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“One is the Loneliest Number”: A Comparison of Solitary Confinement Practices in the United States and the United Kingdom

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**“ONE IS THE LONELIEST NUMBER”: A
COMPARISON OF SOLITARY
CONFINEMENT PRACTICES IN THE
UNITED STATES AND THE UNITED
KINGDOM**

*Daniella Johner**

TABLE OF CONTENTS

I.	INTRODUCTION	230
II.	RELEVANT TREATIES.....	233
	A. International Covenant on Civil and Political Rights.....	235
	B. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	236
III.	SOLITARY CONFINEMENT IN THE UNITED STATES	238
	A. Types of Solitary Confinement.....	240
	B. Solitary Confinement Procedures	241
	C. Conditions of Solitary Confinement.....	246
IV.	SOLITARY CONFINEMENT IN THE UNITED KINGDOM.....	249
	A. Types of Solitary Confinement.....	250

*Daniella Johner is a Student Works Editor of The Penn State Journal of Law & International Affairs and a 2019 Juris Doctor Candidate at Penn State Law. Part of the title, “One Is the Loneliest Number,” is from the song “One.” See THREE DOG NIGHT, ONE (American Recording Co. 1968). I would like to thank my parents, Philipp Johner and Michelle Berger, as well as my fiancé, Jordan Heringer, for their unconditional support. I owe them all my success. I also would like to thank Emilie Merrill and Victoria Wunder for their commitment to helping me master the English language.

B. Solitary Confinement Procedures 251
 C. Conditions of Solitary Confinement..... 256
 V. THE UNITED STATES CONSTITUTION’S “CRUEL AND UNUSUAL” STANDARD COMPARED TO INTERNATIONAL LAW’S “CRUEL, INHUMAN OR DEGRADING STANDARD 257
 VI. MEASURES CONSTITUTIONALLY ACCEPTABLE BUT INTERNATIONALLY CONDEMNED..... 258
 VII. CONCLUSION..... 261

I. INTRODUCTION

Currently, between 80,000 and 84,000 people in the United States live in solitary confinement, whereas other major industrialized countries, such as Japan, Germany, and France, each hold approximately 60,000 prisoners in solitary confinement.¹ The U.S., known for over-using isolation in its prisons and jails, has come under scrutiny for its use of solitary confinement by various global leaders who claim that the U.S.’ practice of solitary confinement violates not only international law, but also globally-recognized human rights.² The

¹ Elisa Mosler, *Solitary Confinement in Great Britain*, SOLITARY WATCH (Jan. 19, 2012) <http://solitarywatch.com/2012/01/19/solitary-confinement-in-great-britain-still-harsh-but-rare/>; David H. Cloud et al., *Public Health and Solitary Confinement in the United States*, AM. J. PUB. HEALTH 18, 18 (2015). In addition, it is suggested that this number excludes “jails, juvenile facilities, or immigration and military detention.” U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 10–11 (2016). *But see* U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 3 (2016) (contending that protocol variations between jurisdictions make it nearly impossible to provide accurate segregation statistics throughout the U.S., and due to this lack of uniform agreement on segregation procedures and what exactly constitutes solitary confinement, a general uncertainty of accuracy concerning solitary confinement statistics exists). *See also* Marie Gottschalk, *Staying Alive: Reforming Solitary Confinement in U.S. Prisons and Jails*, 125 YALE L.J. F. 253, 256 (2016).

² The Human Rights Committee, *see* Anna Conley, *Torture in US Jails and Prisons: An Analysis of Solitary Confinement under International Law*, 7 VIENNA J. ON INT’L CONST. L. 415, 436 (2013), the Director of the Pillar Project at Human Rights First, *see* Aylin Manduric, *Can International Laws and Standards Help Curb Solitary Confinement in the United States?*, SOLITARY WATCH (Aug. 6, 2015) <http://solitarywatch.com/2015/08/06/can-international-laws-and-standards-help->

practice of solitary confinement usually involves the isolation of an incarcerated person for twenty-two to twenty-four hours a day;³ however, there is no internationally agreed upon definition of solitary confinement. A person experiences prolonged solitary confinement when they have been subjected to isolation conditions for fifteen consecutive days or longer.⁴

While the U.S.’ practice of solitary confinement is exceptionally controversial because of the harsh isolation conditions and the seemingly lax “requirements” for which individuals can, by law, be subjected to isolation,⁵ the U.S. is under particular global scrutiny because it has signed and ratified two treaties—the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁶—which both arguably prohibit the solitary confinement practices that the U.S. currently uses.

Although the U.S. signed and ratified both of these treaties, it did so with Reservations, Understandings, and Declarations (RUDs).⁷

curb-solitary-confinement-in-the-united-states/, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *see* HUMAN RIGHTS FIRST, INTERNATIONAL HUMAN RIGHTS LAW ON SOLITARY CONFINEMENT 12 (2015), and the Foreign Relations Committee, *see* Nan D. Miller, Comment, *International Protection of the Rights of Prisoners: Is Solitary Confinement in the United States a Violation of International Standards?*, 26 CAL. W. INT’L L.J. 139, 146 (1995), have raised concerns on the U.S.’ practice of solitary confinement.

³ *Accord* HUMAN RIGHTS FIRST, *supra* note 2. *See also* U.N. Economic and Social Council 15/2015/L.6/Rev. 1 at 18 (May 21, 2015) [hereinafter E.S.C.].

⁴ E.S.C. Rev. 15/2015/L.6, *supra* note 3.

⁵ *See infra* Part III.

⁶ *E.g.*, International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, arts. 7, 10 (entered into force 23 March 1976) [hereinafter ICCPR]; Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, arts. 1, 16 (entered into force June 26, 1987) [hereinafter CAT].

⁷ *See* International Convent on Civil and Political Rights, Declarations and Reservations [hereinafter ICCPR Reservations], at 12, *available at* <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf>; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Declaration and Reservations [hereinafter CAT Reservations], at 7, *available at*

Specifically, the U.S. has vowed to “prevent ‘cruel, inhuman or degrading treatment or punishment’ only insofar as the term ‘cruel, inhuman or degrading treatment or punishment’ means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”⁸ With this caveat in place, the U.S. holds itself to a lower standard than required by international law.

This comment argues that the U.S.’ use of solitary confinement should not be bound to the standards of the Constitution of the United States, but instead, to the standards set out by international law—specifically, the ICCPR and CAT—so long as neither treaty is substantively altered by RUDs. Additionally, by comparing the U.S.’ practices of solitary confinement to those of the United Kingdom, this comment also argues that it is possible to use isolation procedures and remain compliant with international standards. The UK has also signed and ratified the ICCPR and CAT with RUDs,⁹ but, unlike the U.S., has not come under global scrutiny for its use of isolation; the RUDs made by the UK do not specifically apply to the practice of solitary confinement or substantively alter either treaty.¹⁰

Part II discusses the ICCPR and CAT provisions that relate to the U.S. and UK’s use of solitary confinement. Solitary confinement in

<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-9.en.pdf>. See generally U.N. Glossary of Terms Relating to Treaty Actions, https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml#signaturead (defining a State’s Signature Subject to Ratification, Acceptance or Approval as a “signature [that] does not establish the consent to be bound . . . The signature qualifies the signatory state to proceed to ratification, acceptance or approval. It also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty” and Ratification as “the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act.”) (emphasis added).

⁸ CAT Reservations, *supra* note 7.

⁹ See ICCPR Reservations, *supra* note 7; CAT Reservations, *supra* note 7. See also ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, arts. 7, 10 (entered into force 23 March 1976, ratification by United Kingdom 20 May 1976); CAT, Dec. 10, 1984, 1465 U.N.T.S. 85, arts. 1, 16 (entered into force 26 June 1987, ratification by United Kingdom 8 December 1988).

¹⁰ E.g., ICCPR Reservations, *supra* note 7, at 12–13; CAT Reservations, *supra* note 7.

the U.S. is explored in greater depth in Part III. Part IV assesses solitary confinement practices in the UK. The U.S. Constitution's standard of "cruel and unusual" is then compared to the international standard of "cruel, inhuman, or degrading" in Part V. Finally, Part VI examines solitary confinement measures that are acceptable according to the U.S. Constitution, but are condemned on an international level. For the purposes of this comment, the terms isolation and solitary confinement will be used interchangeably.

II. RELEVANT TREATIES

While the U.S. has not enacted any domestic laws that condemn solitary confinement,¹¹ it has ratified two treaties that, though not expressly addressing isolation practices, pertain to solitary confinement.¹² Any treaty that the U.S. signs and ratifies ought to be considered "legally enforceable as binding authority."¹³ Accordingly, as a party to the ICCPR and the CAT, both treaties should be legally binding to the U.S. Similarly, the ICCPR and the CAT also should be legally binding to the UK,¹⁴ as it, too, has ratified both treaties.¹⁵

Though the UK adopted both the ICCPR and the CAT with RUDs, the RUDs do not concern isolation matters.¹⁶ However, unlike the UK, the U.S. ratified these treaties with RUDs that "declare the substantive provisions [of each treaty] to be non-self-executing."¹⁷ By declaring the substantive provisions of the ICCPR and the CAT non-

¹¹ Miller, *supra* note 2, at 169.

¹² *E.g.*, ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, arts. 7, 10 (entered into force 23 March 1976, ratification by United States 8 June 1992); CAT, Dec. 10, 1984, 1465 U.N.T.S. 85, arts. 1, 16 (entered into force 26 June 1987, ratification by United States 21 October 1994).

¹³ HUMAN RIGHTS FIRST, *supra* note 2, at 33.

¹⁴ SHARON SHALEV, A SOURCEBOOK ON SOLITARY CONFINEMENT 3 (2008).

¹⁵ *Cf.* ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, arts. 7, 10 (entered into force 23 March 1976, ratification by United Kingdom 20 May 1976); CAT, Dec. 10, 1984, 1465 U.N.T.S. 85, arts. 1, 16 (entered into force 26 June 1987, ratification by United Kingdom 8 December 1988).

¹⁶ *See generally* ICCPR Reservations, *supra* note 7, at 12–13; CAT Reservations, *supra* note 7.

¹⁷ HUMAN RIGHTS FIRST, *supra* note 2, at 34.

self-executing, the substantive provisions of both treaties are legally unenforceable in the U.S. unless and until the federal government undertakes further implementation of the provisions.¹⁸ By signing and ratifying these treaties with RUDs, the U.S. has successfully created a loophole; it accepts the credit for being a member of two progressive treaties while avoiding accountability from other signatory members. Due to this loophole, “solitary confinement as used in the United States would clearly be a violation of the international standards.”¹⁹

Both the ICCPR and the CAT relate, directly or indirectly, to prisoner rights²⁰ and both treaties are designed to protect individuals from “cruel, inhuman or degrading treatment or punishment”²¹ in some capacity. This standard is to be construed in the broadest form possible to offer the most amount of protection, including “the physical confinement conditions [as well as] the psychological effects of . . . confinement.”²² Nevertheless, under the CAT, the U.S., due to its RUDs, is only bound to protect individuals insofar as required by the U.S. Constitution;²³ the same is true under the ICCPR. The ICCPR and the CAT are individually discussed in greater depth below.

¹⁸ *Id.* at 33.

¹⁹ Miller, *supra* note 2, at 168.

²⁰ *See* ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, arts. 7, 10 (entered into force 23 March 1976) (examining party members’ obligations related to prisoner rights); CAT, 10 December 1984, 1465 U.N.T.S. 85, arts. 1, 16 (entered into force 26 June 1987) (discussing torture and party members’ obligation to protect people from it).

²¹ *See generally* ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, art. 7 (entered into force 23 March 1976). *See also* CAT, 10 December 1984, 1465 U.N.T.S. 85, art. 16 (“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 . . .”).

²² Miller, *supra* note 2, at 165.

²³ Conley, *supra* note 2, at 435.

A. International Covenant on Civil and Political Rights

Though over 170²⁴ states²⁵ worldwide have ratified the ICCPR, whether it is considered customary law is contested.²⁶ Nevertheless, its intent is universally acknowledged: to preserve individual integrity and dignity.²⁷ Articles 7, 10(1) and 10(3) of the ICCPR are relevant to a member state's practice and use of solitary confinement.²⁸ Specifically, Article 7 declares that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁹ Article 10(1) announces that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,”³⁰ and Article 10(3) proclaims that the “treatment of prisoners [must conform to] the essential aim of . . . reform[ing] and social[ly] rehabilitat[ing] . . . prisoners.”³¹

²⁴ See Office of U.N. High Commissioner for Human Rights, Status of Ratification Interactive Dashboard, International Covenant on Civil and Political Rights, <http://indicators.ohchr.org/> (selecting ICCPR from drop-down box at top of webpage indicates that over 170 countries have ratified the ICCPR) (last updated July 16, 2018).

²⁵ See generally JEFFREY L. DUNOFF ET AL., INTERNATIONAL LAW NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH 108 (Erwin Chemerinsky et al. eds., 4th ed. 2015) (defining a state, in the international context, as a sovereign country. A state ought to “possess the following qualifications: a) a permanent population; b) a defined territory; c) government; [and] d) capacity to enter into relations with the other states” (commonly known as the Montevideo criteria). Whether a state needs to be recognized as a sovereign state by other states is contested).

²⁶ Compare Miller, *supra* note 2, at 144 (“[The ICCPR] has yet to achieve the status of customary international law.”), with Conley, *supra* note 2, at 426 (stating that “[t]he prohibition against torture and cruel, inhuman and degrading treatment is . . . customary international law.”).

²⁷ Report of the Human Rights Committee, at 94, U.N. Doc. A/37/40 (1982).

²⁸ HUMAN RIGHTS FIRST, *supra* note 2, at 4.

²⁹ ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, art. 7 (entered into force 23 March 1976).

³⁰ *Id.*, at art. 10.

³¹ *Id.*

Although both the UK and the U.S. have ratified the ICCPR with RUDs,³² the RUDs made by the UK do not pertain to Article 7.³³ One of the U.S.' RUDs states that, while the U.S. agrees to "prevent 'cruel, inhuman or degrading treatment or punishment,'" it only does so "insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."³⁴ Additionally, the U.S. also declared the ICCPR's substantive provisions to be non-self-executing.³⁵ However, multiple states, including Denmark, Finland, Norway, Portugal, Spain, and Sweden objected to the U.S.' RUD relating to Article 7.³⁶ Specifically, Portugal pointed out that, the U.S., "by invoking principles of National Law[,] may create doubts on the commitments of the [United States] to the object and purpose of the [ICCPR] and . . . contribute[s] to [the] undermining . . . of International Law."³⁷ As a result of the U.S.' reservation pertaining to Article 7, prisoners in the U.S. are not afforded the same protections as prisoners in other countries that are signatories to the ICCPR.³⁸

B. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1(1) of the CAT defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person. . . ."³⁹ The "severe pain or suffering" must occur as a consequence of "an act [the person being tortured] or a third person has committed" and must be at the hands "of a public official or other person acting in an official capacity," whether through

³² See generally ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, arts. 7, 10 (entered into force 23 March 1976, ratification by United Kingdom 20 May 1976; ratification by United States 8 June 1992).

³³ See generally ICCPR Reservations, *supra* note 7.

³⁴ ICCPR Reservations, *supra* note 7, at 7.

³⁵ See HUMAN RIGHTS FIRST, *supra* note 2, at 34. See also *supra* Part II.

³⁶ ICCPR Reservations, *supra* note 7, at 17, 18, 26, 27–28, 29–31.

³⁷ *Id.* at 26.

³⁸ Miller, *supra* note 2, at 144.

³⁹ CAT, 10 December 1984, 1465 U.N.T.S. 85, art. 1 (entered into force 26 June 1987).

“instigation . . . , consent or acquiescence. . . .”⁴⁰ Accordingly, under the CAT, not only is punishing an individual by causing severe physical pain or suffering considered torture, but “[b]ased on the plain language of Article 1, intentionally inflicting severe mental pain or suffering . . . ”⁴¹ is also a form of torture. Additionally, a state that “adopt[s] a policy known to . . . cause severe pain and suffering” also violates Article 1.⁴²

Article 16(1) of the CAT obligates each member state of the CAT to vow that, when treatment or punishment does not amount to torture as defined in Article 1, member states will nevertheless ensure that individuals within a member state’s jurisdiction will not be subjected to “cruel, inhuman or degrading treatment or punishment . . . when such acts are committed by or at the instigations of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁴³ Acts that may constitute “cruel, inhuman or degrading treatment or punishment” but do not amount to torture are not discussed in the CAT.⁴⁴ While some may argue that solitary confinement constitutes torture, there seems to be a consensus that solitary confinement is an act that falls under the “cruel, inhuman or degrading treatment or punishment” category.⁴⁵

The UK ratified the CAT with RUDs in December 1988.⁴⁶ Similar to the UK’s ICCPR RUDs, the UK’s CAT RUDs are not relevant to the conclusion discussed in this comment.⁴⁷ However, in October 1994, similar to the RUD made to the ICCPR, the U.S. ratified the CAT with a RUD it made to the ICCPR concerning the language “cruel, inhuman or degrading treatment or punishment.”⁴⁸ Exactly like the U.S.’ RUDs to the ICCPR, the U.S.’ CAT RUDs only make the U.S. responsible for upholding national, instead of

⁴⁰ *Id.*

⁴¹ Conley, *supra* note 2, at 430.

⁴² *Id.*

⁴³ CAT, 10 December 1984, 1465 U.N.T.S. 85, art. 16.

⁴⁴ *See* Miller, *supra* note 2 (contesting that the failure to define “cruel, inhuman or degrading treatment or punishment” “ultimately limit[s] the potential protection provided by the [CAT].”).

⁴⁵ Conley, *supra* note 2, at 433.

⁴⁶ *See generally* CAT Reservations, *supra* note 7.

⁴⁷ *Id.*

⁴⁸ *Id.*

international, law.⁴⁹ Moreover, unless and until the federal government further implements the substantive provisions of the CAT, because the U.S. declared these provisions to be non-self-executing in its reservations, they are legally unenforceable in the U.S.⁵⁰

Finland, the Netherlands, and Sweden objected to the U.S.' RUDs concerning Article 1 and Article 16 of the CAT.⁵¹ According to Finland and Sweden, because the objective of the U.S.' reservations to the CAT is to minimize its obligations under the treaty by making the same reservation it made in the ICCPR, both countries made the same objection they individually made to the U.S.' reservations to the ICCPR.⁵² The Netherlands' objection maintained that the U.S.' reservation "regarding article 16 of [the CAT] . . . [is] incompatible with the object and purpose of the [CAT], to which the obligation laid down in [A]rticle 16 is essential."⁵³ It further pointed out that the provisions of the U.S. Constitution are irrelevant to the U.S.' "obligations under the [CAT]."⁵⁴ Thus, Finland, the Netherlands, and Sweden contend that, regardless of the reservations made by the U.S., the U.S. is bound by the obligations of the CAT, including protecting individuals from torture and other cruel, inhuman or degrading treatment or punishment.

III. SOLITARY CONFINEMENT IN THE UNITED STATES

Aside from the death penalty, isolation is the most severe punishment to which a prisoner can be subjected.⁵⁵ Traditionally, prolonged solitary confinement involves isolating an individual for fifteen days or longer;⁵⁶ however, almost every scientific analysis conducted within the past 150 years has concluded that subjecting a

⁴⁹ *Id.*

⁵⁰ See HUMAN RIGHTS FIRST, *supra* note 2, at 34. See also *supra* Part II.

⁵¹ CAT Reservations, *supra* note 7, at 10, 15–16, 20.

⁵² See CAT Reservations, *supra* note 7, at 10, 20. See also ICCPR Reservations, *supra* note 7, at 18, 30–31.

⁵³ CAT Reservations, *supra* note 7, at 15.

⁵⁴ *Id.*

⁵⁵ SHALEV, *supra* note 14, at 2.

⁵⁶ G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Jan. 8, 2016).

prisoner to involuntary isolation for longer than ten days causes “a distinct set of emotional, cognitive, social, and physical pathologies.”⁵⁷ Not only does the U.S. hold the world record for having the highest number of individuals incarcerated, but it also holds the most amount of prisoners in solitary confinement units.⁵⁸

The U.S. is the only Western country that routinely exposes its citizenry to prolonged solitary confinement.⁵⁹ An estimated 80,000 to 84,000 prisoners in the U.S. live in isolation.⁶⁰ This number exceeds the total number of prisoners many other major industrialized countries house, such as “Japan (60,000), Germany (63,000), [and] France (67,000). . . .”⁶¹ Research indicates that, “[e]ven in [American] jurisdictions where the prison population has declined in recent years, the number of people in solitary [confinement] has grown.”⁶² The U.S. is also an outlier concerning the lack of supervision it provides for determining who is placed and who remains in isolation.⁶³ And although “[a]ll US prisons are subject to human rights standards contained in treaties ratified by the United States and [these standards] are binding on state and federal officials,”⁶⁴ the U.S. continuously

⁵⁷ Cloud et al., *supra* note 1, at 21.

⁵⁸ *Id.* at 18.

⁵⁹ Gottschalk, *supra* note 1, at 253.

⁶⁰ Mosler, *supra* note 1; Cloud et al., *supra* note 1. In addition, it is suggested that this number excludes “jails, juvenile facilities, or immigration and military detention.” U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 10–11 (2016). *But see id.* at 3 (contending that protocol variations between jurisdictions make it nearly impossible to provide accurate segregation statistics throughout the U.S., and due to this lack of uniform agreement on segregation procedures and what exactly constitutes solitary confinement, a general uncertainty of accuracy concerning solitary confinement statistics exists).

⁶¹ Gottschalk, *supra* note 1.

⁶² *See* Cloud et al., *supra* note 1. *Contra* U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 2 (2016) (arguing that the overall number of inmates in the Federal Bureau of Prisons’ restrictive housing units has decreased in recent years).

⁶³ Gottschalk, *supra* note 1, at 259.

⁶⁴ *US: Look Critically at Widespread Use of Solitary Confinement*, Human Rights Watch (June 18, 2012, 12:00 PM), <https://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement>.

violates the CAT and the ICCPR with its widely condemned solitary confinement practices.

A. Types of Solitary Confinement

Solitary confinement is typically used as a control mechanism.⁶⁵ Most often, prisoners are placed in isolation as a consequence for their actions while incarcerated, not as a condition or consequence of their respective convictions.⁶⁶ In an effort to better explain the various types of solitary confinement, the Department of Justice identified five categories of solitary confinement that the Federal Bureau of Prisons (the Bureau) engages in.⁶⁷ Irrespective of name variations, the three most common types of solitary confinement in the U.S. appear to be disciplinary segregation, administrative segregation, and protective segregation.⁶⁸

Disciplinary segregation is a type of isolation used as punishment “for violating [prison] rules.” Administrative segregation occurs when a prisoner, who is suspected of posing a safety threat, is removed from the general prison population. Protective segregation is designed to “protect vulnerable individuals believed to be at risk in the

⁶⁵ Miller, *supra* note 2, at 156.

⁶⁶ *Id.* See generally U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 9 (2016) (explaining that the lack of agreement surrounding segregation, including what isolation itself constitutes, makes it “extremely difficult to make apples-to-apples comparisons necessary to understand how the practice varies by jurisdiction,” even within the United States).

⁶⁷ The Federal Bureau of Prisons is the U.S.’ largest prison system. The five categories identified by the Department of Justice are investigative segregation, disciplinary segregation, protective segregation, preventative segregation, and transitional segregation. See generally U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 4–5 (2016).

⁶⁸ See Cloud et al., *supra* note 1, at 19; Weil, Gotshal & Manges LLP, Cyrus R. Vance Center For International Justice, and Anti-Torture Initiative, Center for Human Rights & Humanitarian Law at American University Washington College of Law, *Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement Detainees*, United Nations Special Rapporteur on Torture (2016) [hereinafter “Seeing into Solitary”] (note that, though the terms differ, the type of segregation remains the same). See also *infra* note 70.

general prison population.”⁶⁹ In the U.S., Texas is the only state that does not use disciplinary segregation as a form of isolation.⁷⁰ Finally, another type of isolation that prison systems in the U.S. engage in is known as “double-celling,” which is the placement of “two segregated inmates together in the same cell.”⁷¹

B. Solitary Confinement Procedures

In order to analyze solitary confinement procedures in the U.S., an inquiry into who can be placed in isolation must be made first. Research indicates that certain groups “of individuals who are especially vulnerable in correctional settings” are disproportionately represented in isolation units.⁷² These “individuals” include inmates who are between the ages of eighteen and nineteen; who suffer from severe mental illnesses; “who identif[y] as lesbian, gay, or bisexual[;]”⁷³ or “who are developmentally delayed.”⁷⁴ While U.S. laws do not afford prisoners subjected to solitary confinement much protection, mentally ill prisoners are *supposed to be* protected from solitary confinement under the Eighth Amendment.⁷⁵ Even though this protection is afforded to mentally ill inmates, in reality, almost “a third of people

⁶⁹ Cloud et al., *supra* note 1, at 19.

⁷⁰ Seeing into Solitary, *supra* note 68, at n.11. *Accord* Miller, *supra* note 2, at 155 (stating that “[m]ost prisons in the United States still use solitary confinement, at least to some degree, as form of punishment within the prison system.”).

⁷¹ U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 3 (2016). Because the terminology and types of solitary confinement practices used differ within U.S. jurisdictions, this comment only discusses the three most common types of solitary confinement used in the U.S., as well as “double-celling,” which is discussed in multiple articles.

⁷² Cloud et al., *supra* note 1, at 20.

⁷³ U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 11–12 (2016). *Contra* Seeing into Solitary, *supra* note 68, at 39 (stating that prisons systems in the U.S. pose limitations on LGBTQ prisoners being placed in segregation).

⁷⁴ Cloud et al., *supra* note 1, at 20.

⁷⁵ Conley, *supra* note 2, at 422 (“US courts have held that solitary confinement of prisoners with mental illness is cruel and unusual.”). *Cf.* Miller, *supra* note 2, at 170.

housed in [isolation] units have [one] or more preexisting psychiatric conditions.”⁷⁶

Additionally, “tens of thousands of inmates are assigned to administrative segregation because of perceived gang affiliation;”⁷⁷ indeed, when deciding whether to place an individual in an isolation unit due to gang affiliations, some jurisdictions consider “factors such as tattoos, known associates, and possessions suggesting gang affiliation, without regard to individual behaviors.”⁷⁸ Moreover, if a prisoner (1) “test[s] positive for HIV[] and [(2)] there [exists] . . . reliable evidence indicating that [the HIV-positive prisoner] may engage in conduct posing a health risk to others[,]” federal law permits such prisoners to “be placed into solitary confinement.”⁷⁹ An HIV-positive prisoner can be placed in isolation—as a result of being HIV-positive and posing a risk to others—for a maximum of twenty working days pending their appearance before a Hearing Administrator.⁸⁰ Lastly, out of California, Colorado, Florida, Illinois, Maine, New York, Pennsylvania, Texas, and the federal prison system, the only jurisdiction which places restrictions on women in isolation is New York, which forbids pregnant prisoners from being placed in solitary confinement.⁸¹

Within the Bureau’s jurisdictions, only a Discipline Hearing Officer (DHO), “who serves as the impartial adjudicator of an inmate’s disciplinary hearing[,]” may place an inmate in disciplinary segregation.⁸² If a prisoner is housed in one of the Bureau’s Special Housing Units (SHUs) for administrative segregation, the prisoner is entitled to make “formal grievances [that] challeng[e] [the inmate’s] placement through the Bureau’s Administrative Remedy Program.”⁸³ This little oversight, which applies only to the Bureau’s system, appears

⁷⁶ Cloud et al., *supra* note 1, at 20.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Seeing into Solitary, *supra* note 68, at 25.

⁸⁰ *Id.*

⁸¹ *Id.* at 20 n.6. (indicating the U.S. states that the study could evaluate with regard to gender and solitary confinement).

⁸² U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 17 (2016).

⁸³ *Id.* at 18.

to be the only internal oversight isolation prisoners are afforded. Because prison officials decide who is placed in solitary confinement without judicial oversight, scholars have termed isolation “a hidden prison within a prison.”⁸⁴ The only other option a prisoner may have when challenging the conditions of solitary confinement is to file a writ of habeas corpus⁸⁵ with the courts, which may contest the validity and/or the conditions of confinement.⁸⁶

In the U.S., many infractions can put an inmate at risk of being placed in solitary confinement. Despite some breaches being severe and thus making it less difficult to comprehend a decision to subject a prisoner to solitary confinement, numerous mild violations permit a correctional facility to impose isolation time. Notably, the U.S. ranks as one of the most punitive “politically progressive and economically developed” countries regarding isolation laws.⁸⁷ For example, the Bureau categorizes the approximately ninety disciplinary infractions that may expose inmates to solitary confinement into four classes, ranging from least severe to most severe.⁸⁸

According to the Bureau, the most severe violations that can land a prisoner in isolation include murder, assault causing serious injury, successfully escaping for more than four hours, “[s]etting a [f]ire[.]” and being in possession of a dangerous weapon.⁸⁹ In contrast, the most minor infractions include faking or exaggerating illness, using

⁸⁴ KATIE ROSE QUANDT, ACLU OF NEV., SOLITARY WATCH, NEV. DISABILITY ADVOCACY & LAW CTR., UNLOCKING SOLITARY CONFINEMENT: ENDING EXTREME ISOLATION IN NEVADA STATE PRISONS 10 (2017).

⁸⁵ Habeas corpus is Latin for “you have the body.” A writ of habeas corpus “most frequently . . . [challenges the legality of a] person’s imprisonment or detention. . . .” *Habeas Corpus*, BLACK’S LAW DICTIONARY (10th ed. 2014).

⁸⁶ See John Flannery, *Habeas Corpus Bore a Hole in Prisoners’ Civil Rights Actions—An Analysis of Preiser v. Rodriguez*, 48 St. John’s L. Rev. 104, 109–10 (2012), for a discussion of courts acknowledging that the writ of habeas corpus may be filed by prisoners who are challenging the validity of their incarceration as a whole, as well as prisoners who are solely challenging their incarceration conditions.

⁸⁷ See *Seeing into Solitary*, *supra* note 68, at 40.

⁸⁸ See generally U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 18–21 (2016) (explaining that the four categories are 100-level (greatest); 200-level (high); 300-level (moderate); and 400-level (low)).

⁸⁹ *Id.* at 21.

abusive or obscene language, “[v]iolating [v]isiting [r]egulations,” and engaging in unauthorized physical contact.⁹⁰ Being unsanitary or untidy is listed as a moderate offense.⁹¹ Prisoners outside of federal prisons are also exposed to solitary confinement “for minor rule infractions, [including] talking back . . . , smoking, failing to report to work or school, refusing to return a food tray, [and] possessing an excess quantity of postage stamps.”⁹²

Research suggests that only a small portion of prisoners in isolation need to be confined on a continuing basis.⁹³ The lack of reliable data surrounding solitary confinement in the U.S. also pertains to the length of time a person is held in solitary confinement, as “[m]ost state departments of corrections do not keep reliable data about or report on the average duration of prisoner’s [isolation].”⁹⁴ Generally, the jurisdiction, reasons for isolating, and “whether the correctional facility imposes indeterminate sanctions” control an inmate’s “length of stay [in solitary confinement, which] can range from days to months to decades.”⁹⁵ For example, prisoners within the Bureau’s jurisdiction who have been placed in disciplinary segregation for murder, assault with a serious injury, successfully escaping for more than four hours, setting a fire, or being in possession of a dangerous weapon face up to 365 days in confinement for their first serious offense; if a prisoner has been found guilty of a serious infraction by a DHO more than once, the maximum amount of time the inmate may be placed in solitary confinement is 545 days.⁹⁶

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Cloud et al., *supra* note 1, at 20.

⁹³ *Id.*

⁹⁴ *Id.* at 19. *See also* Gottschalk, *supra* note 1.

⁹⁵ *Id.*; *see also* Conley, *supra* note 2, at 419.

⁹⁶ U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 20 (2016) (listing the maximum amount of time prisoners can spend in disciplinary segregation, according to the Bureau’s four categories. For first-time offenses, inmates face up to 180 days for 200-level infractions and 90 days for 300-level infractions; inmates that are found to have committed a 400-level infraction once are prohibited from being placed in isolation. For subsequent offenses, inmates face up to 365 days (200-level); 180 days (300-level); and 30 days (400-level) in segregation.).

Even with relatively defined protocol on the federal level—especially in comparison to other jurisdictions within the U.S.—inmates placed in solitary confinement for disciplinary purposes can be, and often are, held there indefinitely, as “there is currently no limit on the cumulative amount of time an inmate can spend in disciplinary segregation.”⁹⁷ Accordingly, a prisoner placed in isolation at a facility under the control of the Bureau can face additional time in solitary confinement for what may actually be an ignored cry for help, such as using abusive or obscene language or engaging in self-mutilation.⁹⁸ Moreover, how long a prisoner “has been housed in [isolation], whether [his or her status] has changed over time” (such as originally being placed in confinement for protective purposes, then continuing to be held in isolation as a punitive measure), and the amount “of times an inmate has returned to [isolation] during the inmate’s entire prison term” cannot be estimated, unless “Bureau staff has access to paper files.”⁹⁹

Federal inmates, however, are not the only prisoners who face the prospect of indefinite solitary confinement; a minimum of nineteen states also permit placing prisoners in solitary confinement indefinitely.¹⁰⁰ On the federal level, if an inmate has been isolated in a SHU for thirty months without what the Bureau considers to be progress, the prisoner may be referred to “another appropriate facility, including the ADX,”¹⁰¹ which “is the Bureau’s only administrative maximum facility and the Bureau’s only institution where all inmates are single-celled.”¹⁰²

⁹⁷ *Id.* at 22. *Cf.* Seeing into Solitary, *supra* note 68, at 40.

⁹⁸ See U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 21 (2016) (self-mutilation is categorized as a 200-level offense).

⁹⁹ *Id.* at 31.

¹⁰⁰ See, e.g., Cloud et al., *supra* note 1, at 20; see also Seeing into Solitary, *supra* note 68, at 10.

¹⁰¹ U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 36 (2016).

¹⁰² *Id.* at 14.

C. Conditions of Solitary Confinement

Various conditions of solitary confinement that are deemed acceptable in the U.S. significantly differ from minimum standards elsewhere in the world. Nevertheless, solitary confinement conditions in the U.S. “must ‘meet or exceed the standards for healthy and humane treatment.’”¹⁰³ Hence, the U.S.’ consideration of what healthy and humane treatment is stands in contrast with the rest of the world.

While the precise conditions may differ, a typical cell that holds an inmate in isolation is sixty to eighty square feet and includes “a cot, a toilet, a sink, [and] a narrow slit for a window. . . .”¹⁰⁴ Sometimes, the cell includes a small desk that is bolted to the wall.¹⁰⁵ Before leaving their cells, inmates “are cuffed and shackled at the wrists, waist, and legs. . . .”¹⁰⁶ Inmates eat alone in their cells and are passed “meals on a tray . . . through a small slot in the cell door,”¹⁰⁷ which is commonly made of steel.¹⁰⁸ The cell doors are made to ensure that objects cannot be “thrown through the door, but also blocks vision and light.”¹⁰⁹ In a report that interviewed over 280 isolation prisoners in Nevada, 84 percent reported having some natural light in their cells, and 78.1 percent indicated being able to “see outside of their cell.”¹¹⁰ Cells commonly are illuminated by bright lights at all times, making it difficult for inmates in solitary confinement to maintain natural sleep cycles.¹¹¹ Solitary confinement prisoners are also stripped from

¹⁰³ Seeing into Solitary, *supra* note 68, at 42.

¹⁰⁴ See Cloud et al., *supra* note 1, at 19–20; see also U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 28 (2016).

¹⁰⁵ Cloud et al., *supra* note 1 at 20; U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 28 (2016).

¹⁰⁶ See Cloud et al., *supra* note 1, at 20; U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 28 (2016).

¹⁰⁷ U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 28 (2016).

¹⁰⁸ See Cloud et al., *supra* note 1, at 20.

¹⁰⁹ Miller, *supra* note 2, at 158.

¹¹⁰ QUANDT, *supra* note 84, at 29. *But see* Conley, *supra* note 2, at 419 (stating that prisoners living in solitary confinement usually do not have exposure to natural light and usually cannot see outside of their cells).

¹¹¹ Cloud et al., *supra* note 1, at 20.

normalcy regarding sound, as isolation cells usually are noiseless “except for sudden outbursts” or “subject prisoners to an incessant cacophony of clanking metal doors, jingling keys, booted footsteps, and distressed voices. . . .”¹¹²

Usually, solitary confinement inmates are permitted to have a few personal belongings in their possession, which are inspected on a regular basis.¹¹³ However, possession of personal belongings is not a right, and under the Bureau’s regulations, how many personal items and what items constitute personal belongings vary depending on the reason a prisoner finds himself or herself in isolation.¹¹⁴ For example, personal items in administrative segregation could include “religious texts, legal material, magazines, mail, a newspaper, personal hygiene items, a 25-page photo album, snack foods, powered soft drinks, stationary, wedding band, radio with ear plugs, and a watch,” while inmates in disciplinary segregation are only permitted to have “mail, . . . [and] reading material including religious texts” and are permitted to buy “limited commissary items, such as hygiene items and stamps.”¹¹⁵ In Nevada, of the prisons and prison population surveyed, most isolated prisoners indicated that they either have access to a radio or television, or both, while more than one third of the sample size reported having neither.¹¹⁶ In the Bureau’s SMUs, prisoners may earn privileges by progressing through four levels; each level affords the prisoners the chance “to earn greater privileges . . . , with the [ultimate] goal of . . . returning to the general population, typically after 18 to 24 months.”¹¹⁷

The only reasons prisoners in solitary confinement are let out of their cells are to either permit them to shower, visit the library, or

¹¹² *Id.*

¹¹³ U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 28 (2016).

¹¹⁴ *See generally* U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 30 (2016) (distinguishing between personal items in administrative segregation and disciplinary segregation).

¹¹⁵ *Id.*

¹¹⁶ QUANDT, *supra* note 84, at 34.

¹¹⁷ U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 14 (2016).

for medical or recreational purposes.¹¹⁸ However, regardless of the reason for leaving the cell, prisoners are in chains before they even step out of their cells.¹¹⁹ Typically, prisoners are removed from their cells for recreational purposes for five hours per week, whether it be for one hour on weekdays or for five hours once a week,¹²⁰ and are placed “in a small room or small caged area with or without exposure to fresh air and sunlight.”¹²¹ Prisoners usually walk in circles during their time outside their cell, as “[t]he pen contains no recreational equipment, not even a ball.”¹²² While the reality surrounding solitary confinement in the U.S. is dire, including the lack of recreation provided to isolation prisoners, some prisoners reported spending no “time outside of their cell.”¹²³

As modern technology develops, the deprivation of meaningful social interactions not only relates to communications with other prisoners and the outside world, but also includes prison staff. Indeed, with the help of “electric doors, search cameras, and intercoms[,]”¹²⁴ prison authorities only need to interact with isolation prisoners on a face-to-face basis in limited circumstances,¹²⁵ meaning “that inmates may go for months or even years without any meaningful social or physical contact.”¹²⁶ And while some prison regulations, for example, the Bureau’s, “require that inmates receive appropriate medical and mental health care . . . ,”¹²⁷ most prisons that house inmates in isolation only permit prisoners “a few minutes per week in

¹¹⁸ Miller, *supra* note 2, at 159.

¹¹⁹ See Cloud et al., *supra* note 1, at 20; U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 28 (2016). See also *supra* note 106.

¹²⁰ Cloud et al., *supra* note 1, at 20.

¹²¹ Conley, *supra* note 2, at 419. See also Cloud et al., *supra* note 1, at 20.

¹²² Miller, *supra* note 2, at 158–59.

¹²³ QUANDT, *supra* note 84, at 32.

¹²⁴ Cloud et al., *supra* note 1, at 20.

¹²⁵ Miller, *supra* note 2, at 156 (explaining that physical contact is no longer required in order to properly monitor prisoners, and thus, inmates in solitary confinement “are now completely denied even minimal social interaction.”). See also Cloud et al., *supra* note 1, at 20.

¹²⁶ Miller, *supra* note 2, at 156.

¹²⁷ U.S. DEP’T JUSTICE, REPORTS AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING 30 (2016).

which a mental health professional will speak with them through their cell door in the presence of a corrections officer and within earshot of other prisoners.”¹²⁸ With almost no contact to the outside world, if any at all, including “limited to no visiting or mail privileges or . . . [access to a] radio, television or newspapers[,]”¹²⁹ and without the privilege “to engage in . . . human interaction, treatment, job training, and educational experiences[,]” inmates in solitary confinement are not given the proper tools for rehabilitation.¹³⁰ Assessing the conditions of solitary confinement in the U.S. leads to the conclusion that, once an inmate is placed in solitary confinement, that prisoner may, very possibly, serve the rest of his or her prison sentence in isolation.

IV. SOLITARY CONFINEMENT IN THE UNITED KINGDOM

The UK’s approach to solitary confinement is considered the best blueprint the U.S. has for reformation purposes.¹³¹ Comparable to the U.S., the UK “has a diverse population [and] a high level of income inequality. . . .”¹³² It also has “the toughest laws and highest incarceration rate in Western Europe.”¹³³ Since Her Majesty’s Prison Service¹³⁴ has approximately the same *total* amount of inmates incarcerated that the U.S. holds in isolation *alone*—85,000 people—it encounters many “of the same problems that plague American prisons (though generally to a lesser degree)[], [including] overcrowding, violence, and unacceptable levels of suicide and self-harm.”¹³⁵ In 2005, twenty percent of all suicides in English and Welsh prisons occurred in solitary confinement units.¹³⁶ The UK also shares another problem that the U.S. encounters: failure to record and keep universal statistics

¹²⁸ Conley, *supra* note 2, at 419.

¹²⁹ *Id.*

¹³⁰ Cloud et al., *supra* note 1, at 20.

¹³¹ Jean Casella, *Off the Block*, SOLITARY WATCH (Oct. 21, 2015) <http://solitarywatch.com/2015/10/21/off-the-block/>.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* (Her Majesty’s Prison Service includes England and Wales).

¹³⁵ *Id.* See also Mosler, *supra* note 1.

¹³⁶ Mosler, *supra* note 1.

on isolation prisoners, making any reported number of prisoners in solitary confinement only an estimate.¹³⁷

Even though the UK faces some major concerns regarding its prison system, it acknowledges that, besides “limitations inherent in the deprivation of liberty, prisoners retain their human rights whil[e] incarcerated.”¹³⁸ There exists “superior relations between guards and prisoners, a greater commitment to rehabilitation, and a far more robust system of oversight[,]” which, in comparison, then lead to a “less harsh, [more humane], and less deadly[]” prison system in the UK.¹³⁹ “[B]ased on the number of prisons that have [isolation] facilities[,]” approximately 500 of the 85,000 prisoners in the UK live in solitary confinement.¹⁴⁰ Moreover, in 2015, it was reported that only twenty-four prisoners were held in solitary confinement “for more than [six] months” in “Britain’s high-security prisons;”¹⁴¹ “this number was widely [condemned as] unacceptably high.”¹⁴² The UK is proof that a nation can adhere to international guidelines while still using solitary confinement as an incarceration method.

A. Types of Solitary Confinement

Not only is the number of isolated prisoners low in the UK, but the number is also decreasing.¹⁴³ The UK most commonly engages in two types of solitary confinement.¹⁴⁴ The first is cellular confinement, in which inmates are placed in solitary confinement by themselves for disciplinary purposes.¹⁴⁵ Cellular confinement is used when an inmate “attacks . . . other prisoners and guards.”¹⁴⁶ The

¹³⁷ *Id.*

¹³⁸ SHALEV, *supra* note 14.

¹³⁹ Casella, *supra* note 131.

¹⁴⁰ Mosler, *supra* note 1.

¹⁴¹ Casella, *supra* note 131.

¹⁴² *Id.*

¹⁴³ Mosler, *supra* note 1.

¹⁴⁴ *See generally* Mosler, *supra* note 1 (discussing cellular confinement and small group isolation in greater depth). *See also* SHALEV, *supra* note 14 (explaining small group isolation in detail).

¹⁴⁵ Mosler, *supra* note 1.

¹⁴⁶ *Id.*

second, more common type of isolation,¹⁴⁷ is small group isolation.¹⁴⁸ “[P]risoners who are classified as dangerous or high risk are held in solitary confinement in small high-security units,”¹⁴⁹ which are also called Close Supervision Centers, or CSCs.¹⁵⁰ Small group isolation consists of groups smaller “than ten [inmates] occupying cells in [CSCs].”¹⁵¹ While prisoners in small group isolation are still held in single cells by themselves most of the time, “at designated times,” they are permitted “limited association with . . . others [also held in small group isolation], typically during the one-hour outdoor exercise period required under international law.”¹⁵² In the UK, “approximately [thirty] prisoners [are] in CSCs at any one time. . . .”¹⁵³

B. Solitary Confinement Procedures

Who can be placed in solitary confinement differs starkly between the U.S. and the UK. National instructions for England and Wales state “that prisoners at risk of suicide should only be [isolated] in exceptional circumstances, once all other possibilities have been discounted.”¹⁵⁴ Additionally, women in England receive special protection from solitary confinement; isolation “for women [is avoided] whenever possible.” When a woman is placed in solitary confinement, it is implemented “for as short a time as possible.”¹⁵⁵ Prisoners who are placed in small group isolation “are usually given a written explanation of why they are placed in [isolation] as well as an informational leaflet about the process.”¹⁵⁶ They are also notified about

¹⁴⁷ See SHALEV, *supra* note 14 (pointing out that small group isolation is “favored in a number of European countries. . .”).

¹⁴⁸ See Mosler, *supra* note 1. See also SHALEV, *supra* note 14.

¹⁴⁹ SHALEV, *supra* note 14.

¹⁵⁰ Accord Mosler, *supra* note 1.

¹⁵¹ *Id.* Contra SHALEV, *supra* note 14 (stating that an inmate in small group isolation is permitted to “associat[e] with one to five others . . .”).

¹⁵² SHALEV, *supra* note 14.

¹⁵³ Mosler, *supra* note 1.

¹⁵⁴ See *Annual Report 2016–17*, PRISONS AND PROB. OMBUDSMAN (UK) (July 2017), https://s3-eu-west-2.amazonaws.com/ppo-dev-storage-4dvlj6iqfyh/uploads/2017/07/PPO_Annual-Report-201617_Interactive.pdf [hereinafter PPO].

¹⁵⁵ See *Seeing into Solitary*, *supra* note 68, at 37.

¹⁵⁶ Mosler, *supra* note 1.

being “selected to enter CSCs [and about the upcoming] move months in advance.”¹⁵⁷

The UK also conforms to oversight and review procedures set out by international human rights guidelines.¹⁵⁸ Specifically, prison staff are required to follow “rules about [isolating] prisoners properly and humanely,”¹⁵⁹ including ensuring that prisoners are kept “in a sanitary and healthy environment.”¹⁶⁰ Before an inmate can be placed in solitary confinement, the decision to isolate the prisoner must be justifiable and explained in writing by “[t]he authority making the decision . . . and [the authority is] accountable for [its decision].”¹⁶¹

Additionally, within two hours of being isolated, a prisoner must be examined by “[a] doctor or registered nurse” who must “complete the Initial Segregation Safety Screen. . . .”¹⁶² If the screen cannot be completed during the inmate’s first two hours in isolation, prison staff are required to observe the prisoner “every [thirty] minutes.”¹⁶³ Prisoners in solitary confinement are visited by a health care professional every day; “[a] doctor must visit each prisoner in [isolation] . . . at least every three days[,]” and on the other days, “[a] registered nurse or healthcare officer” must conduct the visit.¹⁶⁴ During these healthcare visits, “the physical, emotional, and mental well[-]being of the prisoner [must be assessed] and whether . . . any apparent clinical reasons to advise against the continuation of [solitary confinement exist].”¹⁶⁵ Each healthcare visit must be recorded and placed “in the prisoner’s clinical record.”¹⁶⁶ Even if there exists no clinical reason for discontinuing the prisoner’s stay in solitary confinement, the prisoner’s placement in isolation is reviewed as

¹⁵⁷ *Id.*

¹⁵⁸ SHALEV, *supra* note 14, at 40.

¹⁵⁹ PPO, *supra* note 154, at 28.

¹⁶⁰ SHALEV, *supra* note 14, at 40.

¹⁶¹ *Id.* at 28.

¹⁶² See *Prison Service Instruction*, HM PRISON SERVICE (UK) (Jul. 7, 2006), for a detailed explanation on what an Initial Segregation Safety Screen entails.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

frequently as on a monthly basis;¹⁶⁷ “that healthcare staff attend the first case review” is mandatory. The review should “be multidisciplinary where possible.”¹⁶⁸

Prison oversight comes from three different bodies: Her Majesty’s Chief Inspector of Prisons (HMCIP), the Prisons and Probation Ombudsman (PPO), and an Independent Monitoring Board (IMB).¹⁶⁹ First, “[HMCIP] . . . has the statutory responsibility to inspect and report on every prison[] . . . in England, Scotland and Wales.”¹⁷⁰ In England, Scotland and Wales, HMCIP may “enter any prison at any time.”¹⁷¹ The Inspector may also inspect “prisons in Northern Ireland[,]” but only by invitation.¹⁷² During an inspection conducted by HMCIP, inspectors “have unrestricted access, are free to interview all prisoners and look over the prison’s records[,]” and judge the prison based on criteria set by international human rights standards.¹⁷³ Inspections take place twice every five years—“once for a full (often unannounced)[,]” week-long inspection, “and once for a follow-up.”¹⁷⁴ After a prison receives HMCIP’s report, the prison must complete “an action plan on whether [it] will follow the given recommendations or not.”¹⁷⁵ Even though the “recommendations are not legally binding,” they are followed most of the time.¹⁷⁶

Second, the PPO concerns itself with investigating any death that takes place in prison and investigating “individual prisoners’ complaints, and, on the basis of [the complaints], mak[ing]

¹⁶⁷ See SHALEV, *supra* note 14, at 28 (explaining that at one of the UK’s prisons that holds some of “the most challenging prisoners” in solitary confinement, “prisoners’ legal representatives are invited to attend their clients’ review hearings.”).

¹⁶⁸ PPO, *supra* note 154, at 29.

¹⁶⁹ See Casella, *supra* note 131; Mosler, *supra* note 1.

¹⁷⁰ *Accord* Mosler, *supra* note 1.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *E.g., id.* (inspectors examine “whether inmates are held in safety, treated with respect for human dignity, whether they are able to engage in purposeful activity and whether they are prepared for resettlement.”).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

recommendations that are usually enforced.”¹⁷⁷ Finally, each prison has an IMB.¹⁷⁸ IMBs are composed of local citizen volunteers and, in relation to solitary confinement, are tasked with visiting the prison within seventy-two hours of a prisoner being placed in isolation.¹⁷⁹ Within twenty-four hours of placing an inmate in solitary confinement, the prison’s IMB must be notified of that placement.¹⁸⁰ Not only is the decision to place an inmate in isolation reviewed, but the decision to continue a prisoner’s stay in solitary confinement is “substantially and regularly reviewed . . . and that prisoner has a right to appeal against the decision.”¹⁸¹

Similar to the U.S., the UK justifies the use of solitary confinement in many circumstances. A prisoner in the UK may be isolated as punishment, for protection, for prison management, for national security purposes, during pre-charge and pre-trial investigations, and for lack of other institutional options.¹⁸² Since many of the reasons for placing an inmate in isolation in the UK are either identical or similar to the reasons for placing an inmate in isolation in the U.S., only some will be discussed in greater depth.

When it comes to prison management, a prisoner in the UK may be placed in solitary confinement if it “will reduce incidents of violence across the prison system and maintain prison order and discipline.”¹⁸³ However, if a prisoner is held in isolation for longer than seventy-two hours for reasons of prison management, the Governor and the Cabinet Secretary for Justice’s approval is required to extend the isolation.¹⁸⁴ The prisoner’s extended stay in solitary confinement must be “reviewed and renewed every [fourteen] days.”¹⁸⁵

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ Mosler, *supra* note 1.

¹⁸¹ See SHALEV, *supra* note 14, at 28.

¹⁸² See SHALEV, *supra* note 14, at 25. See also *Prison Service Instruction*, *supra* note 162, at 7 (discussing solitary confinement as punishment); Casella, *supra* note 131.

¹⁸³ See SHALEV, *supra* note 14, at 25.

¹⁸⁴ *Accord* Casella, *supra* note 131.

¹⁸⁵ *Id.*

The UK's procedures surrounding the placement of an individual in solitary confinement while "investigation[s] [are] ongoing[.]" without having been charged with a crime, may be considered a violation of international law.¹⁸⁶ This infraction, however, is the only potential violation under international law that has been identified during research for this comment. Prisoners placed in CSCs, regardless of the reason for being in isolation, who demonstrate "signs of co-operative behavior," are given "increased responsibility and freedom."¹⁸⁷

Even though the UK endorses many of the same reasons for placing an inmate in solitary confinement as the U.S., a major difference between the two countries lies in the amount of time a prisoner spends in isolation. Regarding acceptable lengths of time spent in isolation, national prison policy in the UK permits isolating an inmate only "for the shortest period of time consistent with the original reasons for [solitary confinement,]" so that the probability of overusing or abusing solitary confinement as a form of incarceration is mitigated.¹⁸⁸ National prison service instructions state that "[e]very effort must be made to keep the time a prisoner is held in [isolation] to a minimum, i.e., minutes rather than hours or days."¹⁸⁹ Moreover, instead of simply stating rules that could be interpreted vaguely, the UK has set out rules that outline the maximum number of days individuals can be placed in solitary confinement without special permission. Specifically, "[a]dults may be held for [twenty-one] days and young adults (including those under [the age of eighteen]) for [ten days]."¹⁹⁰ Only approximately sixty individuals in the UK live in solitary confinement for longer than the standard maximum.¹⁹¹

¹⁸⁶ See SHALEV, *supra* note 14, at 25 (explaining that "terror suspects may be detained without any charge being brought against them for up to [twenty-eight] days and . . . may extend[] [up] to [fourty-two] days.").

¹⁸⁷ Mosler, *supra* note 1.

¹⁸⁸ See PPO, *supra* note 154, at 63 (stating that prisoners who have been in isolation for longer than thirty days must have a "care plan [describing] . . . how their mental health will be safeguarded."). See also Casella, *supra* note 131.

¹⁸⁹ *Prison Service Instruction*, *supra* note 162, at 11.

¹⁹⁰ Mosler, *supra* note 1.

¹⁹¹ Casella, *supra* note 131.

C. Conditions of Solitary Confinement

Many details surrounding the exact conditions of a cell in the UK are unspecified. However, it has been reported that many British prison “facilities are poor,” as cuts in funding have impacted staffing concerns.¹⁹² Specifically relating to solitary confinement, most prisons that have a solitary confinement wing contain “approximately [fifteen] cells [within that wing],” most of them being vacant.¹⁹³ Prison cells in England comprise “a bed and mattress[], a sink, a toilet and furniture, such as a table and chair.”¹⁹⁴ Moreover, most prisoners in solitary confinement also have a television in their cell.¹⁹⁵ Regarding recreation, prisoners in solitary confinement “are . . . permitted unlimited outside visits. . . .”¹⁹⁶ Additionally, isolated prisoners may have access to recreational activities including community areas, classrooms, books, board games, workshops, fitness centers, and “outside exercise yard[s] which contain[] . . . greenhouse[s] and . . . secure garden[s].”¹⁹⁷

The UK also acknowledges the importance of isolated prisoners engaging in meaningful social interactions. Specifically, “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence. . . .”¹⁹⁸ Prison authorities have a duty not only to ensure that “prisoners retain the right to family life[,]” but also “to assist [prisoners] in maintaining close family contacts.”¹⁹⁹ The right to regular and meaningful social interactions has been described as a crucial right of prisoners, especially to ones who

¹⁹² See Casella, *supra* note 131 (claiming that, due to understaffing, many individuals in British prisons are spending increased amounts of time in their cells, creating “a kind of de-facto [isolation].”).

¹⁹³ Cf. Mosler, *supra* note 1.

¹⁹⁴ See Seeing into Solitary, *supra* note 68, at 42.

¹⁹⁵ See Mosler, *supra* note 1.

¹⁹⁶ *Id.*

¹⁹⁷ E.g., SHALEV, *supra* note 14, at 45 (providing an example of recreational activities available to isolated prisoners in “the [CSC] at Whitemoor prison[,]” located in the UK). See also Mosler, *supra* note 1 (stating that isolated prisoners in CSCs have “access to education programs, libraries and daily exercise.”).

¹⁹⁸ ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, art. 17 (entered into force 23 March 1976).

¹⁹⁹ SHALEV, *supra* note 14, at 46.

are placed in isolation for an extended amount of time.²⁰⁰ Therefore, when prisoners leave their cells in the UK, they are not simply escorted to a prison yard that they occupy by themselves; rather, in addition to spending time outside, prisoners may leave their cells to shower, “collect meals, [and] make telephone calls. . . .”²⁰¹ In other words, interaction among prisoners and between prisoners and “educational, health and religious staff,” as well as receiving visitors, is encouraged.²⁰² Moreover, inmates in solitary confinement receive daily visits not only from healthcare professionals, but also from a chaplain and prison staff.²⁰³ Staff members are encouraged to engage with prisoners as frequently as possible.²⁰⁴ Even though the UK uses solitary confinement as an detention method, its ultimate objectives—to incarcerate prisoners in a humane manner and to rehabilitate them—remains the focal point of its prison operations.

V. THE UNITED STATES CONSTITUTION’S “CRUEL AND UNUSUAL”
STANDARD COMPARED TO INTERNATIONAL LAW’S “CRUEL,
INHUMAN OR DEGRADING STANDARD

The U.S.’ RUDs in both the ICCPR²⁰⁵ and CAT²⁰⁶ shows clearly that the U.S. acknowledges that the U.S. Constitution’s standard of “cruel and unusual”²⁰⁷ is lower than the international standard of “cruel, inhuman or degrading.”²⁰⁸ On the international platform, protecting prisoners from “cruel, inhuman or degrading treatment or punishment” is considered “both a jus cogens norm and customary international law.”²⁰⁹ In assessing whether “cruel, inhuman or

²⁰⁰ *Id.*

²⁰¹ Casella, *supra* note 131.

²⁰² SHALEV, *supra* note 14, at 45–46.

²⁰³ *Accord* Mosler, *supra* note 1.

²⁰⁴ *See Prison Service Instruction, supra* note 162, at 11. *See also* Seeing into Solitary, *supra* note 68, at 44 (maintaining that engaging with inmates includes “talk[ing] [to] and participat[ing] in activities with them where appropriate.”).

²⁰⁵ *Cf.* ICCPR Reservations, *supra* note 7.

²⁰⁶ *Cf.* CAT Reservations, *supra* note 7.

²⁰⁷ U.S. CONST. amend. VIII.

²⁰⁸ *See generally* ICCPR, Dec. 16, 1966, 999 U.N.T.S. 171, art. 7 (entered into force 23 March 1976); CAT, 10 December 1984, 1465 U.N.T.S. 85, arts. 1, 16 (entered into force 26 June 1987).

²⁰⁹ Conley, *supra* note 2, at 426.

degrading treatment or punishment” has occurred, courts use the “totality of conditions” test, which enables them to review “both physical conditions and psychological effects.”²¹⁰ And even though the terms “unusual,” “cruel,” “inhuman” and “degrading” are not accompanied by clear definitions,²¹¹ the international standard is considered broader than the American one.²¹² Indeed, the international community is more likely to recognize violations of human rights where the U.S. will not.²¹³ By signing both the ICCPR and the CAT, the U.S. agreed to be bound to international guidelines concerning certain human rights, and more particularly, prisoners’ rights. As many nations have pointed out,²¹⁴ the U.S.’ reservations in the ICCPR and CAT that hold the U.S. to a lower standard than permitted by international law are null and void, as those reservations defeat the object and purpose of both treaties. The acceptable level of prisoner treatment is a fluid, rather than rigid, standard, and as “society’s standard of living” rises, so too must the standard treatment of prisoners.²¹⁵ In order to ensure the U.S.’ compliance with the ICCPR and CAT, the U.S. must abandon the safeguard of “cruel and unusual” and adopt the standard of “cruel, inhuman or degrading.” In other words, the U.S. must adopt the ICCPR and CAT without RUDs that undermine and minimize its obligations.

VI. MEASURES CONSTITUTIONALLY ACCEPTABLE BUT INTERNATIONALLY CONDEMNED

Because the U.S. incorporated RUDs relating to the cruel, inhuman or degrading treatment or punishment standard set out in the ICCPR and CAT, the U.S. engages in solitary confinement measures that are constitutionally acceptable, yet condemned on an international level. These practices include holding prisoners in prolonged solitary

²¹⁰ Compare Miller, *supra* note 2, at 151, 154 with Conley, *supra* note 2, at 432 (stating that only physical pain and suffering can amount to torture in the U.S.).

²¹¹ See U.N. GAOR, 37th Sess., Supp. No. 40, at 94, U.N. Doc. A/37/40 (1982). See also Miller, *supra* note 2, at 142 (discussing the terms “cruel,” “inhuman,” and “degrading”).

²¹² U.N. GAOR, 37th Sess., Supp. No. 40, at 94, U.N. Doc. A/37/40 (1982).

²¹³ See *Prison Service Instruction*, *supra* note 162, at 11.

²¹⁴ See *supra* Part II.A and Part II.B.

²¹⁵ See generally Miller, *supra* note 2, at 169–70.

confinement; holding prisoners in isolation for indefinite periods of time; holding “juveniles, pregnant or breastfeeding women, or persons with mental disabilities”²¹⁶ in solitary confinement; failing to protect solitary confinement prisoners from non-physical pain and suffering that, under international standards, amounts to torture or cruel, inhuman or degrading treatment or punishment; failing to provide isolated prisoners appropriate medical care; and denying inmates in solitary confinement the opportunity to engage in meaningful social interactions. The U.S., by practicing solitary confinement in the manner it currently does, is failing, and more accurately, not even attempting, to rehabilitate its prisoners in isolation. Assessing how the UK approaches solitary confinement proves that it is possible to use solitary confinement as an incarceration method without it rising to the level of cruel, inhuman or degrading treatment or punishment. Therefore, in order for the U.S. to be in compliance with the safeguards set out in the ICCPR and CAT, it must discontinue certain solitary confinement procedures it currently uses.

First, in order for the U.S. to comply with the guidelines set out in the ICCPR and CAT, it must formally acknowledge certain basic prisoners’ rights.²¹⁷ This list of basic prisoners’ rights should identify the protections that assure that no prisoner is ever subjected to acts or omissions that could constitute cruel, inhuman or degrading treatment or punishment. Additionally, these basic prisoner rights should be formulated in a manner that guarantees that these rights cannot be taken away from any prisoner, under any circumstance.

Second, the U.S. must prohibit holding anyone, under any circumstance, in solitary confinement for longer than fifteen days; Juan Méndez, the former UN Special Rapporteur on Torture, characterized such an act as “cruel, inhuman or degrading treatment or punishment,” and therefore, a violation “of Article 7 of the [ICCPR], and Articles 1 and [16] of the [CAT.]”²¹⁸ According to Méndez, “while the use of

²¹⁶ See *Seeing into Solitary*, *supra* note 68, at 3.

²¹⁷ See Miller, *supra* note 2, at 139 (explaining that the treatment of prisoners on an international level has now developed “into a formal recognition of basic prisoners’ rights”).

²¹⁸ See *Seeing into Solitary*, *supra* note 68, at 3. See also Conley, *supra* note 2, at 416; Manduric, *supra* note 2.

short-term solitary confinement can be justified in some circumstances, provided that adequate safeguards are in place, [] prolonged or indefinite” solitary confinement never can be.²¹⁹ Moreover, indefinite solitary confinement not only violates a prisoner’s human rights, but also his or her due process rights.²²⁰

Third, the U.S. must ban certain types of prisoners from ever being isolated, “including juveniles, pregnant or breastfeeding women, or persons with mental disabilities.”²²¹ Accordingly, any individual who has one or more recorded mental disabilities or illnesses should never, under any circumstances, be placed in solitary confinement. To ensure this proposed safeguard, the U.S. ought to regularly record, “[c]ompile and . . . publish comprehensive disaggregated data on the use of solitary confinement, including related suicide attempts and self-harm.”²²²

Fourth, the U.S. must formally acknowledge that non-physical pain and suffering can amount to torture or, at the very least, “cruel, inhuman or degrading treatment or punishment.”²²³ By making such an acknowledgement, the U.S. would indirectly be committing itself to prohibiting non-physical pain and suffering (if the non-physical pain and suffering is prohibited by international guidelines).

Fifth, while failing to provide prisoners with medical care is not a constitutional violation, it is an international one;²²⁴ therefore,

²¹⁹ See *Seeing into Solitary*, *supra* note 68, at 3.

²²⁰ See Conley, *supra* note 2, at 427 (discussing that, if a prisoner is placed in solitary confinement for an indefinite amount of time and does not have “meaningful and well-established remedies for challenging the detention,” the prisoner’s human rights and due process rights have been violated).

²²¹ See *Seeing into Solitary*, *supra* note 68, at 4.

²²² HUMAN RIGHTS FIRST, *supra* note 2 (citing Comm. against Torture, *Concluding observations on the combined third to fifth periodic reports of the United States of America*, ¶20, U.N. Doc. CAT/C/USA/CO/3-5 (Dec. 19, 2014)) (internal quotations omitted).

²²³ For a full discussion of the Human Rights Committee acknowledging non-physical torture amounting to a violation of the ICCPR, see Miller, *supra* note 2, at 153.

²²⁴ U.S. DEPARTMENT OF STATE, CIVIL AND POLITICAL RIGHTS IN THE UNITED STATES: INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE

prisoners in the U.S. must be afforded medical care. Medical care should include physical as well as mental care.

Sixth, the U.S. must formally recognize the importance of prisoners engaging in meaningful social interactions and must afford prisoners and members of the public the “right to visit persons in prisons.”²²⁵ If the U.S. adopts these proposed changes, it may engage in solitary confinement as an incarceration method while still conforming to international law—specifically, the ICCPR and the CAT. Additionally, these proposed alterations would permit the U.S. to implement all substantive provisions of the ICCPR and CAT on a federal level.

While it would be ideal to ban solitary confinement in its entirety, such a proposal is currently unrealistic—especially in the U.S. A genuine beginning point is vital to success. Policymakers should implement policies that hold the U.S. to the same standards to which other member states of the ICCPR and CAT are held. Even though creating policies that hold the U.S. to international guidelines would be difficult, it can be accomplished. The U.S. should use the laws of the UK as its blueprint for reformation; the UK has proven that solitary confinement can be used while still complying with the ICCPR and CAT. The laws of the United States must reflect the main purpose of incarceration: rehabilitation.

VII. CONCLUSION

“By any measure the use of solitary confinement in American correctional institutions is a global outlier and a human rights crisis.”²²⁶ Having ratified both the ICCPR and the CAT, the U.S. ought to be held to the standards both treaties set out. Due to its RUDs to the ICCPR and CAT, the U.S. created a loophole that permits it to receive recognition for being a signatory member of two progressive treaties

U.N. HUMAN RIGHTS COMMITTEE UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1994).

²²⁵ *Id.*

²²⁶ Seeing into Solitary, *supra* note 68, at 10.

while engaging in isolation practices that contradict the very same treaties.

The U.S. should not be permitted to shield itself behind the constitutional standard of “cruel and unusual.” As a signatory member of both the ICCPR and the CAT, the U.S. has vowed to protect prisoners from “cruel, inhuman or degrading treatment or punishment;” that the U.S. ratified both treaties with RUDs that hold the U.S. to constitutional, instead of international, standards should be considered irrelevant. Because the U.S.’ RUDs allow the U.S. to hold itself to a lower standard than that set out by international law, the U.S.’ RUDs should be regarded as null and void.

While any use of isolation is undesirable, an attainable objective is crucial to reformation. The U.S. should strive to have its solitary confinement procedures comply with the ICCPR and the CAT, which can be accomplished by mirroring its isolation practices to those of the UK’s. Using prolonged or indefinite solitary confinement, placing vulnerable populations in isolation, failing to shield solitary confinement inmates from non-physical pain and suffering, denying isolated prisoners appropriate medical care, and refusing solitary confinement inmates the opportunity to engage in meaningful social interactions are contrary to the values rehabilitation and international law. Thus, the U.S. must abandon these practices in order to comply with the substantive provisions of the ICCPR and CAT. Moreover, after abandoning these practices, the U.S. federal government can and should implement all substantive provisions of both treaties. If the U.S. cannot simultaneously use solitary confinement as an incarceration method and comply with the ICCPR and CAT, the question becomes: Why did the U.S. sign the ICCPR and CAT in the first place?