

FORMAL COMPLAINT

To: Whom it may concern

From: Pelican Bay Prison - SHU

Short Corridor Inmates

[e.g. Todd Ashker & Danny Foxell,  
and many others]

DATE 2011

**RE: COMPLAINT ON HUMAN RIGHTS VIOLATIONS AND REQUEST FOR ACTION TO END 20 + YEARS OF STATE SANTIONED TORTURE TO EXTRACT INFORMATION FROM (OR CAUSE MENTAL ILLNESS TO) CALIFORNIA'S PELICAN BAY STATE PRISON - SECURITY HOUSING UNIT (SHU) INMATES.**

**I. INTRODUCTION:**

**This is a Formal complaint and request for action to end 20 + years of state sanctioned torture in order to extract information from (or cause mental illness to) California inmates incarcerated indefinitely in punitive isolation at Pelican Bay State Prison - Security Housing Units (PBSP-SHU), based on arbitrary policies and practices re: "status" of the inmates (i.e. a California Department of Corrections and Rehabilitation (CDCR) gang "label", without ever being charged, and found guilty, of committing a gang related illegal act), in violation of the 1<sup>st</sup>, 5<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution and International law barring the use of torture and other cruel, inhumane, or degrading treatment or punishment as a means of obtaining information, coercion and/or punishment for acts - suspected acts committed (per. U. N. Conventions Against Torture of 1984 - 1985).**

## II. PARTIES:

- 1) **Named Complainant(s), on behalf of themselves and those similarly situated – inmates, family members, friends, and concerned citizens, harmed by such policies and practices.**
  
- 2) **The State of California law makers – including but not limited to <sup>Edmund</sup> ~~Edmund~~ Governor <sup>BROWN</sup> ~~Edmund~~ ~~Edmund~~, and CDCR Secretary Mathew Cate, et al. (Each and all of them being on notice of said violations and responsible for inmate care and treatment).**

## II. SUMMARY OF HUMAN RIGHTS VIOLATIONS:

The CDCR has been violating the human rights of certain inmates for the last 10 – 35+ years – and counting – via their policy and practice re: the arbitrary, indefinite placement of said inmates into the punitive SHU units alleging said inmates “status” (i.e., a CDCR – gang affiliation classification, which in turn is based on allegations made by confidential inmate informants seeking and receiving special treatment, etc) mandates this SHU placement for Safety and Security reasons. However, the true nature of such “status” based-indefinite SHU confinement is not clear. While the arbitrary nature of such policy-practice is crystal clear, demonstrated by the fact that CDCR claims that all validated prison gang – affiliates automatically “pose an immediate, severe threat to the safety and security of all general population prison, other inmates and staff” (solely based on this “status”; it is notable that most inmates who have been in SHU for the last 10 – 35+ years have never been found guilty of committing a single gang-related, illegal act). But the fact is – this is actually only applied to a few hundred inmates, while tens of thousands of gang affiliates are in general population prisons throughout the state.

This arbitrary “status” based indefinite SHU confinement was imposed on a few hundred inmates, beginning in 1985 – 1986, without prior notice that a gang “label” was prohibited and sanction-able; related rules and regulations were not included in CDCR-Cal. Code of Regs. Title 15 rules book until 1999 (while Calif. Prison gang culture goes back to the 1950’s).

The CDCR began housing these inmates in Pelican Bay State Prison – SHU (PBSP-SHU) in December 1989. Said inmates have been housed in PBSP-SHU arbitrarily, based on that “status” for the last 10-20+ years now, and their sole avenues for release from SHU are: Parole, death, mental illness, or “debriefing”.

“Debriefing” requires a SHU inmate to provide CDCR –staff with “sufficient verifiable information that will adversely impact the gang, other gang members and associates to the extent that they will never accept them back”. This equates to a CDCR – requirement that said inmates have the choice of remaining in SHU until death, mental illness, or becoming a known informant who has caused damage to other inmates. This makes the inmate (and possibly his family members) a target for reprisal, potentially for life... many of these inmates are serving “term – to- life” sentences, and they have been eligible for parole for the last 5 – 25+ years. But they are told if they want a chance to parole they have to debrief – period!

The CDCR – PBSP – SHU policies and practices summarized violate both the U.S. Constitution and International Law banning the use of torture and other cruel, inhumane, or degrading treatment or punishment – as a means of obtaining information via coercion, and/or to punish for acts or suspected acts of misconduct – as exemplified below:

A. In December 1989, CDCR opened PBSP-SHU, bragging that it was meant to contain and isolate the prison systems “1% - worst of the worst inmates”; and this would make the system safer and easier to manage. (This has proven to be false. See Page 7, note C). (at ★)

B. There has been a lot of CDCR-PBSP (and guard union – CCPOA) propaganda generated about these “worst of the worst” ever since 1989 (and it has been perpetuated by the corporate media via T.V. *dramas* ~~demos~~ and movies). Yet, a review of these so-called demonized “worst of the worst” PBSP-SHU inmates, who are party to this complaint, will reveal they are actually free of being guilty of serious rule violations for many years (and zero illegal gang – related acts in prison). Many have paroled and discharged parole-staying out 5-10+ years, but as soon as they returned to CDCR they were placed back into PBSP-SHU indefinitely!

C. Many of these inmates are those who utilize the legal system to challenge illegal – CDCR policies and practices, and encourage others to do the same.

- D. For the last 10-20+ years these PBSP-SHU inmates have been subject to the punitive conditions therein for arbitrarily applied "status" reasons, in order to coerce them into becoming notorious informants for the state, or die/suffer mental illness in SHU – examples being:**
- 1) Subject to 10-20+ years of sensory deprivation via isolation and intentional limitations of normal human contact and social interaction as much as possible.**
  - 2) Denied physical contact with family-friends; no-phone calls, and not even able to have a photograph taken to send home. The isolated location of PBSP-SHU near the Oregon boarder, and fact that visits are restricted to 1 ½ hour on weekends, behind glass, equates to no-visits for most.**
  - 3) If they want out of SHU, they have to provide staff with information and be willing to testify on other prisoners, free citizens, including family members, that only harms others, and this has to be known by everyone. This is a Catch-22 of: become a notorious informant (and thereby place yourself, and possibly family, at serious risk for retaliation) or die/become mentally ill in SHU. This is outrageous, and family, friends and concerned citizens are outraged by this (especially given the fact that CDCR staff are indifferent to, and incapable of, guaranteeing the safety of inmate informants, and their families, outside of prison). This is applied to lifer parole eligibility too (i.e., become an informant, or do life – without parole).**
  - 4) Denied adequate medical care (this became more pronounced when Dr. Michael C. Sayre, became PBSP Chief Medical Officer in 2006; and who, with the complicity of several cronies e. g., M. McLean, Sue Risenhoover and James Flowers, et al., began to systematically discontinue and deny medication, specialist care, assistive aids – telling SHU inmates, "if you want better care, get out of SHU and now SHU inmates are chained down to the floor of the clinic, like animals, if they need to see a nurse/doctor). The Psychiatric staff are complicit too, claiming "there are no – mental health issues precluding continue SHU-confinement", without any personal interaction with those inmates.**
  - 5) CDCR-PBSP-staff constantly seek ways to make SHU more punitive for these inmates (e. g., most cells are freezing in winter – and adequate clothing and head covering is restricted, denied; the food portions are smaller – much of it is inedible,**

and it's the same bland diet everyday for 20+ years. No exercise equipment – while most prisons provide at least a pull-up, dip-bar in SHU units; all property – privileges are severely restricted-denied (compared to most other long-term isolation units across the U.S., including Federal – Supemax in Florence, Colorado). And recently all college and education programs have been taken away from all PBSP-SHU-inmates. Also "group-punishment" is a common response to any rule violation.

All of which combines to a level that constitutes illegal policies that include psychological and physical torture for purpose of coercion and punishment, based on "arbitrary status.... Support for the severity of the combined conditions (exemplified above) is the fact that many of these inmates have died; many have developed serious medical, and mental illness; and hundreds have elected to become "known informants", causing major problems to their families, and many have been seriously victimized as a result (which CDCR is indifferent to), and when they're actually going through the debriefing process, if they do-not provide prison-officials enough information on other prisoners and free-citizens' criminal activities. They are told to come back when they do – Forcing those debriefing to create and invent elaborate half-truths stories incriminating many...Further endangering the debriefer and his family...

#### IV. EXAMPLES OF LEGAL SUPPORT:

Complainants present the following examples of legal precedent in support of this complaint, and call for action. It is notable that California lawmakers and courts have been aware of these blatantly illegal policies and practices for 20+ years; however, for the most part they remain indifferent – therefore, more direct action is necessary.

##### 1. U.S. CONSTITUTION VIOLATIONS:

- A) 1<sup>st</sup> and 5<sup>th</sup> Amendment – Right to be free of punishment for association and/or choosing not to speak (see: NAACP v. Claiborne Hardware Co., 485 U.S. 866, 925 (1982); U.S. v. Safirstein, 827 F.2d 1380, 1388 (9<sup>th</sup> cir. 1987); American Arab Anti-discrimination v. Reno, 70 F.3d 1045, 1063 (9<sup>th</sup> cir. 1995); Hydrick vs Hunter, 2006 D.J. D.A.R. 13181, 13186 (9<sup>th</sup> cir. 2006); People v. Castaneda, 23 cal. 4<sup>th</sup> 743, 749 (2000) (Re: Cal. Supreme Court's interpretation of Cal. Penal Code, Section 186.22 – which is the Penal Code relied upon for CDCR rules re: "gang activity". See: Cal. Code of Regulations Title 15, Section 3023.) (e.g., only conviction for Felonious gang activity is sanctionable per Cal. Pen. Code 186.22)
- B) 8<sup>th</sup> Amendment Right to be free from cruel and unusual punishment (e.g., not be subject to serious threat of physical or mental harm) see: Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9<sup>th</sup> cir. 1989) (Re: "informant status" issue); Benefield v. McDowell, 241 F.3d 1267, 1271 [10<sup>th</sup> Cir. 2001]; David v. Hill, 401 F.Supp.2d 749, at p. 756-57 [S. D. Tex. 2005]

and, U.S. v. Basciano, 369 F. Supp. 2d 344 (E.D. N.Y. 2005); and Madrid v. Gomez, 889 F. Supp. 1146, 1229-30, 1260-67 (N.D. Cal. 1995); re: punitive conditions in PBSP-SHU, and mental health issues; wherein the court questions the legitimacy of SHU punitive measures being used indefinitely on the inmates at issue, and the court states... "In sum, those incarcerated in SHU for any length of time are severely deprived of normal human contact... conditions in SHU amount to a virtual total deprivation, including so far as possible, deprivation on human contact" (Id., at p. 1230).

The court noted... "courts have recognized SHU-conditions, length of time and effects on mental health, are factors that must be considered" (Id. p. 1264-65) and then concludes that PBSP-SHU conditions were not a per se violation, "based on the current record" (specifically stating: the court "cannot speculate on effect it may have on inmates confined in SHU for 10, 20 years or more": Noting "the inmates studied in connection with the case had generally been in SHU for 3 years or less" Id., p. 1267) see also: U.C. Santa Cruz Prof. Craig Haney, expert psych. Studies of mental health issues re: "SHU Syndrome" available online ( see U.C. Santa Cruz Website).

Importantly, the Madrid court acknowledged the applicability of the principles covered by the U.S. Supreme Court in Helling v. McKinney, 509 us. 25 (1993) (Id., at p. 1261. "these same standards will not tolerate conditions likely to make inmates seriously mentally ill"). The Helling court principle is that inmates subjected to unconstitutional conditions do not have to actually suffer physical-mental harm in order to obtain relief if the risk of future harm is a "substantial risk" the courts are supposed to provide relief.

And in the unpublished ruling USDC – N.D. cal #c98-21038 JW, Griffin v. Gomez, the court ordered CDCR-PBSP-SHU to release Griffin to general prison population after finding that the "debriefing" requirement, and risk of serious mental illness, created sufficiently "substantial risk(s)" to both physical and mental health, that when combined (per. Wilson v. Seiter, 501 u.s. 294, 304-305 (1991) rose to the level of an 8<sup>th</sup> Amendment Violation, and ordered Griffin's release from PBSP-SHU in 2006 (Id., order Granting Writ-June 28, 2006). CDCR's response has been 1<sup>st</sup>: to place Griffin in the Administration Segregation Units; and 2<sup>nd</sup>: transfer him to Corcoran-SHU. Also see: Robinson v. California, 370 us. 660 (1962), which held... "punishment for 'status' is particularly obnoxious and cruel and unusual punishment.

## C) MISCELLANEOUS:

See: Madrid ruling, at p.1241, at FN. 186 (Re: some validated gang affiliates not placed in SHU; also note; Cal. Code of Regulations, Title 15, Sections 3378(d) and 3378(e). re: general prison population vs. SHU gang affiliates eligibility for "inactive" status). This supports contention re: arbitrary nature of SHU; the fact that there are tens of thousands of gang affiliated in CDCR General prison populations is well publicized in news stories and published legal rulings. See also: Madrid Ruling, at pages 1263 at FN. 204  
★ (re: contrary evidence showing a decline in CDCR – violence starting in 1984 – six years prior to opening PBSP-SHU, Notably, an analytical study of CDCR – violence since Madrid's Jan. 1995 ruling will reveal a prison system a lot worse off since PBSP-SHU opened).

See; U.S.D.C. – N.D. Cal # coo – 905 S.L., Lira v. Cate, order dated 9-30-09. "Findings of fact and conclusions of law" (wherein, after a court trial, the court held CDCR-PBSP-SHU officials denied Lira of procedural and substantive due process...including that the 180 day classification reviews of his continued SHU retention (mandated in Madrid) were meaningless (id., order at pages 3, 40-42), and that PBSP-SHU (for 8-years) caused Liras' serious mental illness. Such principles apply to all. (however, very few obtain relief).

## 2. INTERNATIONAL VIOLATIONS

(I.e., U.N. Universal Declaration of Human Rights... and 1984 convention against torture and other cruel, inhumane or degrading treatment or punishment-ratified by U.S.A ~~1984~~. 1994)

Wherein the 1984 (C.A.T.) Article – 1 defines, and criminalizes "Torture" (I.e., "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person,... when such pain or suffering is inflicted by or at the instigation of or with the consent acquiescence of Public Official or other person acting in Official Capacity").

There are no-exceptions (Article-2), violations are criminal acts (Article-4) Clearly, the acts and omissions summarized herein violate clearly established U.S. Constitution principles, and International Treaty Law (a flagrant violation of Article – 6 of the U.S. Constitution, which affirms that treaty law is the "Supreme Law of the Land").

**CONCLUSION**

**GOOD CAUSE** be demonstrated, the complainants request a Formal-Investigation, Official International condemnation of said policies and practices,, as well as direct action by those affected, as deemed warranted, just, and necessary to right the wrongs.

[NOTE: ON Feb. 5, 2010 The  
Original sent to Gov. Schwarzenegger  
& CDCR Secretary Cate

Respectfully Submitted,

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