental stimulation. This all occurs within the four corners of decrepit, deteriorating prison cells smaller than a standard parking space. On top of that, TDCJ prisons are chronically understaffed, worsening virtually all of these conditions and generating additional friction between people and staff. Despite knowing all of this, TDCJ remains deliberately indifferent and has refused to take any action to alleviate these egregious constitutional violations.

A. Experts Agree that Solitary Confinement is Torture

Imprisonment in solitary confinement is increasingly recognized by medical and mental health professionals, scholars, scientists, and advocates throughout the United States and around the world as torture. People subjected to solitary confinement are more likely to exhibit anxiety, depression, insomnia, confusion, withdrawal, emotional flatness, cognitive disturbances, hallucinations, paranoia, psychosis, and suicidality.¹⁹ “Nearly every scientific inquiry into the

¹⁹ Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 130–131 (2003).

effects of solitary confinement over the past 150 years has concluded that subjecting an individual to more than 10 days of involuntary segregation results in a distinct set of emotional, cognitive, social, and physical pathologies.”²⁰ People in isolation “suffer from a similar range of symptoms irrespective of differences in the physical conditions in various prisons and in the treatment of isolated inmates.”²¹ Studies also show that some people will continue to suffer from the consequences of isolation after they are released, with some suffering from permanent harms.²² Because of their experience in solitary, many people are never able to resume normal, productive lives.²³

Over a century ago, the United States Supreme Court observed that

[people subject to isolation] fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.

In re Medley, 134 U.S. 160, 168 (1890). More recently, members of the Supreme Court have acknowledged the grave effects of solitary confinement and the serious constitutional issues the practice raises. In 2015, Justice Kennedy observed that prolonged isolation “exact[s] a terrible price,” including “common side-effects . . . [of] anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors.”²⁴ And in 2018, Justice Sotomayor wrote that “we do know that solitary confinement imprints on those that it clutches a wide range of psychological scars Courts and corrections officials must accordingly remain alert to the clear constitutional problems raised by keeping people . . . in ‘near-total isolation’ from the living world in what comes perilously close to a penal tomb.”²⁵

²⁰ David H. Cloud, *et al.*, *Public Health and Solitary Confinement in the United States*, 105 Am. J. of Pub. Health 18, 21 (2015); see Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U.J.L. & Pol’y 325, 338 (2006) (“By now the potentially catastrophic effects of restricted environmental stimulation have been the subject of voluminous medical literature.”).

²¹ Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime & Justice 441, 488 (2006), <https://www.jstor.org/stable/10.1086/500626>.

²² Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. Rev. L. & Soc. Change 477, 534–39 (1997); Grassian, *supra* note 22 at 332–33.

²³ See Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 Crime and Delinquency 124, 141 (2003) (“Those who are not blessed with special personal resiliency and significant social and professional support needed to recover from such atypical and traumatic experiences may never return to the free world and resume normal, healthy, productive social lives. These are extraordinary—I believe often needless and indefensible—risks to take with the human psyche and spirit.”).

²⁴ *Davis v. Ayala*, 135 S.Ct. 2187, 2210 (Kennedy, J., concurring) (citing Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U.J.L. & Pol’y 325 (2006)).

²⁵ *Apodaca v. Raemisch*, 139 S. Ct. 5, 9, 10 (2018) (statement of Sotomayor, J., respecting the denial of certiorari) (citation omitted).

As one prison staff psychiatrist stated in 2002, “[i]t’s a standard psychiatric concept, if you put people in isolation, they will go insane Most people in isolation will fall apart.”²⁶ The psychological effects of isolation include anxiety, depression, insomnia, confusion, withdrawal, emotional flatness, cognitive disturbances, hallucinations, paranoia, psychosis, and suicidality.²⁷ These effects begin to manifest within hours or days of isolation, worsening with time and causing permanent damage, especially to those who linger in isolation for months or years.²⁸ For some people, isolation “can be as clinically distressing as physical torture.”²⁹ Numerous studies show that people in isolation are more likely to engage in self-harm, self-mutilation, and suicide than those in the general prison population.³⁰ In systems where the percentage of people in isolation is

²⁶ Human Rights Watch, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, at 149 (2003), <https://www.hrw.org/sites/default/files/reports/usa1003.pdf> (emphasis omitted).

²⁷ E.g., Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinquency* 124, 130–131 (2003); Bruce Arrigo & J. Bullock, *The Psychological Effects of Solitary Confinement on People in Supermax Units: Reviewing What We Know and What Should Change*, *International Journal of Offender Therapy and Comparative Criminology*, 52, 622–640 (2008); Kristin Cloyes, David Lovell, David Allen & Lorna Rhodes, *Assessment of Psychosocial Impairment in a Supermaximum Security Unit Sample*, *Criminal Justice and Behavior*, 33, 760–781 (2006); Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, *Washington University Journal of Law & Policy*, 22, 325–383 (2006); Craig Haney, *Restricting the Use of Solitary Confinement*, *Annual Review of Criminology*, 1, 285–310 (2018); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: The Psychological Consequences of Solitary and Supermax Confinement*, 23 *N.Y.U. Rev. L. & Soc. Change* 477 (1997); and Peter Smith, *The Effects of Solitary Confinement on Prison People: A Brief History and Review of the Literature*, in Michael Tonry (Ed.), *Crime and Justice* (pp. 441–528). Volume 34. Chicago: University of Chicago Press (2006).

²⁸ See Nadia Ramlagan, *Solitary Confinement Fundamentally Alters the Brain, Scientists Say*, AAAS.org (Feb. 15, 2014), <https://www.aaas.org/news/solitary-confinement-fundamentally-alters-brain-scientists-say> (describing emerging neuroscience findings that solitary confinement is likely to permanently alter the brain); Joseph Stromberg, *The Science of Solitary Confinement*, *Smithsonian* (Feb. 19, 2014), <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/?no-> (same); see also Shruti Ravindran, *Twilight in the Box*, *Aeon*, <http://aeon.co/magazine/living-together/what-solitary-confinement-does-to-the-brain/> (summarizing research on animals in isolation and conditions of sensory deprivation); David Brooks, *The Archipelago of Pain*, *N.Y. Times*, Mar. 7, 2014, <http://www.nytimes.com/2014/03/07/opinion/brooks-the-archipelago-of-pain.html> (describing and condemning the psychological torment of long-term solitary confinement and referencing studies of animals in comparable conditions); and Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, *Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement*, 79 *J. of Abnormal Psychol.* 54, 57–58 (1972) (finding lower levels of brain function, including a decline in EEG activity after only seven days in solitary confinement).

²⁹ Jeffrey Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 *J. Am. Acad. Psychiatry & L.* 104, 104 (2010), <http://jaapl.org/content/jaapl/38/1/104.full.pdf>.

³⁰ Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime and Delinquency* 124, 130–131 (2003); see Fatos Kaba, et. al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104(3) *American Journal of Public Health* 442, 445 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/pdf/AJPH.2013.301742.pdf> (finding that people in isolation in New York City jails were approximately 6.9 times more likely to commit suicide and self-mutilation than those in the general jail population); Ildiko Suto, *Inmates Who Attempted Suicide in Prison: A Qualitative Study*, at 23, 29 (July 27, 2007) (Ph.D. dissertation, Pacific University), <https://commons.pacificu.edu/work/sc/27fa646e-1a00-4249-acb6-0bfd8846d151> (identifying isolation as one of the main risk factors in suicidal thoughts and suicide attempts for people in Oregon); *Ind. Prot. & Advocacy Servs. Comm’n v. Comm’r*, 2012 WL 6738517, at *16 (S.D. Ind. Dec. 31, 2012) (noting that solitary confinement in Indiana resulted in a disproportionately higher percentage of suicides compared with people in the general population).

2% to 8%, 50% of system-wide suicides occurred in isolation.³¹ Between 2015 and 2018, at least 17 Texas people confined to isolation cells committed suicide.³²

Overwhelming research also shows that people in isolation are at risk of negative physiological consequences. Common physical symptoms include: severe headaches; heart palpitations and increased heart rate; chest, abdominal, neck, and back pain; problems with digestion, diarrhea, and weight loss; loss of appetite; and dizziness and fainting.³³ Researchers have observed lower levels of brain function because of isolation, including a decline of electroencephalogram activities after only seven days in isolation.³⁴ Sensory deprivation causes the body to produce increased cortisol, “well-documented to have negative health consequences for both the body and the brain,” and which negatively affects cognition, mood, and well-being.³⁵ The detrimental effects of sensory deprivation occur after as little as two days, and the risk increases the longer an individual is subjected to deprivation.³⁶ Because human brains are designed for social interaction, social isolation also results in neurological changes to the brain, quickly degrading brain function.³⁷

Although all people in solitary confinement are at risk of harm, some are more susceptible to serious health consequences because of their disabilities, age, health conditions, or other characteristics. People with psychiatric or intellectual disabilities are more sensitive and reactive to psychological stressors and emotional pain. As a result, isolation may worsen and intensify pre-existing mental health symptoms such as depression, paranoia, psychosis, and anxiety, and can cause severe impairment in isolated individuals’ ability to function.³⁸ As a federal court explained decades ago in enjoining the solitary confinement of seriously mentally ill people, isolating such individuals “is the mental equivalent of putting an asthmatic in a place with little air to breathe.”³⁹

³¹ Stuart Grassian & Terry Kupers, *The Colorado Study vs. the Reality of Supermax Confinement*, at 11 (Mar. 6, 2012), [https://www.probono.net/people/stopsol-reports/416638.The Colorado Study vs the Reality of Supermax Confinement](https://www.probono.net/people/stopsol-reports/416638.The_Colorado_Study_vs_the_Reality_of_Supermax_Confinement).

³² Texas Civil Rights Project, *Torture by Another Name: Solitary Confinement in Texas*, at 8 & n.57, Oct. 2019, available at <https://texascivilrightsproject.org/wp-content/uploads/2019/10/2019-SolitaryConfinement-Report.pdf>.

³³ Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUSTICE 441, 488 (2006), <https://www.jstor.org/stable/10.1086/500626>.

³⁴ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U.J.L. & Pol’y 325, 335–36 (2006)).

³⁵ Edward Vessel & Steven Russo, *Effects of Reduced Sensory Stimulation and Assessment of Countermeasures for Sensory Stimulation Augmentation*, NASA, at 20, 23, 28, 51–52, 65–66 (May 2015), <http://kinetic-cna.pl/web/pageFiles/kcfinder/files/adaptacja%20synaptyczna%20ARc.pdf>.

³⁶ *Id.* at 22, 28.

³⁷ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U.J.L. & Pol’y 325, 331 (2006)).

³⁸ Human Rights Watch, *Callous and Cruel: Use of Force against Inmates with Mental Disabilities in US Jails and Prisons* (May 12, 2015), <https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and>.

³⁹ *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995). The decisions of numerous federal courts accord with this view. *See, e.g., Braggs v. Dunn*, 257 F. Supp. 3d 1171, 1246 (M.D. Ala. 2017); *Graves v. Arpaio*, 48 F. Supp. 3d 1318, 1335–36 (D. Ariz. 2014); *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1099 (E.D. Cal. 2014); *Indiana Protection and Advocacy Serv. Comm’n v. Comm’r, Indiana Dep’t of Corr.*, 2012 WL 6738517, at *15–17 (S.D. Ind. Dec. 31, 2012); *Jones El v. Berge*, 164 F. Supp. 2d 1096, 1119–23 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), *rev’d on other grounds*, 243 F.3d 941 (5th Cir. 2001); *Casey v. Lewis*, 834 F. Supp. 1477, 1549–50 (D. Ariz. 1993); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1988).

Professional correctional and healthcare guidelines reflect this understanding. For example, the American Psychiatric Association advises against isolation of juveniles and people with mental illness.⁴⁰ The National Commission on Correctional Health Care states that people with mental illness, juveniles, and pregnant individuals should never be in isolation, and that no other individual should be there for more than 15 days.⁴¹ The American Public Health Association advises against isolating juveniles and people with mental illness, and states that no one should be isolated as a disciplinary sanction.⁴² The American Bar Association asserts that isolation should not be allowed for anyone.⁴³ The American Medical Association recently called for the elimination of solitary confinement for individuals with mental illness and the implementation of alternatives to solitary confinement in all correctional facilities.⁴⁴ The bipartisan Commission on Safety and Abuse in America's Prisons overseen by the Vera Institute of Justice recommended that correctional facilities "[e]nd conditions of isolation," calling solitary confinement "expensive and soul-destroying."⁴⁵ Members of the Commission include a former Chief Judge of the U.S. Court of Appeals for the Third Circuit, a former Attorney General of the United States, a former Director of the Southern Center for Human Rights, a former incarcerated person, and a former federal prison warden.⁴⁶ And the Association of State Correctional Administrators has acknowledged that "[p]rolonged isolation of individuals in jails and prisons is a grave problem in the United States" and that "[c]orrectional leaders across the country are committed to reducing the number of people in restrictive housing and altering what it means to be there."⁴⁷

⁴⁰ Am. Psychiatric Ass'n, *Position Statement on Segregation of People with Mental Illness* (Dec. 2012), <https://www.psychiatry.org/File%20Library/Learn/Archives/Position-2012-People-Segregation.pdf>; Am. Psychiatric Ass'n, *Position Statement on Solitary Confinement (Restricted Housing) of Juveniles* (July 2018), <https://www.psychiatry.org/File%20Library/About-APA/Organization-Documents-Policies/Policies/Position-2018-Solitary-Confinement-Restricted-Housing-of-Juveniles.pdf>.

⁴¹ Nat'l Comm'n on Corr. Health Care, *Solitary Confinement (Isolation)* (Apr. 2016), <https://www.ncchc.org/solitary-confinement>.

⁴² See Am. Pub. Health Ass'n, *Solitary Confinement as a Public Health Issue*, <https://apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>; AM. PSYCHIATRIC ASS'N, *PSYCHIATRIC SERVICES IN CORRECTIONAL FACILITIES* (3d ed. 2016).

⁴³ AM. BAR ASS'N, *ABA STANDARDS FOR CRIMINAL JUSTICE, TREATMENT OF PEOPLE* 95 (3d ed. 2011) ("Conditions of extreme isolation should not be allowed regardless of the reasons for a prisoner's separation from the general population. Conditions of extreme isolation generally include a combination of sensory deprivation, lack of contact with other persons, enforced idleness, minimal out-of-cell time, and lack of outdoor recreation."), https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_treatmentpeople/.

⁴⁴ Am. Medical Assoc., *Reducing the Use of Restrictive Housing in People with Mental Illness*, Res. 412.2018 at 641, <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/public/hod/a18-reference-committee-reports.pdf>.

⁴⁵ John J. Gibbons & Nicholas de Belleville Katzenbach, *Confronting Confinement: A Report of The Commission on Safety & Abuse in America's Prisons*, 22 Wash. Univ. J. Law & Policy 385, 467, 470 (June 2006), <https://goo.gl/YdoFCp>.

⁴⁶ *Id.* at 395–97; see also John E. Dannenberg, *Confronting Confinement, A Report On Safety and Abuse In America's Prisons* (Feb. 15, 2007), Prison Legal News, goo.gl/OfiEJb.

⁴⁷ Press Release, Ass'n of State Corr. Adm'rs, *New Report on People in Administrative Segregation Prepared by the Association of State Correctional Administrators and the Arthur Liman Public Interest Program at Yale Law School* (Sept. 2, 2015).

Similarly, in 2016 the Department of Justice recommended significantly limiting the use of solitary confinement.⁴⁸ Specifically, it recommended against placing juveniles and pregnant women in isolation.⁴⁹ It also recommended that absent special circumstances, people with serious mental illness should not be placed in isolation.⁵⁰ It said that isolation for “low level” offenses should be eliminated, and that people should spend less time in isolation for other offenses.⁵¹ When people must be isolated, they should be housed “in the least restrictive setting necessary” to ensure the safety of all people; that placement be based on specific, “clearly articulate[d] reasons”; and that the placement serve “a specific penological purpose.”⁵² Then-President of the United States Barack Obama ordered executive departments and agencies to implement these recommendations: “it is critical that DOJ accelerate efforts to reduce the number of Federal inmates and detainees held in restrictive housing and that Federal correctional and detention systems be models for facilities across the United States.”⁵³

This same consensus is reflected outside the United States. International human rights organizations and bodies, including the United Nations, have condemned prolonged solitary confinement and especially solitary confinement of vulnerable populations like people with mental illness. In 2015, the U.N. General Assembly revised its Standard Minimum Rules for the Treatment of People (renamed the “Mandela Rules”) to state that, “[s]olitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review.”⁵⁴ The Mandela Rules forbid indefinite or prolonged use of isolation (defined as anything more than 15 consecutive days) and restrict its use for people with mental or physical disabilities.⁵⁵ Similarly, the United Nations Special Rapporteur on Torture has condemned such solitary confinement practices as cruel, inhuman and degrading treatment that can amount to torture.⁵⁶ Human Rights Watch recommends that people with mental disabilities should not be housed in solitary confinement.⁵⁷ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has recommended that, due to its potentially hazardous effects, isolation should only be used as punishment in exceptional cases and for the shortest period possible.

⁴⁸ U.S. Dep’t of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing*, at 104–16 (Jan. 2016), <https://www.justice.gov/archives/dag/file/815551/download>.

⁴⁹ *Id.* at 101, 102.

⁵⁰ *Id.* at 99–101.

⁵¹ *Id.* at 109–10.

⁵² *Id.* at 94.

⁵³ Presidential Memorandum on Limiting the Use of Restrictive Housing by the Fed. Gov’t from President Barack Obama to the Heads of Exec. Dep’t and Agencies (Mar. 1, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/03/01/presidential-memorandum-limiting-use-restrictive-housing-federal>.

⁵⁴ G.A. Res. 70/175, at 17, U.N. Doc. A/RES/70/175 (Dec. 17, 2015), <https://undocs.org/A/RES/70/175>.

⁵⁵ *Id.*

⁵⁶ Juan Mendez, *Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 77, U.N. Doc. A/66/268 (Aug. 5, 2011).

⁵⁷ Human Rights Watch, *Callous and Cruel: Use of Force against Inmates with Mental Disabilities in US Jails and Prisons* (May 12, 2015), <https://www.hrw.org/report/2015/05/12/callous-and-cruel/use-force-against-inmates-mental-disabilities-us-jails-and>.

In sum, there is clear consensus among the medical, legal, and correctional communities, both domestic, and international: solitary confinement causes severe harm to the mental and physical health of those subject to it. Yet as discussed in greater detail below, Texas continues to incarcerate more people in isolation, for longer periods of time, than any other reporting state.

B. Even as Other States Move Away from Solitary, Texas Continues to Imprison More People in Isolation, for Longer Periods of Time, than Any other State

The above consensus has led states across the country to begin limiting their use of solitary confinement, both as a result of litigation successfully challenging its use as unconstitutional and due to voluntary changes.

For example, after litigation, New York, California, Georgia, and Arizona have all agreed to substantially limit the use of extreme isolation.⁵⁸ Both these state correctional systems and others have also recognized the harm caused by isolation and have voluntarily implemented measures to dramatically reduce its use. For instance:

- In Colorado, after subjecting himself to just 20 hours in isolation, the former Director of Corrections implemented policies that reduced the population in isolation from over 7% to less than 1% of its prison population.⁵⁹ Since these reforms were implemented, the rate of assaults on staff have decreased by half.⁶⁰ Colorado has also limited the use of isolation to 15 days maximum, in compliance with the United Nations Mandela Rules, and prohibited by statute the use of isolation for severely mentally ill people.⁶¹
- Maine enacted reforms that cut its population in isolation by half, and provided increased programming and environmental stimulation for those that remain in isolation. There has been no statistically significant rise in violence, and by some measures the violence in Maine has decreased.⁶²

⁵⁸ See Settlement Agreements in *Peoples v. Fischer*, 1:11-cv-02694, Doc. 137 (S.D.N.Y. 2011); *Ashker v. Brown*, 4:09-cv-05796, Doc. 424 (N.D. Cal. 2009); *Gumm v. Ford*, 5:15-cv-00041, Doc. 256 (M.D. Ga. 2015); *Parsons v. Ryan*, 2:12-cv 00601, Doc. 1185 (D. Ariz. 2012).

⁵⁹ Rick Raemisch, Op-Ed., *My Night in Solitary*, N.Y. Times, Feb. 20, 2014, <https://www.nytimes.com/2014/02/21/opinion/my-night-in-solitary.html>; Rick Raemisch & Kellie Wasko, Colo. Dep't of Corr., *Open the Door—Segregation Reforms in Colorado*, at 2–3 (2015), <https://drive.google.com/file/d/0B30yLI0I1yBRY2h2UDBCZ0Q5WIE/view>.

⁶⁰ *Id.* at 9.

⁶¹ Association of State Correctional Administrators & Arthur Liman Center For Public Interest Law at Yale Law School, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell*, 67 (Oct. 2018), available at https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca_liman_2018_restrictive_housing_revised_sept_25_2018_-_embargoed_unt.pdf.

⁶² American Civil Liberties Union of Me., *Change is Possible: A Case Study of Solitary Confinement Reform in Maine*, at 31 (Mar. 2013), https://www.aclumaine.org/sites/default/files/field_documents/aclu_solitary_report_webversion.pdf.

- Mississippi enacted reforms at one institution that cut its population in isolation down from 1,000 to 150, and eventually closed the entire unit.⁶³ In July 2019, New Jersey enacted a law limiting the use of solitary to no more than 20 consecutive days.⁶⁴
- In 2019 Minnesota passed legislation requiring a psychological screening before those exhibiting signs of mental illness may be placed in solitary confinement, as well as daily wellness checks and reporting requirements to track the number of people in solitary confinement.⁶⁵
- Idaho is just beginning its reforms, but it has already stopped placing women in isolation, and reduced the number of men it isolates by more than 50%.⁶⁶
- Since 2015, North Dakota has reduced its population in isolation by 60 to 70%, and has experienced a sharp decline in prison violence.⁶⁷
- Since 2016, New York has reduced its population in isolation by 35%, reduced the average length of stay in isolation by 35%, and reduced the number of individuals serving over 365 days in isolation by 85%.⁶⁸
- In 2020, Washington, working with the Vera Institute of Justice, reduced the number of people in solitary confinement by 10%.⁶⁹
- Inclusive of the above, in 2019 twenty-eight states introduced legislation to ban or restrict solitary confinement, and twelve states passed reform legislation limiting its use: Arkansas, Connecticut, Georgia, Maryland, Minnesota, Montana,

⁶³ Terry A. Kupers, et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 *Criminal Justice & Behavior* 1037, 1041 (2009) https://www.aclu.org/sites/default/files/field_document/asset_upload_file359_41136.pdf; John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, GOVERNING, Aug. 2010, at 20, 27, https://drjdbij2merew.cloudfront.net/GOV/GOV_Mag_Aug10.pdf.

⁶⁴ Catherine Kim, *Solitary confinement isn't effective. That's why New Jersey passed a law to restrict it*, VOX (July 11, 2019), <https://www.vox.com/policy-and-politics/2019/7/10/20681343/solitary-confinement-new-jersey>.

⁶⁵ Minn. Stat. § 243.521.

⁶⁶ Ass'n of State Corr. Adm'rs & Arthur Liman Pub. Interest Program, *Working to Limit Restrictive Housing: Efforts in Four Jurisdictions to Make Changes*, YALE L. SCH., at 7 (2018), https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca_liman_2018_workingtolimit.pdf.

⁶⁷ *Id.* at 8; David Kidd, *Tender Justice, North Dakota is Conducting a Prison Experiment Unlike Anything Else in the United States*, GOVERNING, Aug. 2018, at 46, 50-51, https://archives.erepublic.com/GOV/GOV_Mag_Aug2018.pdf.

⁶⁸ New York Department of Corrections and Community Supervision, *2019 Annual Update: DOCCS Continues to Improve the Conditions and Reduce the Use of Solitary Confinement in its Facilities*, <https://doccs.ny.gov/system/files/documents/2020/09/2019-annual-shu-update.pdf>.

⁶⁹ Rachel Friederich, *Washington Corrections Continues Restrict Housing Reforms*, WASHINGTON DEP'T OF CORRECTIONS, Oct. 28, 2020, <https://www.doc.wa.gov/news/2020/10282020.htm>.

Nebraska, New Jersey, New Mexico, Texas,⁷⁰ Washington, and Virginia.⁷¹

Texas has not joined this trend. Rather, as reported by the Arthur Liman Center for Public Interest Law at Yale Law School in 2020, which collected data on time-in-isolation for 2019 from 33 reporting states, the approximately 4,500 people TDCJ held in solitary confinement that year was nearly double the solitary confinement population of the next-highest reporting state, Missouri.⁷² Moreover, the 1,124 people held in solitary for “6 or more years” in Texas—the greatest duration recorded in the Liman Center report—was nearly three times the 431 held in solitary for 6 or more years in the other reporting states *combined*.⁷³ Put another way, while an average of “only” 5.7% of people in solitary confinement had been there for 6 or more years in every other reporting state, 25.5% of people in solitary confinement had been there for 6 or more years in Texas. Moreover, according to data obtained by TCRP via Texas’s Public Information Act, in 2019 about two-thirds of the 4,500-plus people held in isolation by Texas had been in solitary for a year or more; half for 2 or more years; nearly 1,300 for 5 or more years, more than 600 for 10 or more years, and about 150 for more than *twenty years*.⁷⁴

Texas is an outlier in both the number of people it keeps in isolation and the length of time it keeps them there, despite the overwhelming weight and consensus of authority—scientific, scholarly, and legal, both domestically and internationally—reflecting the fact that isolation is degrading, inhumane, dangerous, and should never be used as punishment. There is no doubt that such isolation is a form of torture that poses a substantial risk of psychological and physical pain. Texas’s continued and frequent use of solitary confinement, especially as it bucks the national and international trend towards reducing the use of solitary confinement, violates contemporary standards of decency in a civilized society.

⁷⁰ Although Texas has recently passed legislation relating to the use of solitary confinement, it was only to require a mental health assessment of any person prior to placement in isolation and to limit its use for pregnant women. *See* Tex. Gov’t Code §§ 501.068, 501.114. As discussed later, this in fact demonstrates that Texas is aware that solitary confinement is dangerous and yet remains deliberately indifferent to more meaningfully limiting its use.

⁷¹ *See* Amy Fetting, *2019 was a Watershed Year in the Movement to Stop Solitary Confinement*, ACLU NEWS AND COMMENTARY, Dec. 16, 2019, <https://www.aclu.org/news/people-rights/2019-was-a-watershed-year-in-the-movement-to-stop-solitary-confinement/>; *see also* Corr. Leaders Ass’n & Arthur Liman Ctr. for Pub. Int. L. at Yale L. Sch., *Time-In-Cell 2019: A Snapshot of Restrictive Housing based on a Nationwide Survey of U.S. Prison Systems* 81–83 (Sept. 2020), https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_2019.pdf.

⁷² Corr. Leaders Ass’n & Arthur Liman Ctr. for Pub. Int. L. at Yale L. Sch., *Time-In-Cell 2019: A Snapshot of Restrictive Housing based on a Nationwide Survey of U.S. Prison Systems* 9–10 tbl.1 (Sept. 2020), https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_2019.pdf. Missouri has approximately 2250 people in restrictive housing, followed by Georgia (approximately 2140) and New York (approximately 2090). *Id.*

⁷³ Corr. Leaders Ass’n & Arthur Liman Ctr. For Pub. Int. L. at Yale L. Sch., *Time-In-Cell 2019: A Snapshot of Restrictive Housing based on a Nationwide Survey of U.S. Prison Systems* 13–14 tbl.3 (2020), https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_2019.pdf.

⁷⁴ TDCJ Response to TCRP Request for Public Information, July 7, 2020 (on file with TCRP).

C. TCRP’s On-the-Ground Investigation Reveals that Texas’s Solitary Confinement Practices are Especially Cruel Above and Beyond the Harm of Isolation Alone

There is no centralized and publicly accessible listing of who TDCJ holds in solitary confinement. TDCJ has additionally refused to permit organizations like ours, as well as journalists, access to its solitary confinement cells. Nevertheless, through community outreach, TCRP has identified many of these individuals and sent and received hundreds of detailed surveys describing what life in solitary confinement is like in Texas.⁷⁵ We have also conducted and documented dozens of in-person interviews in prison units across the state. These primary sources, along with what public information we have managed to gather from TDCJ—primarily written policies and procedures, and incarcerated people’s records—confirm that Texas’s solitary confinement practices are especially cruel, even above and beyond the unconstitutional harm posed by isolation standing alone. These practices, alone and in conjunction with the fact that Texas keeps more people in long-term solitary than any other state, are egregiously unconstitutional.

Initially, reports from people in solitary confinement universally substantiate the literature on the effects of isolation. The mental trauma and risk of trauma inflicted by extreme isolation is further exacerbated by TDCJ’s failure to provide those incarcerated in solitary with adequate medical and mental health care, or even such basic human needs such as hygiene, adequate food and water, and environmental stimulation. This all occurs within deteriorating prison cells smaller than a standard parking space. TDCJ is also chronically understaffed, which worsens these conditions and generates friction between incarcerated people and prison staff.

We draw from these personal accounts in setting out the facts below. All quotations come directly from communications with people in solitary confinement and are presented without identifying information in order to preserve the anonymity and confidentiality of those individuals.⁷⁶

i. The Mental and Physical Costs of Solitary Confinement and Isolation in Texas

People incarcerated in solitary confinement in Texas report a panoply of mental health pathologies in both themselves and others, either engendered or worsened by isolation. The majority describe some combination of anxiety, panic attacks, depression, hallucinations, sensitivity to sights and sounds, feelings of paranoia, difficulty interacting with other people, difficulty moving and sleeping, feeling disoriented, and physical and oral outbursts as a result of their isolation. The severe isolation has caused many to develop—and be formally diagnosed with—serious mental disorders such as paranoid schizophrenia, bipolar disorder, and major

⁷⁵ In the last two years we have sent over two hundred surveys, received nearly one hundred back, and conducted in-person interviews with dozens of people currently in isolation. We additionally collected nearly 150 survey responses and conducted similar in-person interviews in 2015. See Texas Civil Rights Project and American Civil Liberties Union of Texas, *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, (Feb. 2015), available at https://texascivilrightsproject.org/wp-content/uploads/2019/08/SolitaryReport_2015.pdf.

⁷⁶ Should the Department of Justice open an investigation into TDCJ’s solitary confinement practices we would welcome the opportunity to more fully share our underlying data in a way that protects the confidentiality of our sources.

depressive disorder. Those who entered isolation with preexisting mental health problems universally report the worsening of their conditions. A common refrain is that the constant isolation demands equally constant vigilance to avoid mental deterioration, but that it is inevitable when those in solitary are “treated worse than animals,” that “if we were cats and dogs[,] animal rights people would be appalled at the treatment we receive.”

People near-unanimously report either their own instances of self-harm, especially by cutting or attempting to overdose on medication, or knowing of others in solitary who have self-harmed, including in many instances by committing suicide. One 60-year-old person who has been in the TDCJ system since he was 18 recounted going as far as pouring boiling water on himself solely for the purpose of being taken to the medical wing so that he could “see other faces” and later cutting the tendons of his dominant hand “out of desperation and anger.” Numerous incarcerated persons in the Estelle Unit report knowing of a particular individual who bangs on his door day in and day out—“a banger,” who “cuts [himself] real deep, viciously, not playing around” who has “lost his mind” in solitary. Although that person has been “sent out on ambulance many times for cutting himself up” he is simply returned to solitary each time for history to repeat itself. But as one person in the Coffield Unit stated, “sending someone [for treatment] and then back to [solitary] is like putting a band-aid on a bullet hole.” People across the TDCJ system similarly tell stories of those who have mentally deteriorated to the point of smearing feces, blood, and urine over the walls of their cells, refusing to bathe, and eating their own excrement, who “cry, scream, [and] cut their wrists,” “lash out or commit suicide,” “bang on their cell door day and night” and “scream for hours daily,” all of which is ignored by the guards. As one person in the Polunsky Unit put it, “[t]here are so many guys that lose their minds in these cells, and do all kinds of crazy stuff like set fires, throw feces, and pound on things. . . . [i]t gets under your skin to hear [and see] this all day, but what can you do?”

Compounding the psychological trauma inflicted by this day-to-day isolation is TDCJ’s policy of prohibiting people in solitary from having contact visits.⁷⁷ Many people report the obvious and heavy toll that years and decades on end of no human contact—other than the touch of guards as they are handcuffed when moved out of their cells—has had on them, and how much they miss being able to touch, hug, embrace, hold hands with, and kiss their family members, or even to just interact face to face without a plastic or metal divider separating them. Incarcerated people in solitary are additionally prohibited from normal prison telephone system access, and may at most submit a request for one 5 minute phone call every 90 days.⁷⁸ Numerous people report the frustration and despair attendant on being unable to contact the outside world when their loved ones—whom they had been unable to touch for years prior—have died.

Nor are people in solitary allowed to participate in any of the programming available to

⁷⁷ TDCJ Restrictive Housing Plan, August 2019 at 19; TDCJ Offender Rules and Regulations for Visitation, November 2015 at 19 (people in security detention are not permitted contact visits).

⁷⁸ TDCJ Executive Directive 03.32, Offender Access to Telephones, October 31, 2019 at 2, 4–5 (people in solitary may request one five minute phone call every 90 days at the discretion of the prison’s warden but are otherwise not permitted access to the Offender Telephone System).

people in the general population, such as educational or vocational programs.⁷⁹ Person after person has expressed their desperation to be allowed to participate in *any* sort of activity beyond the forced idleness of sitting in a cell alone: “I would love to work, things like that, be out there doing something positive. I want to be a role model to my kids . . . [a]t least let me work, let me clean, let me do something.” One person in the Coffield Unit reported that prior to his placement in solitary—based on his purported affiliation with an STG, not any individual disciplinary reason—he had been assigned to maintenance because he had been an HVAC technician prior to incarceration. But once placed in solitary he lost all access to any job or programming, notwithstanding his ability and desire to work.

ii. TDCJ Fails to Provide Adequate Medical and Mental Health Care to those in Solitary

The mental trauma and risk of trauma inflicted by extreme isolation, standing alone, violates the Eighth Amendment. But that trauma is worsened by TDCJ’s failure to provide those incarcerated in solitary with adequate medical and mental health care.

As an initial matter, most people report not receiving any sort of mental health assessment prior to being placed in solitary, even though Texas law requires such an assessment.⁸⁰ The few people who report receiving an assessment say that “the only thing they ask you is ‘are you feeling like killing yourself? Are you going to kill yourself?’” If the answer is no, “well, put him in a hole.”

People across the TDCJ system additionally report that in many instances TDCJ staff faced with mentally ill people housed in isolation react with violence rather than by seeking out proper medical care. People at the Estelle Unit unanimously report that guards, angered by the noise that “bangers” and other mentally ill people generate, or just frustrated with a particular person’s screaming, will “gas”—shoot with riot control/tear gas—and beat those people. “A guy will be slicing himself up and throwing blood all over the cell” and the guards “will gas him.” Guards will “beat the shit out of” people for “writ[ing] grievances, act[ing] out, [or] jack[ing] the tray slot to try to get help.”⁸¹ They “might pepper spray too,” because “the guards get annoyed at the banging.”

⁷⁹ There are a number of what TDCJ calls “step-down programs” available to those in solitary but no educational or vocational programming of the sort available to people in general population. These step-down programs include various mental health treatment programs. However, people in some units report they are generally unable to access these programs despite the programs’ supposed availability, or that their experiences with these programs have been so overwhelmingly negative and ineffectual that they have consciously chosen not to continue to participate even though they otherwise would seek out mental health treatment. *See also, e.g.,* Jolie McCullough, *Solitary confinement worsens mental illness. A Texas prison program meant to help can feel just as isolating*, THE TEXAS TRIBUNE, (April 23, 2019), <https://www.texastribune.org/2019/04/23/texas-prisons-solitary-confinement-mental-health-program/>. Furthermore, as discussed shortly in greater detail, mental health “checkups” are perfunctory and consist of, as one person put it, simply asking “you ok?” once every week to month and nothing more.

⁸⁰ Tex. Gov’t Code § 501.068. A person may not be placed in solitary if a “medical or mental health care professional” determines that it is “not appropriate for the inmates’ medical or mental health.” *Id.* Of course, solitary confinement is not appropriate for *anyone’s* medical or mental health.

⁸¹ “Jacking the tray slot” refers to the practice of generating noise by repeatedly opening and closing the lid of a slot in the cell door, similar to a mail slot, through which food trays are passed to the person inside the cell. This is often

When one person is “gassed” the entire wing feels the effects because the gas spreads to other cells, so that “if they gas one person, everyone’s gonna be sneezing and coughing.” A person in the Darrington Unit similarly reports that guards will “taunt” or “ignor[e] . . . the crazy ones . . . rather than report the person to [mental health]” and that “[s]ome officers make people get on their knees to eat the food.”

Beyond this sort of purposeful, malicious abuse, people universally report that once housed in isolation they have to “jack the tray slot”⁸² or pound and bang on their cell walls and doors for hours on end to obtain any sort of emergency medical treatment, either for themselves or for their neighbors. Many have stories of themselves or a neighbor having a seizure, or a heart attack, or some other sort of emergent medical issue, and being unable to move the guards to action. This is true even in the rare facilities, such as the Estelle Unit, where cells are equipped with a “medical button” specifically intended to provide a way of letting the guards know that a person needs help. People report either that they are ignored when they press the button or—unsurprisingly, given the state of disrepair in TDCJ facilities—that the button simply does not work. For example, one person in the Estelle Unit lay on the floor seizing for an hour and a half before guards responded to his cries for help because his medical button did not work; another lay for six hours with a broken hip. As multiple people have put it, “you have to be dying to get medical attention.” In fact, several people report that their neighbors have simply died in their cells without TDCJ staff noticing. In one instance, a person in the Estelle Unit reported his neighbor had died and that because all TDCJ staff typically do during check-ups is open the tray slot, say “are you going to eat?” and leave, they did not discover the person’s death for two days. Another reported to TCRP staff that two people on his wing had recently died in their cells, one from bleeding out and the other from complications having to do with cancer. This was not an uncommon occurrence and neither death was discovered for some time.

In less urgent situations, people in isolation are still unable to obtain medical care. As one person put it, “you can submit 100 sick calls and [TDCJ] won’t get back to you.” In the instances that TDCJ does finally take action, people report it taking weeks and sometimes months post-request before they actually receive any sort of attention, even for conditions as serious as cirrhosis of the liver, diabetes, and heart failure. If and when an appointment is finally scheduled, many people report that the guards often fail to escort them to their appointments and then lie on the paperwork to indicate that they refused to leave their cell. Some people hypothesize that this is because they must be placed in leg shackles, strip searched, and handcuffed any time they leave their cells, such that the guards are simply too lazy or apathetic to make the effort to take them to their appointments. People also report that guards sometimes retaliate against them for perceived slights by refusing to escort them to their medical appointments. Whatever the reason for this abdication of duty, people in these situations must attempt to reschedule and once again go through the excruciatingly slow process of obtaining an appointment.

The mental health treatment provided by TDCJ is no better. Despite the open, obvious, and

the only way, in addition to screaming and banging on the doors and walls, that people in need of medical attention are able to stir prison employees to action.

⁸² See *supra* note 81.

apparent nature of the mental toll that solitary confinement can and does take on human beings, TDCJ does not adequately check up on or monitor the mental state of the thousands of people it holds in isolation. Many people report that mental health personnel never make rounds on their wings. Others report wildly varying rates of check-ins at different units; some receive a check-in “once in a blue moon,” or twice a year, or once every three months, or once every 90 days. Universal in these accounts, however, is that check-ins consist of simply asking people “are you alright?” or “how are you?” before moving on. The constant refrain in interviews and survey responses is that mental health personnel “don’t care,” that “they do nothing to help or to better the situation,” that they “don’t take it serious.” One person in the Coffield Unit reported during an interview with TCRP staff that a single TDCJ mental health worker makes the rounds once per week, but that this consists of merely asking each person “you good?” before moving on. If a person answers in the negative they are simply “put in a sick cell.” This person calculated that a single TDCJ mental health staffer once “interviewed” 830 people in a single morning using this methodology.

iii. People in Isolation Live in Tiny, Filthy Cells and are Denied Basic Needs Such as Hygiene, Adequate Food and Water, Exercise, and Environmental Stimulation

The mental trauma inextricably linked to the extreme isolation these people face, and TDCJ’s deliberate indifference toward and failure to provide health care for that trauma, both stand alone as unconstitutional, unethical, and immoral. Yet people in isolation must also contend with being housed in tiny, decrepit cells and deprived of basic human needs such as hygiene, nutrition, and exercise.

Incarcerated people from across the TDCJ system report black mold and mildew in their solitary cells, which are smaller than the average parking space⁸³ and contain at most a faucet, a toilet, a built-in desk, and a rusted steel bed frame. The cells are frequently windowless so that occupants are not exposed to natural light, and are infested with rats, roaches, ants, and spiders. Uncovered surfaces both within and outside the cells are blanketed with bird, raccoon, mouse, rat, and other animal feces. People have no choice but to endure this filth because, as many report, they are provided at most a tablespoon of “bippy”—a generic cleaning powder—once per week to once per month. Any other cleaning materials must be purchased at inflated prices in the commissary.⁸⁴ “They won’t give us a broom or a mop or a toilet brush, we have to wash the toilet with our hands . . . They don’t give a damn about anybody here.” People moved from one cell to another report that the cells are never cleaned in between inhabitants and that whatever the prior inhabitant left, such as smeared feces or blood on the walls, remains for them to clean as best they can. Layered on top of these health hazards is the simple fact that, as people have reported, “nothing dries and it is always wet” because there is no fresh air or cooling. Nor, during the scorching Texas summers, do most units have air conditioning, only fans that blow the hot air

⁸³ See, e.g., Columbus, Ohio, Code of Ordinances, Title 33, Zoning Code, § 3312.29 (“A parking space shall be a rectangular area of not less than nine feet by 18 feet.”); South San Francisco, California, Municipal Code, § 20.330.010 (“The minimum basic dimension for standard parking spaces is 8 1/2 feet by 18 feet.”).

⁸⁴ Because people in solitary are denied the opportunity to work or participate in any normal TDCJ programming, any money for use at the commissary must be sent to them by friends or family.

around.

The provision of nutrition in isolation is similarly disgraceful. Meals are inconsistently served and frequently consist of rotting, spoiled, inedible food. As people have put it, “[t]he food they feed us back here is nothing more than pig slop” and “not fit for human intake.” Numerous people report losing substantial weight because they do not receive enough food, as well as food poisoning or other illness from consuming the food they do get. People in solitary confinement may also go up to 12 hours without nourishment, or are forced to wake up as early as 4:30 AM to eat breakfast because skipping that meal could leave them starving until “lunch” 11 hours later at 3:30 PM. The guards implement this irregular meal schedule “to fuck with you,” and “if you complain, they do it more.” This sort of scheduling, in conjunction with the often inedible nature of the food, poses unique and significant challenges for individuals with health needs—like diabetes—that are aggravated by a lack of consistent, proper nourishment. The only available recourse is to attempt to utilize the internal TDCJ grievance system, but as one person accurately stated, that “doesn’t help when your food is rotten that day.” Moreover, people across the TDCJ system report that submitting grievances is a generally fruitless endeavor.

Similar deficiencies exist regarding access to water. A ubiquitous complaint is that the faucet and toilet plumbing in isolation units is often broken. For example, one person in the Coffield Unit reported not having water for an entire week and that he had to consider drinking from the toilet before managing to get bottled water from a neighbor. During this time, TDCJ staff ignored his complaints and refused to move him to an unoccupied cell with a working faucet just three doors down.

People might be provided some, albeit inadequate, reprieve from these housing conditions if TDCJ actually adhered to its written policy of providing those in isolation with periodic “physical recreation outside of their cells, to include the opportunity to recreate outside, weather permitting,”⁸⁵ as well as “the opportunity to take a shower seven days per week.”⁸⁶ For “Security Level I” people “the opportunity to recreate” would require they receive either (1) one hour per day, seven days a week, with two hours of the weekly out-of-cell recreation taking place outdoors, or (2) two hours, five days a week, with two hours of the weekly out-of-cell recreation taking place outdoors.⁸⁷ For “Security Level II and III” people this would mean one hour, five days a week, with one hour of the weekly out-of-cell recreation taking place outdoors.⁸⁸

However, TDCJ’s on-the-ground practices do not track those set out in policy. Nor, in any event, would adherence to policy somehow redeem the cruelty of the conditions people face. Rather, every single person with whom TCRP has spoken has reported at one time or another

⁸⁵ TDCJ Restrictive Housing Plan, August 2019 at 18.

⁸⁶ TDCJ Restrictive Housing Plan, August 2019 at 23. In some rare instance, certain cells—like those in the isolation wing of the Estelle Unit—are equipped with showers, which operate only during certain hours. The vast majority of people in isolation do not have in-cell showers and must be removed from their cells and escorted to separate shower facilities.

⁸⁷ *Id.* at 18.

⁸⁸ *Id.*

spending, at a minimum, weeks—and sometimes months—stuck in their cells without the opportunity to leave, whether for recreation or for a shower. More typically, as people from across the TDCJ system report, they are “lucky to get out [of their] cells for 2 hours a week.”

Reasons for this vary. People across the TDCJ system describe how guards, just as in the medical appointment context, frequently withhold access to recreation or showers due to simple laziness or apathy. As one person put it, “[t]he guards don’t like to run showers and rec [because] it requires a lot of hassle for them to put us in the shower each individually and the same for rec”; in the words of another, “if the officer working your pod . . . isn’t trying to work, forget it.” People also report that officers sometimes withhold recreation or showers as punishment. In addition to this, the simple utilitarian fact is that TDCJ’s facilities are not built to adequately provide people with even these most basic needs. As reported by people at the Coffield Unit—which houses approximately 750 people in isolation—there are only three recreation rooms and four showers per row of 84 people. As one person who has spent 18 years in solitary at Coffield accurately observed during an interview with TCRP staff, the unit is “old, dysfunctional, and not built for [isolation].”

Nonetheless, when recreation does occur, people are taken either to outdoors, kennel-like cages “about the size of [what] they keep a dog [in] when they are in the dog pound,” or interior “day rooms” that have openings to allow natural light in. These enclosures are filthy and exposed surfaces are covered in animal feces. They may contain a basketball hoop—but no basketball—and a single pull-up bar, but are otherwise bare. And though these rooms do contain a water faucet and a urinal, people across multiple units report that those facilities are rarely functional and that the urinals are always “overflowing.” That there is nowhere to use the bathroom in the recreation areas is of particular indignity given that people at multiple units report that when they *are* permitted to take recreation, the guards often leave them in the recreation cages or day rooms for six or more hours at a time. This is hardly an act of kindness; rather, it forces people who cannot hold their bowels to urinate or defecate in the one area shared between them and other people and the only place they are allowed to spend any time outside of their cells.

As a result, some people report “choosing” to stay in their cells even when they could theoretically go to “recreation.” For example, one person at the Ferguson Unit explained that sometimes “guys would rather just remain in their cells” because it’s “dehumanizing” when “recreation” consists of swapping “a cage for a cage.” Another at the Darrington Unit does not leave his cell for recreation because “the rec yard is disgusting.” Yet another at the Estelle Unit recounts that he and others frequently refuse recreation because the guards are so indifferent to people’s circumstances that they often return people to the wrong cells, which can result in being attacked and injured. That some people *choose* not to attend recreation therefore serves only to further indict TDCJ’s overall failure to provide those in solitary with out-of-cell time.

iv. Chronic Understaffing Exacerbates the Unconstitutional Conditions in Solitary

Entirely aside from the above, TDCJ has struggled with chronic understaffing for years, which serves to exacerbate all of the problems so-far described, from the mechanical failures in

TDCJ facilities to the lack of oversight which enables the rampant abuse of people in isolation.⁸⁹ Today, during the COVID-19 pandemic, staffing has fallen to unprecedented lows. As of October 2020, TDCJ reported 5,505 correctional officer vacancies out of a total of 25,437 authorized positions, or about a 22% shortage in staff. TDCJ’s director has publicly blamed the organization’s difficulty hiring and retaining staff on the existence of “more attractive job opportunities than what prisons can offer,” given that rookie officers, as of 2018, were paid about \$34,000 a year.⁹⁰

Staffing shortages in the prison units with dedicated isolation wings far exceed the overall systemwide vacancy rate.⁹¹ At the Coffield Unit, which houses approximately 750 people in isolation—the most of any TDCJ unit—only 53.45% of positions were filled as of October 2020, with 337.5 vacancies.⁹² At the Allred and Eastham Units, each with more than 450 people held in isolation, only 61.78% and 59.90% of positions were filled as of October 2020, leaving 285.5 and 204.5 positions vacant, respectively.⁹³ And the vacancy rates at the McConnell, Polunsky, and Telford Units—each of which housed over 300 people in solitary as of late 2019—hovered around 50%.⁹⁴ The Clements Unit, which also housed over 300 people in solitary as of late 2019, had a 58% vacancy rate and more than 460 empty positions in late 2020.⁹⁵

As one can predict and as people interviewed at the Coffield Unit unanimously describe, this sort of chronic understaffing exacerbates and worsens conditions in solitary. One person at the Coffield Unit explained how, in recent months his wing—consisting of three rows of 84 cells each—has been overseen by a single officer. This ratio of incarcerated person to guard renders it essentially impossible, in conjunction with fact that there are only three dayrooms and four showers per 84-cell row, for TDCJ to comply with its own, already inadequate, recreation and shower policies. A single guard simply cannot handle the task of escorting that many people, individually, to recreation and showers at the pace required. Another person in the Coffield Unit explained how the unit’s understaffing and failure to train its current and new officers ultimately means that guards “are not trained for what they have to deal with, which all feeds into a cycle” of exacerbating tensions between staff and people in solitary. People at Estelle report similar issues due to understaffing.

Beyond the day-to-day incarcerated-person-TDCJ-staff interactions and TDCJ facility disrepair, TDCJ’s chronic understaffing also burdens the attorney-client relationship. For example,

⁸⁹ See, e.g., Jolie McCullough, “You’re not as safe as you should be.” *How understaffing is affecting one Texas prison*, THE TEXAS TRIBUNE, (May 9, 2018), <https://www.texastribune.org/2018/05/09/understaffing-texas-prisons-telford-maximum-security-prison-timothy-da/>; Jolie McCullough, *Texas to shutter three more prisons as units face critical staffing shortages*, THE TEXAS TRIBUNE, (Dec. 1, 2020), <https://www.texastribune.org/2020/12/01/texas-prisons-close-understaffing/>.

⁹⁰ Jolie McCullough, “You’re not as safe as you should be.” *How understaffing is affecting one Texas prison*, THE TEXAS TRIBUNE, (May 9, 2018), <https://www.texastribune.org/2018/05/09/understaffing-texas-prisons-telford-maximum-security-prison-timothy-da/>.

⁹¹ See *supra* note 13 for a list of each TDCJ unit with an isolation wing.

⁹² TDCJ, *Summary of Authorized and Filled Positions for Corrections Officers as of October 2020* (on file with TCRP).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

TCRP staff who travel to the Coffield Unit to meet with people are frequently forced to wait for hours—and in multiple instances been unable to meet with people despite confirming the visit beforehand—because the prison simply had no staff on hand to escort them to the visitation room.

v. TDCJ Knows of and Refuses to Mitigate the Harms Associated with Solitary Confinement

TDCJ is aware of both the harm and the risk of harm that is caused by solitary confinement and the conditions outlined above. Initially, it defies logic to suggest that TDCJ officials, as corrections professionals, are unaware of the overwhelming weight of scholarly literature describing and quantifying the adverse mental and physical effects of solitary confinement that has emerged in recent years, which so many courts, other States, medical and correctional organizations, and international bodies have acknowledged. Given that solitary confinement serves no penological purpose—that it does not reduce future violence or disciplinary misconduct—it is difficult to imagine what else TDCJ officials could understand its effects to be.

More specifically, TDCJ is aware that the Texas legislature has acknowledged the potential harm posed by solitary by recently amending Texas law to require a positive mental health assessment from a medical professional prior to placing any person in solitary, and to prohibit the placing of pregnant women in isolation.⁹⁶ In 2017, then-TDCJ policy reflected this understanding, requiring that anyone placed in “solitary confinement” for more than 15 days receive a 72 hour respite in between each 15-day cycle.⁹⁷ Moreover, TDCJ:

- Participated in a survey conducted by the Association of State Correctional Administrators (ASCA) and Yale Law School in 2015, 2018, and 2019, each of which generated a report made publicly available and delivered to TDCJ. These reports specifically describe the harms of isolation and the fact that Texas confines vastly more people in solitary than other reporting states.

⁹⁶ See Tex. Gov’t Code §§ 501.068, 501.114.

⁹⁷ TDCJ Offender Orientation Handbook, Feb 2017 at 72. It seems that this policy is no longer in place because TDCJ ended the use of what it at the time referred to as “solitary confinement” in late 2017. See, e.g., Keri Blakinger, *Texas prisons eliminate use of solitary confinement for punitive reasons*, THE HOUSTON CHRONICLE, (Sept. 21, 2017), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-prisons-eliminate-useof-solitary-12219437.php>; Trey Shaar, *Texas Ends Solitary Confinement As Punishment, But Still Keeps Thousands Alone in Cells*, KUT.ORG, (Sept. 22, 2017), <https://www.kut.org/texas/2017-09-22/texas-ends-solitary-confinement-as-punishment-but-still-keeps-thousands-alone-in-cells>. The various names Texas has used for its isolation practices have shifted over time. In early 2017 what is now called “restrictive housing” was known as “administrative segregation,” a term people, staff, and policies still use to describe isolation. At that time, people could also be placed in “solitary confinement,” which referred to placement in administrative segregation for “punitive” rather than “security” reasons. Texas therefore “ended” the use of “solitary confinement” in 2017, allowing it to claim a public relations victory, although what distinction there is between “punishment”-based segregation versus “security”-based segregation is questionable. Moreover, only about 75 people were actually held in “solitary confinement” for punitive reasons at the time that TDCJ ended its use, meaning that decision had no impact on the then-4000 plus people remaining in what TDCJ now calls “restrictive housing.”

- Has been sued numerous times in federal court over its use of solitary confinement.⁹⁸
- Receives hundreds of grievances each year from people specifically describing the mental and physical health consequences they are experiencing in isolation and asking to be removed from solitary.
- Was notified in January 2019, by the Texas Civil Rights Project, of the risk of harm to people subjected to solitary confinement, leading to a meeting between TCRP and TDCJ's General Counsel and Deputy General Counsel to discuss ways to eliminate the use of solitary confinement in Texas prisons.

In addition, TCRP has published two widely-circulated reports outlining the cruelty of Texas's use of solitary confinement—one in 2015, in collaboration with the American Civil Liberties Union of Texas,⁹⁹ and one in 2019¹⁰⁰—as have other organizations spanning the political spectrum.¹⁰¹ Numerous major Texas news outlets have also published articles exposing Texas's practices, including that Texas leads the nation in long-term solitary confinement.¹⁰² Despite all of this, TDCJ remains deliberately indifferent to the harm and risk of harm posed by solitary confinement and has refused to take any action to curb the daily and continuous constitutional violations that are the result of its solitary confinement practices.

⁹⁸ See, e.g., *Hope v. Harris*, --- F. App'x ----, 2021 WL 2523973 (5th Cir. June 18, 2021); *Hernandez v. Abbott*, 2020 WL 5539093, at *13 (E.D. Tex. Aug. 24, 2020), *report and recommendation adopted*, 2020 WL 5534522 (E.D. Tex. Sept. 15, 2020); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 910 (S.D. Tex. 1999), *rev'd and remanded on other grounds sub nom. Ruiz v. United States*, 243 F.3d 941 (5th Cir. 2001).

⁹⁹ Texas Civil Rights Project and American Civil Liberties Union of Texas, *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, (Feb. 2015), available at https://texascivilrightsproject.org/wp-content/uploads/2019/08/SolitaryReport_2015.pdf.

¹⁰⁰ Texas Civil Rights Project, *Torture By Another Name: Solitary Confinement in Texas*, (Oct. 2019), available at <https://texascivilrightsproject.org/wp-content/uploads/2019/10/2019-SolitaryConfinement-Report.pdf>.

¹⁰¹ See, e.g., Texas Public Policy Foundation, *Reining in Solitary Confinement in Texas: Recent Progress and Next Steps*, (Jan. 2021), available at <https://files.texaspolicy.com/uploads/2021/01/28152507/Levin-Reining-in-Solitary-Confinement.pdf>.

¹⁰² See, e.g., Michael Barajas, *Texas Prisons Lead the Nation in Long-Term Solitary Confinement*, THE TEXAS OBSERVER, (Oct. 18, 2018), <https://www.texasobserver.org/texas-prisons-lead-the-nation-in-long-term-solitary-confinement/>; Michael Barajas, *The Prison Inside Prison*, THE TEXAS OBSERVER, (Jan. 21, 2020), <https://www.texasobserver.org/solitary-confinement-texas/>; Jolie McCullough, *Solitary confinement worsens mental illness. A Texas prison program meant to help can feel just as isolating*, THE TEXAS TRIBUNE, (April 23, 2019), <https://www.texastribune.org/2019/04/23/texas-prisons-solitary-confinement-mental-health-program/>; Ariana Lipkin, *Texas Prisons Lead the Nation in Long-Term Solitary Confinement*, SPECTRUM NEWS, (Jan. 23, 2020), <https://spectrumlocalnews.com/tx/austin/news/2020/01/24/texas-prisons-lead-the-nation-in-long-term-solitary-confinement>; Jeremy Busby, *The Trauma of Solitary: A Voice From the 'Madhouse'*, THE CRIME REPORT, (Jul. 8, 2021), <https://thecrimereport.org/2021/07/08/the-trauma-of-solitary-a-voice-from-the-madhouse/>; Alexandra Hart and Kristen Cabrera, *Why Some Experts Call Solitary Confinement 'Torture'*, THE TEXAS STANDARD, (Jan. 23, 2020), <https://www.texasstandard.org/stories/why-some-experts-call-solitary-confinement-torture/>.

D. TDCJ Denies People in Solitary Procedural Due Process, Both in their Initial Placement and During Periodic Reviews of their Placement

TDCJ’s use of solitary confinement is cruel and unusual. Beyond that, however, TDCJ’s procedures for determining who should be placed in solitary, and for how long, are additionally unconstitutional because they deny people in solitary the right to procedural due process.

As mentioned previously, TDCJ places the vast majority of people in solitary because it determines they are “a current escape risk,” a “threat to the physical safety of other offenders or staff, to include volunteers and contract staff,” a “threat to the order and security of the prison as evidenced by repetitive serious disciplinary violations,” or “a confirmed member of a security threat group (STG).”¹⁰³ Once placed in solitary, an incarcerated person’s only hope of returning to general population is that the State Classification Committee (SCC) approve their removal at a periodic 6-month hearing. If the person has been placed in solitary confinement due to being a “confirmed member” of an STG, they must also complete the “Gang Renouncement and Dissociation” (GRAD) program.

These people have a liberty interest under the United States Constitution in not being placed in the extreme conditions of solitary confinement.¹⁰⁴ They therefore also have the right to procedural due process—at a bare minimum, to receive notice of a decision relating to their placement in solitary, an opportunity to contest the basis for that decision, and meaningful consideration of their current circumstances—both when the initial determination is made and at any subsequent review hearings. While TDCJ’s written policy appears to provide for that bare minimum, in practice that is almost never the case. TDCJ frequently fails to provide people with notice and an opportunity to present evidence on their behalf at either the initial placement or the periodic review decisions. The SCC’s periodic reviews are also perfunctory, preordained, and tantamount to a sham, with the SCC frequently rehashing the reason for a person’s initial placement as justification for their continued placement with no meaningful consideration given to current circumstances.

The same and additional issues abound for those placed in solitary due to their purported affiliation with an STG. People report not knowing why they have been confirmed as an STG member, erroneous confirmations, and no opportunity to contest the label. Similarly, the GRAD program is constitutionally deficient because it does not provide a meaningful route out of solitary, given that participation in GRAD requires those who are not in a gang to affirm that they *are* in a

¹⁰³ TDCJ Restrictive Housing Plan, August 2019 at 4.

¹⁰⁴ Solitary confinement poses an atypical and significant hardship in relation to the ordinary incidents of prison life for the reasons already described. In addition, a person in solitary confinement is much less likely than one in general population to receive parole because, in determining whether to grant parole, TDCJ utilizes a risk-assessment tool that gives substantial negative weight to the fact that an inmate was or is being held in solitary confinement, regardless of whether they had a clean disciplinary record while in solitary. It also appears that these people—at least those placed in solitary confinement due to their purported membership in an STG—cannot accrue good time credit. *See* TDCJ, *On the Inside: Security Threat Groups*, August 2007 at 3, available at https://www.tdcj.texas.gov/documents/Security_Threat_Groups_GRAD_English.pdf.

gang, and additionally requires people to publicly renounce “their” gang, which may result in them being labeled a “snitch” and becoming a target for violence.

i. The Processes for Placing and Retaining Non-STG People in Solitary are Constitutionally Deficient

Initial placement in solitary for people who have not been confirmed as members of an STG occurs when a Lieutenant or higher-ranking officer alleges that the person meets one or more of the three non-STG related criteria set out above.¹⁰⁵ By policy, the person must be provided notice of why they are being moved to solitary and receive an initial hearing before the “Restrictive Housing Committee” (RHC) prior to the move and within 7 days of the notice.¹⁰⁶ However, TDCJ policy also allows an officer to move a person to solitary prior to any notice or hearing if the officer determines the person “is an immediate threat to the physical safety of other offenders or staff,” with notice and a hearing to follow within 7 days.¹⁰⁷ In either case, the warden’s office must approve a transfer to isolation within 24 hours.¹⁰⁸ However, because there is no guidance in TDCJ’s Restrictive Housing Plan (RH Plan) as to what behavior justifies placement in solitary, nor as to what the warden’s office should consider in approving the transfer, these determinations are left exclusively to the arbitrary, ad hoc interpretation of whichever TDCJ staff member makes the decision.

At the initial placement hearing the RHC¹⁰⁹ determines whether the person should remain in solitary or return to general population.¹¹⁰ The RHC is allowed to exclude people from their own hearings based on its subjective perception that the person poses a health, safety, or security risk, but the RH Plan provides no guidance on making this decision. It appears that the RHC is required to consider the person’s unit file and permit the person to make a written statement but nothing else.¹¹¹ There is no guidance in the RH Plan or any other TDCJ policy requiring the RHC to consider any additional individualized information, such as the person’s history of disciplinary violations, medical evaluations, relationships to staff and other people, programmatic participation, age, mental health, or physical condition. The limited evidence considered results in a second layer of arbitrary and unequal treatment of people placed in solitary confinement.

After making its decision the RHC notifies the State Classification Committee (SCC) of its decision. The SCC must affirm or deny the RHC’s decision within sixty days of the initial hearing.¹¹² The SCC appears to be the sole body of TDCJ officials that determines if a person

¹⁰⁵ TDCJ Restrictive Housing Plan, August 2019 at 6.

¹⁰⁶ *Id.* at 6–7.

¹⁰⁷ *Id.* at 7.

¹⁰⁸ *Id.* at 6–7.

¹⁰⁹ The RHC comprises (1) the Warden or the Warden’s designee, who serves as chairperson; (2) a lieutenant or above, or classification staff; (3) a correctional officer or above who is assigned to restrictive housing; and (4) a representative from the medical or mental health department, if needed, who serves in a consultative role. *Id.* at 2. The RH plan does not give direction about how officials are to determine if medical or psychiatric personnel are needed.

¹¹⁰ *Id.* at 8–9.

¹¹¹ *Id.* at 38 (Security Detention Initial Hearing Record Form).

¹¹² *Id.* at 9, 12.

confined to isolation on a non-STG related basis may be released.¹¹³ In addition to the 60-day hearing reviewing the RHC’s decision, the SCC must conduct a review once every six months for each person in solitary confinement.¹¹⁴ Theoretically, the SCC must give a minimum of 24 hours notice in advance of each hearing¹¹⁵—hardly enough time for a person to gather information and prepare for such a potentially meaningful proceeding—but like the RHC, may choose to exclude the person from attending the hearing in-person if the SCC believes they “present[] a threat to the security of offenders or staff by attending the hearing.”¹¹⁶ Beyond that, people purportedly have the right to “make a statement, submit written statements from witnesses, and submit other documentary evidence” in their favor.¹¹⁷ Afterwards, the SCC is required to provide written notice to the person of its decision, “including the reasons for the decision and summarizing the information presented and considered.”¹¹⁸ The “written notice” the SCC provides consists only of TDCJ Form I-189, which allows the SCC to simply check off one of a series of boxes such as “Escape Risk,” “Offender Assaultive,” or “Defeats Restraints,” without any additional factual elaboration.¹¹⁹ There is no guidance in TDCJ policy as to the standard the SCC should use during either its review of the RHC’s initial determination or its periodic six-month hearings, nor is there any guidance provided to people as to what they can do to ensure or at least increase the odds of release from solitary confinement.

This process—from the initial placement decision by an individual TDCJ officer, to the RHC review, to the SCC review—is susceptible at every step to the subjective, arbitrary whims of TDCJ staff, whether driven by malice, apathy, or something in between. On top of that, there are only thirteen SCC officers for the entire state of Texas. They are responsible not only for reviewing the placement of people into solitary confinement, but also the classification decisions for the entire TDCJ system of over 130,000 people. Even assuming good faith and the best of intentions, a mere thirteen people cannot give truly meaningful consideration to the thousands of solitary confinement reviews they must undertake each year *in addition* to the thousands of other housing decisions on their docket.

It is therefore of no surprise that people placed in solitary frequently report that the precipitating event for their placement has no relation to TDCJ’s purported interest in the “safety” or “security” of the prison. Many report being placed in solitary for minor infractions or because they have in some way angered a correctional officer, who is able to punish them by sending them to isolation. For example, one person in the Estelle Unit was placed in isolation after accidentally

¹¹³ *Id.* at 9, 15–16. There are only thirteen individual SCC officers for the entire state of Texas. They are responsible not only for reviewing the placement of people into solitary confinement, but also the classification decisions for the entire TDCJ system of over 130,000 people. For any given individual person’s review, the RH plan defines “the SCC”—which is otherwise a statewide body of 13 individuals—as consisting “of a representative of the SCC, the warden or designee, and other staff as deemed appropriate.” The RH plan does not set out who may be “deemed appropriate.” *Id.* at 12.

¹¹⁴ *Id.* at 12–14.

¹¹⁵ *Id.* at 13.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 41–42.

spilling food on an officer's shoes; a second for "staff assault," although he has no idea what he did that constituted the "assault"; a third in the Coffield Unit for refusing to urinate when ordered to do so; a fourth in the Polunsky Unit for complaining after an officer threw his sack lunch on the floor; and a fifth in the McConnell Unit for possessing a contraband cell phone. A common thread among reports is that people can and often do receive disciplinary cases for "assault" for virtually any conduct that an officer dislikes. For instance, one person interviewed explained that sometimes people send each other "kites"—paper attached to a string on which people write and then pass back and forth to communicate with one another. It is common, if a TDCJ officer happens to grab the string and the person pulls on it at that point without realizing, that the officer will write them up for "assault." This record of disciplinary action for "assault" is then used to justify keeping the person in solitary.

Another common report from people is that any sort of escape attempt results in being sent to isolation. Multiple people have referenced an unspoken rule at TDCJ that any escape attempt is punished by an automatic minimum of 10 years of isolation, even when the person has maintained an otherwise clean disciplinary record in the interim. One person has been in solitary for over two decades due to a single escape attempt in 1998, with no disciplinary cases since; two others for nearly ten years each for the same reason. Another describes that his verbal threat to escape, made in a moment of anger—"I'm going to climb that fence"—resulted in his now-eight years in solitary. Each of these people reports that the SCC, when it actually does provide them with an explanation for their continued isolation, simply "goes through the motions" by ticking off the "escape risk" checkbox on their paperwork without any regard for their behavior since.

Moreover, as alluded to above, many people report never receiving written notices of solitary-related decisions as required under TDCJ policy, either with respect to their initial placement in isolation or the SCC's purported six-month reviews. But some people do report receiving notice. Sometimes they are allowed to attend the SCC's six-month reviews; sometimes they are not. Sometimes, when allowed to attend, they are allowed to argue on their behalf; sometimes not. Sometimes they receive paperwork after the SCC's six-month hearing; sometimes they do not. Sometimes the paperwork contains no factual basis for their continued isolation beyond a checkmark next to one of the several generic bases contained on the form; sometimes it contains an additional but still perfunctory factual statement. In all cases, however, every person with whom we have corresponded or spoken describes the process as preordained and tantamount to a sham. Many no longer bother attempting to participate in their six-month review hearings, even when given the opportunity to do so, because every time they have tried before has felt—and then been—futile. Even when people do receive notice of a hearing, it is only 24 hours in advance, which would be insufficient time to muster evidence in their favor even if the hearings were not tantamount to a sham. And even when a person does want to attend their hearing—just as in the context of medical appointments, showers, recreation time, or other times in which they should ostensibly be able to leave their cells—people report that TDCJ staff will sometimes falsify paperwork indicating their "failure to appear" or "verbal refusal" to attend in order to avoid the effort required to take them to their hearing.

As one might expect, this lack of formal rules or policies regarding how people may "earn"

their way out of solitary confinement has resulted in the proliferation of rumors. Several people have reported that there is a general belief among those in isolation—fueled by verbal promises from SCC officers—that if they achieve 18 months without a single “major” disciplinary infraction they will be released to the general population. But even the determination as to whether a disciplinary infraction amounts to being “major” versus “minor” is up to the subjective decision-making of individual TDCJ officers: “An offender shall not be given any major penalty without a major disciplinary hearing,” and “[t]he final decision whether a disciplinary hearing will be classified as minor or major shall be made by a captain or above” based on “[t]he nature and seriousness of the offense” as set out in TDCJ policy, “[t]he offender’s disciplinary history,” and “[t]he period of time since the offender’s last rule violation.”¹²⁰ In any event, it is clear from our investigation that avoiding “major” disciplinary infractions for 18 months does not provide any guarantee of release from isolation.

In all, it is clear from people’s reports that many do not understand why they were placed in isolation to begin with nor why they continue to be kept in isolation. To the extent *some* people are *sometimes* afforded *some* degree of procedural due process at various moments during their time in isolation, it is sporadic, unpredictable, and evidently up to the discretion of whichever individual TDCJ employees make up the relevant decision-making body. It is easy to see how the ad hoc, arbitrary, and inconsistent nature of these procedures cause severe stress and anxiety for people condemned to isolation. This, along with the fact that the decisions of the SCC are not reviewed by any other entity, renders the system extraordinarily prone to error, particularly given the clear takeaway from our investigation that people placed in isolation are rarely the “worst of the worst” for whom such placement might, in extreme circumstances, be justified. Ultimately, the unpredictability of TDCJ’s processes renders isolation indeterminate and indefinite and layers additional psychological stress and harm on top of the already severe psychological and physical burdens caused by isolation. These practices violate the Procedural Due Process Clause of the United States Constitution and intensify the already independently cruel and unusual nature of isolation itself.

ii. The Process for “Confirming” STG Members is Vague and Arbitrary and the GRAD Program Does not Provide a Meaningful Route out of Isolation

The same and additional problems plague the processes used by TDCJ to identify people as members of a “Security Threat Group” (STG)—a label which generally results in automatic placement in solitary confinement.¹²¹ TDCJ’s “Security Threat Group Plan”¹²² (STG Plan) defines an STG as “a group of offenders with a well organized structure, who routinely use violence, fear,

¹²⁰ TDCJ Disciplinary Rules and Procedures for Offenders, August 2019 at 7.

¹²¹ The SCC appears to review the placement of people it identifies as members of an STG once every twelve months rather than once every six months. Texas Civil Rights Project, *Torture by Another Name: Solitary Confinement in Texas*, at 2, Oct. 2019, available at <https://texascivilrightsproject.org/wp-content/uploads/2019/10/2019-SolitaryConfinement-Report.pdf>.

¹²² We draw the majority of our information about TDCJ’s STG practices either from our communications with people or from TDCJ’s April 2015 Security Threat Group Plan, which is the most recent copy of the TDCJ policy in our possession.

and intimidation to further the group’s prohibited activities, and who the TDCJ [Correctional Institutions Director] determines poses a threat to the physical safety and security of staff, offenders, or the public.”¹²³ Of the gangs active within the TDCJ system, only eleven qualify as STGs:

Aryan Brotherhood of Texas
Barrio Azteca
Bloods
Crips
Hermanos De Pistoleros Latinos
Mexican Mafia
Partido Revolucionario Mexicanos
Raza Unida
Texas Chicano Brotherhood
Texas Mafia
Texas Syndicate¹²⁴

“Any unit employee” at a TDCJ facility who suspects that a person is “involv[ed] with a gang” may “document any substantiating evidence and forward” it to their prison unit’s “Unit Security Threat Group Officer” (USTGO).¹²⁵ If the USTGO agrees, they complete a “gang member confirmation packet” and forward it to the warden’s office for review.¹²⁶ If the warden’s office agrees, it forwards the packet to the Regional Security Threat Group Coordinator.¹²⁷ Lastly, if the Regional officer agrees, they send the packet to the centralized STG Management Office for final confirmation.¹²⁸ Notably, if at any point during this escalating review process the assessing office finds the evidence insufficient to establish the person’s gang affiliation, the evidence is returned to the USTGO for *continued monitoring of the person*.¹²⁹ In other words, once *any* unit employee at a TDCJ facility decides to report a person as being “involv[ed] with a gang,” that person’s actions will from then on be placed under a microscope and assessed for suspected gang affiliation or meaning.

This process is both oppressive, arbitrary, and rife for abuse. It is unclear whether any training on this front is provided to TDCJ staff, and we do not have any documentation fully setting out how TDCJ identifies and designates individuals as members of any particular STG. However,

¹²³ This is in contrast to what TDCJ calls “cliques” and “disruptive groups,” which it defines as less organized groups that do not pose a “constant threat to the physical safety and security of staff, offenders, or the public.” TDCJ Security Threat Group Plan, April 2015 at 2. The “Security Threat Group Management Office” (STGMO) is “the central administrative office within the TDCJ responsible for overseeing [the] gang identification, confirmation, and monitoring process” and it recommends in the first instance which gangs should qualify as STGs, cliques, and disruptive groups. *Id.* at 7–8.

¹²⁴ TDCJ Response to TCRP Request for Public Information, August 18, 2021 (on file with TCRP).

¹²⁵ TDCJ Security Threat Group Plan, April 2015 at 5–6.

¹²⁶ *Id.* at 6.

¹²⁷ *Id.*

¹²⁸ *Id.* at 6–7.

¹²⁹ *Id.* at 6–7.

a public information officer for TDCJ did mention, during a phone call with TCRP staff, that TDCJ generally uses the same criteria as that set out in the Texas Code of Criminal Procedure.¹³⁰ That statute states, among other things, that characteristics such as family, social networks, hand gestures, and tattoos should be used in determining whether an individual is affiliated with a gang.¹³¹ These criteria are subjective, vague, and carry a substantial risk for error.

Unsurprisingly then, numerous people report being erroneously “confirmed” as STG members—based on details as mundane as their hometown, or for being friends with a gang member but otherwise having no other affiliation with the gang in question—with no opportunity to rebut that determination. Some additionally report not being given notice as to why TDCJ has determined they are in a gang. But even for those people accurately confirmed as members of an STG, the determination that they should be placed in solitary based on nothing other than their affiliation with others, as opposed to any sort of individual assessment of the risk they pose to security or safety, is problematic. As the Department of Justice’s 2016 Report on Restrictive Housing in the United States noted, “the most controversial aspects of the relationship between

¹³⁰ The most recent version of the TDCJ STG Operations Manual appears to be from March 2016, which TCRP received—heavily redacted—via a public information request made in August 2021. The Manual appears to set out a non-exhaustive list of “evidentiary characteristics in identifying an determining gang members” but TDCJ redacted the majority of the information contained therein. TDCJ STG Operations Manual, March 2016 at 19–20. The information that is not redacted tracks the Texas Code of Criminal Procedure factors set out in note 131 below. *See id.* (listing as identifying features “hand signs, symbols[,] and graffiti,” “[i]nformation received from a confidential information,” and “[s]pecific illegal acts” such as extortion, protection, racketeering).

¹³¹ When considering potential gang activity in the adjudication of criminal offenses, the Texas Code of Criminal Procedure provides that a judgment can be satisfied with evidence of only two of eight categories of corroborating evidence. *See* Tex. Code. Crim. Proc. art. 67.054. Those include:

- (i) a self-admission by the individual of criminal street gang membership that is not made during a judicial proceeding, including the use of the Internet or other electronic format ...;
- (ii) an identification of the individual as a criminal street gang member by a reliable informant or other individual;
- (iii) a corroborated identification of the individual ... by an informant or other individual of unknown reliability;
- (iv) evidence that the individual frequents a documented area of a criminal street gang and associates with known criminal street gang members;
- (v) evidence that the individual uses ... criminal street gang dress, hand signals, tattoos, or symbols, including expressions of letters, numbers, words, or marks ... that are associated with a criminal street gang that operates in an area frequented by the individual ...;
- (vi) evidence that the individual has been arrested or taken into custody with known criminal street gang members for an offense or conduct consistent with criminal street gang activity;
- (vii) evidence that the individual has visited a known criminal street gang member, other than a family member of the individual, while the gang member is confined in or committed to a penal institution; or
- (viii) evidence of the individual’s use of technology, including the Internet, to recruit new criminal street gang members.

Id.

gang affiliation and restrictive housing pertain to the purported arbitrariness and lack of due process in validating gang affiliates, the policies that automatically segregate gang affiliates based on status and not behavior, and the indeterminate placement of gang affiliates in restrictive housing.”¹³² It is for that reason that the Eastern District of California, in assessing a similar policy implemented by California in its Pelican Bay State Prison, ruled that the practice of assigning people to solitary confinement “based solely on the [person’s] gang affiliations, without regard to his criminal history or propensity for violence” increased the risk of the erroneous deprivation of the person’s liberty interest in staying out of solitary confinement.¹³³ In fact, TDCJ is among the minority of state agencies that uses gang affiliation as a determinant of placement in isolation absent any other qualifying criteria.¹³⁴

The risk of error in this process is further compounded by the fact that TDCJ has likely made no meaningful effort to keep its list of gangs that qualify as STGs up to date with the penological purpose—safety and security—it claims justifies the automatic placement in solitary of any person associated with those STGs. TDCJ’s STG Operations Manual requires review of STG designation only once per two years “in light of any changing factors” but it is unclear what those factors are.¹³⁵ Thus, while TDCJ began the practice of wholesale segregating gang members in September 1985 in response to the “war years” of 1984 and 1985, during which gang violence led to an increase in homicide rates in TDCJ,¹³⁶ it is unclear to what extent that justification still carries water for each STG. For example, multiple people report that certain STG groups have not been involved in any sort of organized violence in decades yet continue to be automatically relegated to indefinite isolation.

¹³² National Institute of Justice, *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, (Nov. 2016) at 148, available at <https://www.ojp.gov/pdffiles1/nij/250315.pdf>. The report additionally explains that:

One of the most controversial issues surrounding the use of restrictive housing is the segregation of inmates from the general population based solely on the threat or safety risk they pose to prison staff, other inmates, or the institution at large. This pathway is especially controversial for gang affiliates for at least two reasons. First, placement into restrictive housing is usually indeterminate, that is, until the threat wanes or is eliminated. Because gang affiliation is the primary determinant of the threat, release to the prison’s general population requires that gang members convince authorities that they are no longer affiliated with a gang. This is a risky or uncertain endeavor. Second, the decision to place an inmate into restrictive housing is made administratively, which often entails wide discretionary latitude. In cases of gang affiliation, the discretion that poses the greatest concern involves the validation of gang members.

Id. at 134.

¹³³ *Ashker v. Brown*, 2013 WL 1435148, at *7 (N.D. Cal. Apr. 9, 2013).

¹³⁴ National Institute of Justice, *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, (Nov. 2016) at 137–38, available at <https://www.ojp.gov/pdffiles1/nij/250315.pdf>.

¹³⁵ TDCJ STG Operations Manual, March 2016 at 11. Although the TDCJ STG Operations Manual does appear to provide a list of factors to be used in designating a “group of offenders” as an STG or disruptive group, TDCJ redacted that information prior to supplying TCRP with the manual.

¹³⁶ National Institute of Justice, *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, (Nov. 2016) at 143, available at <https://www.ojp.gov/pdffiles1/nij/250315.pdf>.

Finally, the only route out for people confined to solitary due to purported STG membership is to, at a minimum, renounce their affiliation with the STG and to complete the “Gang Renouncement and Dissociation” (GRAD) program.¹³⁷ This process takes a minimum of 21 months, because people must first demonstrate they “have not been involved in any STG activities for a minimum of one year” before entering the program, which itself takes 9 months to complete.¹³⁸ The criteria for admission to the GRAD program are onerous and the final decision on admission is up to the STG Management Office.¹³⁹ The STG Operations Manual states that any person “removed from the GRAD process due to receiving a major disciplinary[case]” must wait six months before they may rejoin the program, assuming they still meet the eligibility criteria.¹⁴⁰ However, according to at least one person who has participated in GRAD, “successful completion” includes the requirement that the participant receive zero disciplinary cases of any kind during their time in GRAD. Participants who do not “successfully complete” GRAD remain in solitary, and a person who successfully completes GRAD but who is later re-confirmed as an STG member will be returned to solitary and not allowed to participate in GRAD again.¹⁴¹

¹³⁷ TDCJ Security Threat Group Plan, April 2015 at 10; TDCJ Restrictive Housing Plan, August 2019 at 15.

¹³⁸ TDCJ, Correctional Institutions Division, *Gang Renunciation and Disassociation (GRAD) Process*, https://www.tdcj.texas.gov/divisions/cid/stgmo_GRAD.html (last visited Aug. 31, 2021); TDCJ Security Threat Group Plan, April 2015 at 10.

¹³⁹ TDCJ, Correctional Institutions Division, *Gang Renunciation and Disassociation (GRAD) Process*, https://www.tdcj.texas.gov/divisions/cid/stgmo_GRAD.html (last visited Aug. 31, 2021). To qualify for the GRAD process a person “shall meet the following criteria:

1. Have not been involved in any STG activities for a minimum of one year;
2. Have a completed and signed Gang Member Disassociation Packet;
3. Have been assigned to administrative segregation Level I (IA) for the previous six months prior to enrollment;
4. Have not received any Level I major disciplinary cases for offender assault, staff assault, aggressive sexual misconduct or weapon possession for at least two years prior to enrollment. All other Level 1 major disciplinary cases shall be reviewed on a case by case basis after a period of one year;
5. Have not received any Level 2 or Level 3 major disciplinary cases for at least six months prior to enrollment;
6. The following security precaution designators: Escape (ES), Staff Assault (SA), or Hostage Situation (HS) are reviewed by the State Classification Committee for consideration on an individual case by case basis.
7. Have not previously completed the Returning Population Gang Renouncement and Disassociation Program (RP-GRAD) or GRAD process.”

Id. The RP-GRAD process is a six month version of the GRAD process limited to STG members who were previously discharged from TDCJ custody but have returned. These criteria are onerous because whether a person has satisfied them is, as is at issue in almost every process described in this letter, subject to the arbitrary and subjective decision-making of individual TDCJ officers and/or procedural delays, such as the requirement that the SCC review certain people’ admission to the GRAD process on an individual basis.

¹⁴⁰ STG Operations Manual, March 2016 at 32.

¹⁴¹ TDCJ, Correctional Institutions Division, *Gang Renunciation and Disassociation (GRAD) Process*, https://www.tdcj.texas.gov/divisions/cid/stgmo_GRAD.html (last visited Aug. 31, 2021).

At a minimum, then, even people who are erroneously confirmed as members of an STG are guaranteed to spend at *least* 21 months in solitary confinement. However, people report waiting far longer than one year after asking to join GRAD, and, in one case, not being able to enter the GRAD program until more than 5 years after the initial request. Moreover, the GRAD program does not provide a *meaningful* route out of solitary. Numerous people report that they simply cannot participate in it, whether or not they are in fact members of an STG. For starters, some people incorrectly identified as gang members do not wish to “renounce” their membership in a gang because doing so would constitute a tacit admission of that affiliation. But both these people and those who are in fact members of an STG have also reported that participation in GRAD will result in them being labeled a “snitch.” This label, as the Supreme Court has noted, may incite violence; “[t]estifying against, or otherwise informing on, gang activities can invite one’s own death sentence.”¹⁴² Similarly, as numerous people have put it, “you can’t just quit the gang.” This “renunciation” requirement therefore—as the Eastern District of California found in assessing a similar requirement imposed on STG members seeking release from solitary confinement in California’s Pelican Bay State Prison—increases the risk that TDCJ will erroneously deprive these people of their liberty interest in not being placed in solitary.¹⁴³ Similarly, the Eastern District of Texas recently permitted a procedural due process challenge to TDCJ’s STG confirmation practices and the GRAD program to proceed on the grounds that the GRAD program simply does not provide a meaningful route out of solitary confinement.¹⁴⁴

iii. TDCJ’s Policies and Practices in Assigning People to and Reviewing their Placement in Solitary Confinement Violates the Due Process Clause of the Constitution

Ultimately, what our investigation has shown is that TDCJ’s processes for placing people in solitary confinement are extraordinarily unfair. The decision to place a person in isolation frequently bears no relation to penological concerns and is instead based on the ad hoc, arbitrary, and inconsistent decision-making of individual TDCJ staff members. And once a person is relegated to solitary, they are condemned to suffer in a state of uncertain, unending limbo. Promises from SCC personnel that certain behavior will result in release go unfulfilled, while SCC reviews are perfunctory and often preordained, based on decades-old, stale information. People frequently receive no notice of review hearings or are denied the opportunity to submit documentation in their favor or to appear at those hearings, and for purported STG members, whether accurately confirmed or not, the only way out is to publicly renounce—and possibly inform on—their supposed STG. This runs the risk of being labeled a “snitch” and the obvious ramifications that could follow. It is repugnant to the United States Constitution that such incredibly serious consequences flow from these infirm, error-prone, and ad hoc processes.

¹⁴² *Wilkinson v. Austin*, 545 U.S. 209, 227 (2005).

¹⁴³ *Ashker v. Brown*, 2013 WL 1435148, at *7 (N.D. Cal. Apr. 9, 2013).

¹⁴⁴ *Hernandez v. Abbott*, 2020 WL 5539093, at *14 (E.D. Tex. Aug. 24, 2020), *report and rec. adopted*, 2020 WL 5534522 (E.D. Tex. Sept. 15, 2020) (plaintiff stated a violation of procedural due process where he alleged he was subject to de facto indefinite period of isolation because the only way out was to “debrief” through the GRAD program and to therefore become “the target of violence by fellow gang members”).

E. TDCJ’s STG Practices Likely Discriminate Against Persons of Hispanic and Latin Origin

TDCJ’s STG practices are not only procedurally unconstitutional but likely discriminatory. Of the eleven gangs that TDCJ recognizes as STGs, eight are of Hispanic or Latin origin. The enormous discrepancy in the proportion of Hispanic men imprisoned in solitary confinement versus the proportion of Hispanic men held in general population is almost certainly due to this fact; as of August 2019, Hispanic men made up 33.5% of the on-hand male population incarcerated in TDCJ (44,424 out of 132,469 people) but 49.2% of the solitary confinement male population (2,145 out of 4,359 people).¹⁴⁵ Moreover, it appears that TDCJ policy explicitly treats women who are confirmed as STG members differently than men; TDCJ’s STG Operations Manual states that women are not to be automatically placed in solitary confinement and are not required to go through the GRAD process in order to dissociate from their purported STG.¹⁴⁶ Both of these practices raise serious concerns under the Equal Protection Clause of the Constitution.

We hope these discrepancies are of particular interest to your office not only because they strongly suggests unconstitutional discrimination but also because the Biden Administration is clearly committed to advancing racial equity.¹⁴⁷ We agree with President Biden that “[r]acial equity . . . has to be the business of the whole of government”¹⁴⁸ and Director of the United States Domestic Policy Council Susan Rice that “in all aspects of what we do, we need to be intentional about infusing equity and racial justice.”¹⁴⁹ Jurisdictions nationwide, in the wake of the murder of George Floyd, have begun to take small steps toward this goal, particularly in the gang-policing

¹⁴⁵ See Texas Department of Criminal Justice, *Fiscal Year 2019 Statistical Report* at 1, available at https://www.tdcj.texas.gov/documents/Statistical_Report_FY2019.pdf; TDCJ Response to TCRP Request for Public Information, July 7, 2020 (on file with TCRP); see also Corr. Leaders Ass’n & Arthur Liman Ctr. For Pub. Int. L. at Yale L. Sch., *Time-In-Cell 2019: A Snapshot of Restrictive Housing based on a Nationwide Survey of U.S. Prison Systems* 29–31 tbls.11 & 12 (2020), https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_2019.pdf. While women make up less than 10% of TDCJ’s total population and less than 2% of its restrictive housing population, Hispanic women are also overrepresented in restrictive housing. Hispanic women account for roughly 22% of TDCJ’s women population, yet comprise nearly 40% of all women in restrictive housing. *Id.* at 32–34 tbls.13 & 14.

¹⁴⁶ TDCJ STG Operations Manual, March 2016 at 50.

¹⁴⁷ See, e.g., Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, (Jan 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/> (directing the White House Domestic Policy Council to “coordinate the formulation and implementation of . . . efforts to embed equity principles, policies, and approaches across the Federal Government”); Michael D. Shear, *Efforts to Advance Racial Equity Baked In Throughout Biden’s Budget*, THE NEW YORK TIMES, (May 29, 2021), <https://www.nytimes.com/2021/05/29/us/politics/efforts-to-advance-racial-equity-baked-in-throughout-bidens-budget.html>.

¹⁴⁸ Remarks by President Biden on America’s Place in the World, (Feb. 4, 2021), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/04/remarks-by-president-biden-on-americas-place-in-the-world/>.

¹⁴⁹ Joe Davidson, *Susan Rice wants every federal agency to focus on racial equity*, THE WASHINGTON POST, (Jan. 29, 2021), https://www.washingtonpost.com/politics/rice-biden-federal-racial-equity/2021/01/28/a9c0a3be-61b2-11eb-ac8f-4ae05557196e_story.html.

context.¹⁵⁰ These steps are necessary because gang-related laws and policy often constitute, in practice, “normalized racism.”¹⁵¹ Thus, for example, the New York Police Department has disbanded its “anti-crime unit” with the goal of “build[ing] trust amid heightened racial tension”¹⁵² and eliminating the “last vestige of the city’s aggressive stop-and-frisk policy.”¹⁵³ Portland has shifted millions away from and dissolved its “Gun Violence Reduction Team,” the police successor to the “Gang Enforcement Team,” that disproportionately targeted young men of color.¹⁵⁴ And the Los Angeles District Attorney has dissolved its “Hardcore Gang Division” to better serve its communities.¹⁵⁵ But it appears that neither Texas nor TDCJ have endorsed anything approaching these viewpoints.

Moreover, the makeup of TDCJ’s STG list is suspect not only for what it includes but also for what it omits: proportionate representation of the threat posed by white nationalist and white supremacist gangs. The growing threat of violence posed by these groups was visibly exemplified by the January 6, 2021 attack on the United States Capitol, which was presaged by the U.S. State Department’s recognition in its 2019 Country Reports on Terrorism that white supremacist violence was “both on the rise and spreading geographically.”¹⁵⁶ More recently, U.S. Attorney

¹⁵⁰ Even in jurisdictions less willing to voluntarily adjust their gang-policing practices, the community has won meaningful change through litigation, such as forcing the city of Chicago to implement stricter qualifying criteria and notice practices with respect to its gang database. *See, e.g., Chicagoans for an End to the Gang Database v. City of Chicago*, summary available at <https://www.macarthurjustice.org/case/chicagoans-for-an-end-to-the-gang-database/>.

¹⁵¹ *See, e.g., Emily Galvin-Almanza, California Gang Laws Are Normalized Racism*, THE APPEAL, (Oct. 4, 2019), <https://theappeal.org/drakeo-california-gang-laws-racism/> (discussing how California’s gang database creates “a scheme that corrals communities of color and subjects them to different rules of engagement . . . formaliz[ing] a pipeline of people from heavily policed communities into the prison system.”); *see also, e.g., Philip Marcelo, Gang database made up mostly of young black, Latino men*, ASSOCIATED PRESS, (July 30, 2019), <https://www.apnews.com/dd5643e358c3456dbe14c16ade03711d>; Mary Holper and Claire Valentin, *Boston Police Has a Secret Point System That Turns Normal Teenage Behavior Into Gang Membership*, AMERICAN CIVIL LIBERTIES UNION (Nov. 21, 2018), <https://www.aclu.org/blog/immigrants-rights/boston-police-has-secret-point-system-turns-normal-teenage-behavior-gang>; Larry Smith, *Former Baltimore Police Officer Criticizes the Department’s Gang Database*, THE APPEAL, (July 23, 2018), <https://theappeal.org/former-baltimore-police-officer-unloads-on-departments-gang-database>.

¹⁵² Peter Szekely, *New York City police disband rough street unit amid pressure for reform*, REUTERS, (June 15, 2020), <https://www.reuters.com/article/us-minneapolis-police-new-york/new-york-city-police-disband-rough-street-unit-amid-pressure-for-reform-idUSKBN23M2U6>.

¹⁵³ Quil Lawrence, *NYPD Eliminates Plainclothes Anti-Crime Units Implicated In Many Shootings*, NPR.ORG, (June 16, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/16/878226021/nypd-eliminates-plainclothes-anti-crime-units-implicated-in-many-shootings>. Additionally, in 2018 and in the absence of statutory guidance, NYPD acknowledged community concerns and now conducts periodic status checks to maintain the integrity of the database. Rocco Parascandola, Khadija Hussain, and Larry McShane, *NYPD honcho insists gang database saves lives, but a teary City Council member said it can have devastating consequences*, N.Y. DAILY NEWS, (June 13, 2018), <https://www.nydailynews.com/new-york/ny-metro-nypd-gang-database-20180613-story.html>.

¹⁵⁴ Nigel Jaquiss, *Mayor Ted Wheeler Agrees to Disband the Portland Police Bureau’s Gun Violence Reduction Team*, WILLAMETTE WEEK, (June 9, 2020), <https://www.wweek.com/news/2020/06/09/mayor-ted-wheeler-agrees-to-disband-the-portland-police-bureaus-gun-violence-reduction-team/>.

¹⁵⁵ James Queally, *D.A. George Gascón’s new vision for taking on L.A. County gangs draws confusion, criticism*, THE L.A. TIMES, (Apr. 22, 2021), <https://www.latimes.com/california/story/2021-04-22/gascons-downsizing-of-gang-unit-draws-criticism-confusion>.

¹⁵⁶ United States Department of State, *Country Reports on Terrorism 2019*, available at <https://www.state.gov/reports/country-reports-on-terrorism-2019/>.

General Merrick Garland similarly testified to a Senate panel in May 2021 that white supremacist groups pose a rising threat to the United States,¹⁵⁷ and the Biden Administration’s June 2021 National Security Council’s National Strategy for Countering Domestic Terrorism acknowledges that among the “wide range of animating ideologies” behind recent domestic terrorism attacks, “racially or ethnically motivated violent extremists (principally those who promote the superiority of the white race) . . . are assessed as presenting the most persistent and lethal threats.”¹⁵⁸

The overrepresentation of Hispanic gangs on TDCJ’s list of STGs does not seem to align with this reality. Instead, the way TDCJ has chosen to label and thus police the groups it identifies as STGs appears to represent at best a head-in-the-sand mentality and at worst unconstitutional discrimination. Ultimately, this overrepresentation—and the underrepresentation of white supremacist groups—raises serious questions, as does TDCJ’s differential treatment of purported STG members based on gender. We hope you agree that federal resources can and should be mobilized to further investigate TDCJ’s STG practices.

III. CONCLUSION

Texas’s deliberate indifference to the harm and risk of harm caused by its adherence to placing thousands of people in indeterminate, indefinite solitary confinement violates the federal rights of the people in its custody and care. Despite public reporting, political pressure, and other forms of advocacy, TDCJ has refused to change its practices. Nothing short of investigation and, potentially, enforcement action by the Department of Justice will compel Texas to cease violating the federal constitutional rights of the people held in its decaying and understaffed prisons. We ask that you respond to this letter within thirty days of receipt and open a CRIPA investigation into the Texas Department of Criminal Justice for failure to protect the individuals it incarcerates from harm, for failing to provide procedural due process, and for failing to provide equal protection of the laws to all within its custody. Additionally, if it would aid in your investigation, we would welcome the opportunity to more fully share our investigation and our underlying data in a way that protects the confidentiality of those who have been willing to speak with us.

Sincerely,



Mimi Murray Digby Marziani
President
Texas Civil Rights Project

¹⁵⁷ Mark Hosenball, *White supremacy groups pose rising U.S. threat, Garland says*, REUTERS, (May 12, 2021), <https://www.reuters.com/world/us/white-supremacist-groups-pose-rising-us-threat-garland-says-2021-05-12/>.

¹⁵⁸ National Security Council, *National Strategy for Countering Domestic Terrorism*, (June 2021), available at <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.



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Enclosures: [Torture by Another Name](#) – 2019 Report on Solitary Confinement in Texas
[A Solitary Failure](#) – 2015 Report on Solitary Confinement in Texas

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