

March 11, 2016

Ms. Vanita Gupta  
Principal Deputy Assistant Attorney General  
U.S. Department of Justice Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Office of the Assistant Attorney General, Main  
Washington, D.C. 20530

Re: Request for an Investigation into the Use of Solitary Confinement in Florida's Prisons

Dear Ms. Deputy Assistant Attorney General Gupta:

We write to you today to express our deep concern that the rights of those imprisoned in Florida are being violated. We wish to bring to your attention the overuse of solitary confinement in our state, and to urge that the Civil Rights Division's Special Litigation Section investigate whether its use in Florida's prisons violates the Civil Rights of Institutionalized Persons Act (CRIPA). We strongly believe that it does, that state bodies are unable or unwilling to adequately address these issues, and that the Department of Justice alone is capable of bringing our state's practices into accordance with the law.

While we strongly support needed measures to ensure that those who work in our state's prisons are safe, and understand that solitary confinement is sometimes necessary in that effort, we strongly believe that such confinement is overused throughout our nation and our state.<sup>1 2</sup> All of this indicates why a growing consensus in our country believes not just that too many people are incarcerated, but that too many are in the various forms of Restricted Housing or Special Housing, usually put under the heading of "solitary confinement." The President's recent directive to end solitary confinement in federal prisons for juvenile offenders, and for those convicted of lesser violations, obviously reflects this concern.<sup>3</sup>

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<sup>1</sup> "Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison", The Liman Program, Yale Law School and The Association of State Correctional Administrators, August 2015, page ii, [https://www.law.yale.edu/system/files/documents/pdf/ascaliman\\_administrative\\_segregation\\_report\\_sep\\_2\\_2015.pdf](https://www.law.yale.edu/system/files/documents/pdf/ascaliman_administrative_segregation_report_sep_2_2015.pdf). This report estimates the number of federal and state prisoners in "restricted housing" in 2014 at 80-100,000.

<sup>2</sup> Bureau of Justice Statistics, Allen J. Beck, PhD., "Use of Restrictive Housing in U.S. Prisons and Jails, 2011-12", October 23, 2015, pages 1, 6, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5433>. On an average day in 2011-12 (the most recent period for which the Bureau has issued findings), 4.4% of state and federal prisoners, and 2.7% of those in local jails, were in "administrative segregation or solitary confinement". Across the previous twelve months, roughly 20% of those in prison, and 18% in jails, had spent time in some form of "restrictive housing, including disciplinary or administrative segregation or solitary confinement". Troublingly, this report further notes that LGBT inmates, and those with mental illness, were even more likely to have spent time in confinement.

<sup>3</sup> Barack Obama, "Why we must rethink solitary confinement", Washington Post, January 25, 2016, [https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce\\_story.html?tid=a\\_inl](https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html?tid=a_inl)

In Florida, according to figures submitted by the Florida Department of Corrections (FDC) last year for an upcoming ASCA-Liman survey (obtained by public records request #15-0518, appended), at September 30, 2015 there were 87,111 inmates held in prisons administered by the FDC and 12,477 in privately administered prisons, for a total of 99,588.<sup>4</sup> Of these, 12,002 in FDC prisons (13.8%), and 434 of those in private prisons (3.5%), were in held in all forms of “Restricted Housing.”

As defined by the ASCA-Liman questionnaire, this form of housing includes housing in which prisoners are confined to their cells for at least 22 hours a day, and for at least 15 continuous days. At some points in the data, the term “Extended Restricted Housing” is also used. We take them to be the same. In Florida, the various forms of solitary confinement are sometimes referred to as “Special Housing”. We are concerned about any and all of these forms.

Taking the overall prison population of 99,588 as a baseline, 12,436 prisoners are in such confinement (12.5%).

We strongly urge the Department to investigate why one in eight Florida prisoners are being held in confinement.

We are also concerned by what appears to be racial bias in the use of solitary confinement. The FDC reports that there are 92,679 men in state prisons in Florida (including those publicly, and privately, administered) and 6,909 women. By the state’s records, the ethnicity of the men (rounded) were 46% white, 49% Black and 4% Hispanic for the general population. But the percentages of those ethnicities in restricted housing are 37, 59 and 5%, respectively.

For women, the percentages in the general population were 67% white, 30% Black and 3% Hispanic, but in restricted housing they are 47, 50 and 3%. The overall totals for both genders show the same pattern, with these ethnicities in the overall prison population at 47, 48 and 4%, but 37% white, 58% Black and 5% Hispanic are in restricted housing.

All these figures show a large overrepresentation of Black inmates in such confinement, by 10% for men, 20% for women, and 10% overall.

A similar pattern presents itself in the state’s figures for those deemed as “Having a Serious Mental Health Issue”. There were, again at the end of September 2015, of the general population of 99,588, there were 11,709 (11.8%) such inmates in the general population, 2,674 (2.7%) in restricted housing. For men, the white, Black and Hispanic ethnicities were 48, 48 and 3% of the total, but among those in restricted housing were 38, 58 and 4%, respectively. For women, the two sets of numbers were 69, 28 and 3% overall, and 51, 46 and 2% in confinement. For both genders combined, those three ethnicities represented 52, 44 and 3% of the population, but 39, 57 and 4 percent of those held in restricted housing.

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<sup>4</sup> Liman-ASCA Survey of Extended Restricted Housing—Fall 2015, pages 1-9. The forms of Extended Restricted Housing listed are Protective Custody, Disciplinary Custody, Administrative Segregation, and Other Forms of Extended Restricted Housing (comprising Close Management, Maximum Management, Death Row and Mental Health In Patient).

Again, Black prisoners among those with mental health issues were overrepresented in restricted housing by 10% for men, 18% for women and 13% overall.

Further, it is troubling that 22.8% of all prisoners with mental health issues are in restricted housing.

This material also shows that there were 138 males under the age of 18 held within these prisons, 46 of whom were in restricted housing.<sup>5</sup> As part of our public records request, we asked the FDC if these inmates were held in adult prisons because they were tried as adults, and specifically asked: “Is special consideration given to protecting them from the physical and psychological burdens of confinement?” We were given no answer other than: “The Department is complying with PREA [Prison Rape Elimination Act] standards relative to those who are 17 and under”.<sup>6</sup>

We still do not know how many prisoners, juvenile or otherwise, are in confinement in each individual adult prison, nor exactly which types of restricted housing are used in each, although we specifically requested this information both from the FDC and from the Florida Department of Management Services (DMS), which has oversight responsibility for private prisons.

A public records request (#4853, appended) sent to the DMS, seeking information on solitary confinement in the state’s privately operated prisons, which they are charged with monitoring, was rebuffed with no information at all given. (This is especially odd, given that the FDC provided us with at least some information on these prisons, including the overall number, 434, in restricted housing.)

We are also deeply concerned about the use of confinement for juvenile offenders incarcerated in facilities under the jurisdiction of the Florida Department of Juvenile Justice (DJJ). According to figures obtained from a public records request to the DJJ in December of last year (appended), there were approximately 1,900 juveniles held in residential programs and about 900 in Regional Detention Centers. In both cases, females were about 14 percent of the population.

According to the Florida Administrative Code, the types of confinement available for use in juvenile residential programs (which are all privately run) is confinement to a juvenile’s room for a maximum of four hours (F.A.C. 63E-7.009(4)(a)) and, in programs designated high or maximum risk, Controlled Observation for a maximum of 24 hours (F.A.C. 63E-7.013(16) and 63E-7.013(16) (i)(1)). We do not know if Controlled Observation involves a locked room. The DJJ has told us that it has no information on the number of instances of confinement in these settings, and directed that we seek the information from the individual residential programs.

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<sup>5</sup> The Miami Herald, June 12, 2015, Fred Grimm: “Florida still sticks juveniles in the box”, <http://www.miamiherald.com/news/local/news-columns-blogs/fred-grimm/article23904103.html#storylink=cpy>. Of Florida’s roughly 100,000 inmates in 2015, nearly 21,000 were juveniles when they committed their crime. Florida tries more children as adults than any other state, and with no minimum age for indictment, at least one 12-year-old has been tried as an adult. “The potential psychiatric consequences of prolonged solitary confinement are well recognized and include depression, anxiety and psychosis. Half of prison suicides occur in confinement. Due to their developmental vulnerability, juvenile offenders are at particular risk of such adverse reactions.”

<sup>6</sup> Email, January 12, 2016, from Vicki Newsome, Assistant Bureau Chief, Population Management/ Classification Management, Florida Department of Corrections

For Regional Detention Centers (RDC) operated by the state (and which limit incarceration to 21-30 days), the Florida Administrative Code (F.A.C. 63-G-2.022 (4)(b-h) states that confinement is allowed for a maximum of eight hours, with extensions. It can be extended beyond 24 hours with the approval of the Regional Director or their designee, and beyond 72 hours if there is a hearing (F.A.C. 63-G-2.022 (4)(b-h).

Data provided to us by the DJJ does raise concern about the extent to which confinement is used in Regional Detention Centers. In 2015, across 21 RDCs, there were 8,244 instances of confinement, with an average time of 8.3 hours. In January of this year, the Alachua County RDC had 59 confinements, with an average time of 9.2 hours (but with four that lasted between 46 and 48 hours). This is in a facility with 48 beds. We are also concerned that some RDCs confine juveniles at a rate roughly five times that of the facilities that use these the least.

We also wish to call your attention to the following cases of adult prisoners who are suffering, or have died, while in solitary confinement:

**Randall Jordan-Aparo** (DOC# T37895) died on September 13, 2010 after being gassed three times while in a solitary confinement cell at **Franklin Correctional Institution**. He had been ill for the preceding week, but was denied medical care despite the prison's knowledge that he had a rare blood disorder.<sup>7</sup>

**Rommell Johnson** (DOC#080667) died on June 3, 2010, as a direct result of two uses of chemical agents against him within a five-minute period while in a solitary cell at **Northwest Florida Correctional Institution**. Johnson was a known asthmatic and had an asthma attack earlier the same day. Despite that knowledge, the FDC used chemical agents on him, knowing full well that chemical agents can be fatal to asthmatics, and deliberately failed to provide him a reasonable accommodation for his disability. While in respiratory distress after the gassing, the FDC acted with deliberate indifference when they refused to provide him with medical care he so urgently needed. According to the Medical Examiner, Rommell suffered his untimely death as the result of "status asthmaticus associated with inhalation of chemical agents." In other words, the chemical agents triggered a severe asthma attack, and he suffocated to death.<sup>8</sup>

Further, mentally ill prisoners in Transitional Care Units (TCU) are in a form of solitary confinement.<sup>9</sup> It was in the TCU at **Dade Correctional Institution** (DCI) where **Darren Rainey** (DOC# 060954) died on June 23, 2012 when he was tortured in a locked shower rigged to be controlled by guards from the outside, with its water temperature at approximately 180 degrees. Shockingly, it has recently been reported that the Miami-Dade County Medical Examiner's autopsy

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<sup>7</sup> The Miami Herald, July 8, 2014, Julie K. Brown, "Inmate was gassed, say employees"

<sup>8</sup> Evelyn Brady, Personal Representative of the Estate of Rommell Johnson v. Florida Department of Corrections, Case No. 4:11-cv-00510-RH-WCS, U.S. Dist. Court (N.D. Fla.).

<sup>9</sup> Liman-ASCA Survey of Extended Restricted Housing—Fall 2015, page 9. As mentioned in footnote 4, the FDC includes a category of "Mental Health In Patient", which we take to mean those inmates held in TCUs, among its categories of restricted housing. Unfortunately, Mental Health In Patient is put, along with Close Management, Maximum Management and Death Row under the heading of "Other Form of Extended Restricted Housing", without specific numbers being given for any of these categories.

report found that Mr. Rainey's death was accidental, and that the guards who locked him into the shower had intended no harm.<sup>10</sup> Forty-four months after Mr. Rainey's death, this report is said to have been delivered to Miami-Dade County State Attorney Katherine Fernandez Rundle, but has not been made public. Not one person has been criminally charged in this case.

**Latandra Ellington** (DOC# H43061) died at **Lowell Correctional Institution** on October 1, 2014 also in a confinement cell. She had been placed there after she filed a complaint alleging that Sgt. Patrick Quercioli had engaged in sex with another prisoner, and threatened to kill Ellington. The official investigation of Ellington's death has been closed, with the cause of death given as "heart disease". A private autopsy commissioned by her family, which has filed a lawsuit in the matter, said she did not have heart disease, but found excessive bruising, and a lethal level of Amlodipine, a blood pressure medication, in her system.<sup>11</sup>

On October 9, 2014 **Yalex Tirado** (DOC# C08794) died in solitary confinement at **Lancaster Correctional Institution**, an FDC prison for juvenile offenders. This is a prison where, as The Miami Herald has reported, the sodomizing of inmates with broomsticks by other inmates has been common, and where nine guards have been charged over the last two years with battery or facilitating the entry of contraband. As of September 2015, neither the FDC nor Florida Department of Law Enforcement (FDLE) had reported any details of Mr. Tirado's death.<sup>12</sup>

We also wish to highlight the case of **Kristopher Rodriguez** (C07499), currently held in solitary confinement at **Union Correctional Institution**. He was incarcerated after becoming mentally ill in his teens, and eventually committing a crime. His medical care in confinement has been such that he lost, at its greatest extent, 100 pounds, and become so disoriented that, on one occasion, he could not recognize his mother, Gemma Pena ([Gpena1957@yahoo.com](mailto:Gpena1957@yahoo.com), 813-527-5148). He is still in very poor condition.

Much valuable information on solitary confinement has come from **Harold Hempstead** (DOC# 268866, currently at **Martin Correctional Institution**, B2-114 Upper, 1150 S.W. Allapattah Road, Indiantown, FL 34956. His sister, Windy Hempstead, is at 727-386-3867). Mr. Hempstead's courage is the reason the Darren Rainey case came to light. He was an orderly at that time in DCI's Transitional Care Unit, and witnessed the events of Mr. Rainey's death, as well as the use of this shower to torture four other inmates: **Michael Alfonso** (K53957), **William Wallace** (146352), **Halden Casey** (D02838), and **Daniel Geiger** (J42951).<sup>13</sup> As we stated in a previous letter to you:

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<sup>10</sup> The Miami Herald, David Ovalle, January 23, 2016, "Inmate's death in shower ruled an accident by M.E.", <http://www.miamiherald.com/news/special-reports/florida-prisons/article56108525.html#storylink=cpy>

<sup>11</sup> The Miami Herald, Julie K. Brown, September 26, 2015, "Suit claims abuse in death of inmate at Fla. women's prison", <http://www.miamiherald.com/news/special-reports/florida-prisons/article36612063.html>, and December 16, 2015, "At Lowell, sex, death and a probe riddled with questions" <http://www.miamiherald.com/news/special-reports/florida-prisons/article49158995.html>

<sup>12</sup> The Miami Herald, September 13, 2015, Julie K. Brown, "Broomstick attacks: a prison ritual," <http://www.miamiherald.com/news/special-reports/florida-prisons/article35039946.html>

<sup>13</sup> Harold Hempstead, February 4, 2013, grievance filed with the Florida Department of Corrections

“Mr. Hempstead has raised questions about prison conditions in general in Florida, giving accounts of guards beating and starving prisoners, allowing them, when they were in a psychotic state, to eat feces and drink urine (and paying the prisoners with extra food so that the guards could watch this), putting urine and laxative into inmates’ food, having bleach thrown into cells and onto inmates, and verbally abusing and tormenting psychologically fragile inmates in a unit intended to help them with their mental illnesses.<sup>14</sup>

These events took place in the Transitional Care Unit of DCI during Mr. Hempstead’s time there as an inmate orderly for four months in 2010, and 21 months between 2011 and 2012.

Mr. Hempstead has also presented us with information about abuses in the Protective Management Unit at **Columbia Correctional Institution**. As you know, he has signed an affidavit alleging such crimes as stabbings, extortion, sexual battery and robbery there. He further alleges that this has been facilitated by the false classification of many inmates within the FDC’s Inmate Risk Management System and Sexual Risk Indicator, which has had the result of downgrading the threat these inmates pose to others.<sup>15</sup> This creates an added threat to prisoners there, and makes it necessary to investigate whether this is being duplicated in other Florida prisons.

Finally, we note that the use of solitary confinement is increasingly seen as violating standards of international law. The United Nations Committee on the Rights of the Child has called for the abolition of its use for juveniles, and the U.N. Committee Against Torture (which administers the U.N. Convention Against Torture, to which the United States is a signatory) calls for its end for all prisoners. In 2011, Juan Mendez, the U.N. Special Rapporteur on torture, specifically criticized the use of our nation’s Supermax prisons, where all prisoners are held in solitary confinement.<sup>16</sup>

We believe the abuses catalogued here are just a fraction of the wrongs committed against those in solitary confinement. As Americans devoted to the rule of law, and the Constitutional rights it protects, we call upon the Department of Justice to vigorously investigate this matter to determine whether the conditions outlined here violate the provisions of the Civil Rights of Institutionalized Persons Act.

We thank you for your attention to this urgent matter, and we look forward to your response.

Please respond to Howard Simon, [HSimon@ACLUFL.org](mailto:HSimon@ACLUFL.org) or 786 – 363 – 2706.

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<sup>14</sup> The Miami Herald, August 9, 2015, Julie K. Brown, “Caged Crusader”, <http://www.miamiherald.com/news/special-reports/florida-prisons/article30490770.html>, as well as an affidavit by Harold Hempstead dated 6/26/2015

<sup>15</sup> Signed affidavit by Harold Hempstead, signed July 3, 2015

<sup>16</sup> Solitary Watch, Solitary Confinement: FAQ, page 4, <http://solitarywatch.com/wp-content/uploads/2012/01/Solitary-Confinement-FAQ-short-version.pdf>

Sincerely,



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