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# Linguistic Isolation: A New Human Rights Violation Constituting Torture, and Cruel, Inhuman And Degrading Treatment

Peter Jan Honigsberg\*

## INTRODUCTION

¶1 Sixteen-year-old Uzbek, Sunnat (not his real name), was seized in Afghanistan following the attacks on September 11, 2001. He was transported to the detention center in Guantanamo Bay, Cuba in 2002.<sup>1</sup> After interrogating him over a period of several months, the United States government understood that he was not a threat. Nevertheless, the U.S. could not release him safely because many nations, including Uzbekistan, did not want any involvement with former detainees from Guantanamo. Sunnat feared for his life if he were repatriated. Consequently, the military was required to keep Sunnat in Guantanamo until the U.S. could locate another country willing to accept him. Sunnat waited eight years to find that country.

¶2 In the meantime, Sunnat was placed in a cell among other detainees in the general prison population. However, he spoke neither Arabic nor English, the lingua francae of the prison and the only languages spoken by the detainees in neighboring cells. There were six other Uzbeks in the prison population. Additionally twenty-two Uyghurs<sup>2</sup> in the prison spoke a language similar to Uzbek. Neither Uyghur nor Uzbek detainees were placed near Sunnat.

¶3 Sunnat could, of course, reach out and communicate through eye contact, hand signs and facial expressions. And over his eight years, he made acquaintances and learned minimal Arabic and English. One of his goals, he told the Witness to Guantanamo project (hereinafter W2G),<sup>3</sup> was to greet and “say hi” to the men nearby. He

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<sup>1</sup> Interview with “Sunnat,” W2G, in Riga, Lat. (Aug. 4, 2011) (*see infra* note 3 for information on the W2G project).

<sup>2</sup> Uyghurs are an ethnic minority in East Turkistan, a nation subjugated by the Chinese government in the mid-20<sup>th</sup> century. Preeti Bhattacharji, *Uighurs and China's Xinjiang Region*, COUNCIL ON FOREIGN RELATIONS (May 29, 2012), <http://www.cfr.org/china/uighurs-chinas-xinjiang-region/p16870>.

<sup>3</sup> The Witness to Guantanamo project (W2G) has filmed interviews of more than 100 former detainees and other people who have lived or worked in Guantanamo Bay, Cuba, or have been involved with Guantanamo issues. The others include prison guards, chaplains, interrogators, interpreters, medical personnel, psychologists, habeas attorneys, JAG attorneys, high-level government officials, high-level military officials, and the wives and parents of former detainees.

wanted to learn Arabic and English, but the U.S. would not provide him with books or materials to learn a language. Sunnat could never adequately communicate with his neighbors. The communication connections he was able to make with his neighbors were insufficient to provide him with any *meaningful* human contact.

¶4 Absence of meaningful human contact is characteristic of isolation and a source of suffering caused by isolation.<sup>4</sup> Because most of the inmates in Guantanamo spoke either Arabic or English, they were able to share their countries' cultures and common languages and even identities among themselves. Sunnat could not participate in this exchange. Nor could Sunnat communicate with the guards and other prison workers. He lived inside the prison but outside the prison community. He was always alone.

¶5 Because the government concluded that he was not a threat, Sunnat no longer met with an interrogator and, therefore, an interpreter. Having access to an interpreter would have provided him with someone to whom he could have expressed his needs. It is even possible that he could have had something approaching a "regular" conversation. But, because of his "innocent" status—he was never charged with a crime—he was deprived of access to a government interpreter. He had no one to whom he could talk. In essence, he suffered further punishment as a result of his innocence. When W2G asked him how he coped with his powerful sense of loneliness during those years in Guantanamo, he replied in his quiet and shy manner: "I cried, and then I felt better."<sup>5</sup>

¶6 After the *Rasul v. Bush* decision granted statutory habeas rights to Guantanamo detainees,<sup>6</sup> Sunnat was able to obtain access to an attorney. Each time they would meet, the attorney would bring an interpreter with him. However, the attorney's visits were infrequent, and Sunnat was still unable to find someone with whom he could hold meaningful conversations. With the help of counsel, Sunnat was finally released to Latvia in 2010. The W2G project interviewed him in summer 2011.

¶7 In this article, I use Sunnat's story as a lens through which to see how isolation through language barriers is a form of isolation that warrants special attention in the detention context, and may rise to the level of torture or cruel, inhuman, or degrading treatment (hereinafter CID). Academic literature on isolation, including literature in the social sciences and international fields, has only cursorily acknowledged the experience of being isolated by language. The literature has neither dedicated extensive or significant content or analysis to the situation, nor described the experience as a distinct type of isolation.

¶8 Consequently, this article is an original work that will focus on the phenomenon of isolation by language barriers or linguistic isolation and address it as a new and unique form of isolation. I argue that linguistic isolation is as pernicious as other forms of isolation and deserves to be recognized on its own terms. I will also propose specific recommendations for limiting or minimizing linguistic isolation in prisons and detention centers.

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<sup>4</sup> See, e.g., Peter S. Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 449 (2006) ("The key factor is that socially and psychologically meaningful contact is reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative.")

<sup>5</sup> Interview with "Sunnat," *supra* note 1.

<sup>6</sup> *Rasul v. Bush*, 542 U.S. 466 (2004).

¶9 Part I, although relatively short, will set out the core thesis for this piece: that isolation is regarded as a form of torture or CID under international law.<sup>7</sup> Accordingly, linguistic isolation should similarly be regarded, under certain conditions, as a form of torture or CID.

¶10 Part II will identify and review three types of physical isolation: solitary confinement, incommunicado detention, and administrative segregation. The current literature does not recognize these three types as distinct within an overarching theme of isolation. Rather, the literature will often use these terms interchangeably with “isolation.”<sup>8</sup> For example, solitary confinement is often used as a synonym of isolation. However, identifying these different yet overlapping types of physical isolation, while also identifying their similar and distinguishing characteristics and features, will lay the groundwork for the introduction and analysis of a fourth type: linguistic isolation or isolation by language barriers. This part will also review sensory deprivation, which exacerbates the effects of isolation, and will conclude by identifying many of the general physiological and psychological effects and symptoms of isolation.

¶11 Part III will address linguistic isolation or isolation by language barriers as a fourth type of isolation. This part will also demonstrate how linguistic isolation deserves to be recognized as a distinct and unique form of isolation.

¶12 Part IV will suggest implementing procedures and standards that will go towards remedying linguistic isolation. It will also recommend legal remedies, including full U.S. and international recognition of the phenomenon of isolation by language barriers. Because there are likely other cases of linguistic isolation that have not yet been identified, this Part calls for the undertaking of research on the issue of linguistic isolation in prisons around the world. It also encourages experts to study the symptoms and effects of linguistic isolation.

#### I. ISOLATION AS TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

¶13 Two international treaties expressly prohibit torture and CID: the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter CAT)<sup>9</sup> and the International Covenant on Civil and Political Rights (hereinafter ICCPR), in which the prohibition against torture and CID is non-derogable.<sup>10</sup> Regional treaties also prohibit torture and CID.<sup>11</sup> Moreover, there are international documents on the basic rules for the proper treatment of prisoners that disfavor

<sup>7</sup> Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment of punishment, *Interim Rep. of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 70, U.N. Doc. A/66/268 (May 8, 2011) (Juan Méndez) [hereinafter Interim Rep. of the Special Rapporteur].

<sup>8</sup> See *infra* note 14.

<sup>9</sup> Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

<sup>10</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 6 I.L.M. 368, 999 U.N.T.S. 171 (1967).

<sup>11</sup> Organization of American States, American Convention on Human Rights art. 5, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, C.E.T.S. No. 005, 213 U.N.T.S. 221; African Union, African [Banjul] Charter on Human and Peoples' Rights art. 5, Jun. 27, 1981, 21 I.L.M. 58.

isolation.<sup>12</sup> “Nevertheless, there is currently no international consensus on whether or under what circumstances isolation constitutes torture or CID.”<sup>13</sup> However in 2011, the Special Rapporteur of the Human Rights Council for Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment recognized that solitary confinement can amount to torture or CID.<sup>14</sup> By acknowledging the seriousness of solitary confinement issues, the Special Rapporteur has raised the conversation on isolation to a new and vitally important human rights level.<sup>15</sup>

¶14 Isolation can take various forms, i.e., solitary confinement, incommunicado detention, administrative segregation and sensory/perceptual deprivation. It is beyond the scope of this article to document the situations in which each form of isolation would qualify as torture or CID. However, this article will argue that linguistic isolation should be recognized as a distinct human rights abuse. Because of its devastating impact and effects on the human spirit, linguistic isolation can also amount to torture and CID under certain circumstances, such as those suffered by Sunnat.

## II. DISTINGUISHING TYPES OF ISOLATION

¶15 There is a body of literature in the social sciences, as well as international law, on isolation in the context of detention.<sup>16</sup> However, the terms isolation, solitary confinement,

<sup>12</sup> Standard Minimum Rules for the Treatment of Prisoners, ¶ 51(2), E.S.C. Res. 663 C (XXIV) (July 31, 1957); Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, § 7, U.N. Doc. A/RES/45/111 (Dec 14, 1990).

<sup>13</sup> Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *supra* note 9, at art. 7. However, the Committee Against Torture has recommended “the use of solitary confinement be abolished, particularly during pre-trial detention. Interim Rep. on the Special Rapporteur, *supra* note 8 at ¶ 10. *See also* Smith, *supra* note 4, at 445.

<sup>14</sup> Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶ 70. The report also asserts that social isolation is contrary to article 10, para.3 of the International Covenant on Civil and Political Rights. *Id.* ¶ 76.

<sup>15</sup> The Interim Report of the Special Rapporteur has provided organizations new support and a standard that they can use in advocating against solitary confinement. *See, e.g., Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences*, CENTER FOR CONSTITUTIONAL RIGHTS (June 19, 2012),

[http://www.ccrjustice.org/files/CCR%20Statement%20to%20Congress%20on%20Solitary%20Confinement\\_2012-06-19.pdf](http://www.ccrjustice.org/files/CCR%20Statement%20to%20Congress%20on%20Solitary%20Confinement_2012-06-19.pdf) (the Center for Constitutional Rights cited to the Special Rapporteur’s report in testimony to Congress advocating for the elimination of solitary confinement); *Complaint Submission: The Use of Solitary Confinement on Palestinian Children Held in Israeli Detention*, DEFENCE FOR CHILDREN

INTERNATIONAL (Dec. 28, 2011), [http://www.dci-palestine.org/sites/default/files/solitary\\_confinement\\_website\\_dec\\_2011.pdf](http://www.dci-palestine.org/sites/default/files/solitary_confinement_website_dec_2011.pdf) (Defence for Children International has cited to the report in a complaint to the U.N. regarding Israel’s placing Palestinian children in solitary confinement); *World Leaders Urged to Ban Solitary Confinement*, SCOTLAND AGAINST CRIMINALISING COMMUNITIES (Dec. 10, 2011),

<http://www.sacc.org.uk/index.php?option=content&task=view&id=870&catid=27> (Scotland Against Criminalising Communities used the report’s findings to call on world leaders to ban solitary confinement); *Solitary Confinement is Torture*, GIRIFNA (Nov. 11, 2012), <http://www.girifna.com/7068> (a Sudanese activist group, GIRIFNA, cited to the special rapporteur in its advocacy report urging the Sudanese government to abolish solitary confinement).

<sup>16</sup> This article draws from the English-language literature not only in the legal field, but also in the sociological, medical and psychological fields. However, much of the literature in the social science field repeatedly cites to the same core studies in the context of detention, especially those by Stuart Grassian and Peter Scharff Smith. *See, e.g.,* Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U.J.L. & POL’Y 325, (2006). *See also* Smith, *supra* note 4. For a recent study in the medical field, see

incommunicado detention, and administrative segregation are often used interchangeably in the literature.<sup>17</sup> Although these terms share some similar features and characteristics, such as physical isolation, they are not identical. The terms often connote distinctive isolating treatment of the prisoner or various reasons for isolating the prisoner.

¶16 In addition, there does not appear to be a framework in the literature for identifying and separately defining forms of isolation. I believe that it would be helpful in anchoring this article to outline different types of isolation and to identify their overlapping and distinctive features and characteristics. With this kind of framework, the term “isolation” would be seen as a general or umbrella term. Solitary confinement, incommunicado detention, administrative segregation, and language barriers would all fall under the overarching term “isolation.” In setting out the different types of isolation within a framework, this Part will also address the effects and symptoms of isolation.

¶17 Commentators and courts have also introduced other terms, often as variations to and distinctions from, the terms mentioned above. For example, the European Court of Human Rights, or ECHR, has issued decisions referring to the term “relative isolation” and comparing it to the term “total isolation.”<sup>18</sup> The ECHR has also considered such terms as “sensory isolation” and “total social isolation.”<sup>19</sup> This essay does not intend to

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PHYSICIANS FOR HUMAN RIGHTS & NATIONAL IMMIGRANT JUSTICE CENTER, *INVISIBLE IN ISOLATION: THE USE OF SEGREGATION AND SOLITARY CONFINEMENT IN IMMIGRATION DETENTION* (2012) [hereinafter *INVISIBLE IN ISOLATION*].

<sup>17</sup> For example, the Center for Constitutional Rights stated, “approximately 70% of the men imprisoned in Guantanamo are in solitary confinement or isolation.” The article makes no distinction between the terms. *Solitary Confinement at Guantanamo Bay*, CENTER FOR CONSTITUTIONAL RIGHTS (Dec. 31, 2012), <http://ccrjustice.org/learn-more/faqs/solitary-confinement-guantanamo-bay#2>.

The Human Rights Committee and the Committee Against Torture also use isolation and solitary confinement interchangeably, although they use solitary confinement more frequently than isolation. *See*, Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Denmark, ¶ 7, U.N. Doc. CAT/C/CR/28/1 (June 12, 2002); Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Luxembourg, ¶ 5, U.N. Doc. CAT/C/CR/28/2 (June 12, 2002); Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Norway, ¶ 5, U.N. Doc. CAT/C/CR/28/3 (June 12, 2002); Human Rights Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Luxembourg, ¶ 6, U.N. Doc. CCPR/CO/77/LUX (Apr. 15, 2003); Human Rights Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Uganda, ¶ 18, U.N. Doc. CCPR/CO/80/UGA (May 4, 2004); Human Rights Comm., Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Thailand, ¶ 16, U.N. Doc. CCPR/CO/84/THA (July 8, 2005) (using “solitary confinement”); Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Finland, ¶ 3(c), U.N. Doc. CAT/C/CR/34FIN (June 21, 2005) (using “isolation”). *See also* FAQ, SOLITARY WATCH, <http://solitarywatch.com/faq/> (referring to administrative segregation as isolation); Comm. Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Spain, ¶ 10, U.N. Doc. CAT/C/CR/29/3 (Dec. 23, 2002) (referring to incommunicado detention as isolation).

<sup>18</sup> *See* Csüllög v. Hungary, Judgment, App. No. 30042/08, Eur. Ct. H.R., ¶¶ 31-33 (2011); Ramirez Sanchez v. France, Grand Chamber Judgment, App. No. 59450/00, Eur. Ct. H.R., ¶ 145 (2006).

<sup>19</sup> *See* Ramirez Sanchez v. France, Grand Chamber Judgment, App. No. 59450/00, Eur. Ct. H.R., ¶ 87 (2006); Ramirez Sanchez v. France, First Section Judgment, App. No. 59450/00, Eur. Ct. H.R., ¶ 100 (2005); Csüllög v. Hungary, Judgment, App. No. 30042/08, Eur. Ct. H.R. ¶¶ 31-33 (2011); Rohde v. Denmark, Judgment, App. No. 69332/01, Eur. Ct. H.R., ¶ 97 (2005); Messina v. Italy, Inadmissibility Decision, App. No. 245498/94, Eur. Ct. H.R. at 13-14 (1999). In using these terms, the court looked at the entire circumstances of the individual’s situation while held in isolation, considering such factors as whether the individual had access to other inmates and to visitors including family members, fiancés, and

explore the gradations and nuances of terms used in isolation literature. Nevertheless, identifying and recognizing the many terms used in the literature supports the argument that there is no single form of “isolation.”

### A. *Solitary Confinement*

#### 1. Background

¶18 Solitary confinement was first introduced in the United States as a progressive rehabilitation measure in the early 1800s in a program known as the “Philadelphia system.”<sup>20</sup> Prison reformers believed that if they placed a prisoner in solitary to live his life alone, he would have time to reflect on, and atone for, his misdeeds. The inmate would then correct his behavior in the future.<sup>21</sup> The solitary confinement would begin on the inmate’s walk to the cell. The inmate would wear a hood over his head so that he could not see other inmates and they could not see him.<sup>22</sup> Other countries adopted the American practice of atonement through isolation a decade later.<sup>23</sup> Unfortunately, and not without irony, the practice did not work out as planned. Rather, solitary confinement caused the inmate to further suffer, and in some cases even become unhinged, undermining his rehabilitation.<sup>24</sup> Nevertheless, the solitary confinement approach to punishment in prisons was not abandoned. Rather, it was adopted by nations as a norm for addressing pretrial detention and breaches of prison discipline.<sup>25</sup>

¶19 The reader might expect that because nearly 200 years have passed since the disastrous experiment with isolation was first attempted in the U.S. in 1820, isolation would now be a well-regulated feature of the American prison system. However, surprisingly, isolation is not seriously regulated. Rather, the federal prison system and the prison systems of individual states do not think of isolation as a human rights issue. Instead, isolation in the prison system is described as a matter of protection—either the

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lawyers; whether the inmate received mail and could make phone calls; whether the cell was lit by natural or artificial light; the length of time that the inmate was isolated, and also reviewed other conditions, stringency measures and the effects on the person.

<sup>20</sup> Grassian, *supra* note 17, at 328. *See also* Smith, *supra* note 4, at 456-57 (discussing the Auburn Prison in New York, where prisoners were forbidden to talk, but would work together). *See also* Brooke Shelby Biggs, *Solitary Confinement: A Brief History*, MOTHER JONES (Mar. 2, 2009, 4:42 PM), <http://www.motherjones.com/politics/2009/03/solitary-confinement-brief-natural-history>. The article notes that solitary confinement, along with penitence, had been conceived by the Quakers and Anglicans as humane reformation of the penal system, and adds that penitentiary is derived from the word penitence.

<sup>21</sup> Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶ 23. *See also* Grassian, *supra* note 16, at 340; Smith, *supra* note 4, at 456-57.

<sup>22</sup> Grassian, *supra* note 16, at 340.

<sup>23</sup> Smith, *supra* note 4, at 457.

<sup>24</sup> Grassian, *supra* note 16, at 342-43 (noting that studies revealed psychotic disturbances among prisoners subjected to isolation, and although other factors were also likely responsible for prison psychoses, including duration of imprisonment, the most consistent factor was solitary confinement); Smith, *supra* note 4, at 457 (noting that prisoners suffered hallucinations, “dementia,” and “monomania”).

<sup>25</sup> Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶ 24. For a more complete study of the evolution of solitary confinement, *see* Smith, *supra* note 4.

protection of the prison population and the prison personnel from the prisoner, or the protection of the prisoner from the prison population.<sup>26</sup>

¶20 Thus, in the U.S., isolation is not usually termed isolation or even solitary confinement, but is considered a form of “administrative segregation.”<sup>27</sup> To the extent it is regulated, the regulation is in the terms of reviewing the prisoner’s isolating situation after a certain period of time. For example, the U.S. federal system provides for review every 30 days, while states have different evaluation cycles.<sup>28</sup> Nevertheless, an evaluation does not mean release from isolation. An inmate, although reviewed every 30 days, may continue to be housed in administrative segregation for years in a federal or state institution.<sup>29</sup>

## 2. Defined

¶21 Solitary confinement is the term most regularly used in the literature on isolation. There is no exact definition for solitary confinement. A common definition is found in the “Istanbul Statement on the use and effects of solitary confinement”:

¶22 Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day . . . Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.<sup>30</sup>

¶23 Solitary Watch defines solitary confinement as “the practice of isolating inmates in closed cells for 22-24 hours a day,<sup>31</sup> virtually free of human contact, for periods of time ranging from days to decades.”<sup>32</sup> Solitary Watch notes that most prisons in the U.S. prefer the term “segregation” to solitary confinement.<sup>33</sup>

¶24 In solitary confinement, the prisoner has very limited contacts with other prisoners. The prisoner may not greet or even see other prisoners for up to 24 hours a day. However, prisoner may have contacts with people on the outside such as attorneys.

<sup>26</sup> HOPE METCALF, ET. AL., ADMINISTRATIVE SEGREGATION, DEGREES OF ISOLATION, AND INCARCERATION: A NATIONAL OVERVIEW OF STATE AND FEDERAL CORRECTION POLICIES 1-2 (June 2013), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2286861](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286861).

<sup>27</sup> See *infra* Section 3 of this Part. In addition, inmates held in some form of isolation in the U.S. are often described as being held in the “Shoe,” a reference to the acronym “SHU” or Special Housing Unit, sometimes also known as Security Housing Unit. SOLITARY WATCH, *supra* note 17. A Yale Law School study makes a similar point in noting that U.S. prison policies rely on a variety of terms: “administrative close supervision,” “administrative confinement,” “administrative maximum,” “administrative segregation,” “behavior modification,” “departmental segregation,” “inmate segregation,” “intensive management,” “locked unit,” “maximum control unit,” “restricted housing,” “security control,” “security housing unit,” “segregated housing,” “special housing unit,” and “special management.” These policies do not refer to the terms “solitary” or “isolation.” Metcalf, *supra* note 26, at 3.

<sup>28</sup> See *infra* section titled “Defined” and *infra* note 46.

<sup>29</sup> SOLITARY WATCH, *supra* note 17.

<sup>30</sup> *The Istanbul Statement on the Use and Effects of Solitary Confinement*, International Psychological Trauma Symposium (Dec. 9, 2007), [http://www.univie.ac.at/bimtor/dateien/topic8\\_istanbul\\_statement\\_effects\\_solconfinment.pdf](http://www.univie.ac.at/bimtor/dateien/topic8_istanbul_statement_effects_solconfinment.pdf).

<sup>31</sup> In many jurisdictions prisoners are allowed out of their cells for only one hour of solitary exercise. See Interim Rep. of Special Rapporteur, *supra* note 7, at ¶ 25.

<sup>32</sup> SOLITARY WATCH, *supra* note 17.

<sup>33</sup> *Id.* Segregation is discussed *infra* Part II(3).



¶25 The restrictions in seeing or conversing with other humans can include not only other inmates, but also prison personnel. For example, guards at Guantanamo may ignore the prisoners held in isolation, walking by their doors without speaking to them. At mealtimes, the guards could merely shove the meal tray through the bean-hole in the door.<sup>34</sup>

¶26 In addition to Guantanamo, solitary confinement is found in the U.S. today in its many super-maximum security (“supermax”) prisons.<sup>35</sup> In a supermax prison, inmates have limited social contact and are often kept isolated for 23 hours a day. In addition, inmates can only communicate by shouting through cell doors.<sup>36</sup> Visits in supermax prisons are sometimes only through videoconferencing systems.<sup>37</sup>

¶27 When American citizen John Walker Lindh, known as the “American Taliban,” was housed at the Supermax in Florence Colorado in 2006-2007, he was kept in 24-hour solitary confinement. He was not permitted to interact with or even see other prisoners. When he exercised, he exercised alone. When he was taken out of his cell to visit with his mother or father through a glass-partitioned phone booth, all the other visiting booths in the area were kept empty while he was present. The officials made certain that no other prisoners were in the halls as he passed through.<sup>38</sup> In addition, his meetings with his parents were restricted to a total of eight hours a month. He never was permitted to hug his parents or even physically touch them on any of their visits.<sup>39</sup>

¶28 According to the “Istanbul statement on the use and effects of solitary confinement,” solitary confinement is broadly used in four situations:<sup>40</sup> 1) disciplinary punishment; 2) isolation of individuals during an ongoing criminal investigation; 3) administrative tool for managing specific groups of prisoners such as gang members or child molesters; and 4) judicial sentencing.<sup>41</sup> However, it should be noted that these

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<sup>34</sup> Of course, even where detainees are permitted contacts with prison personnel, the interactions are not necessarily positive but could, in fact, be harmful. In one example, Moazzam Begg—who had been kept in isolation for nearly 4 years in Guantanamo and denied access to other inmates and usually to guards—in near desperation asked for human contact. In response, the military sent him a psychologist. During the conversation, the psychologist asked him whether he ever thought of taking off his trousers, wrapping them over the door and crossing them into a loop, so that he could place his head into the loop. Interview with Moazzam Begg, Birmingham, U.K. (Aug. 17, 2009).

<sup>35</sup> In 2004, more than forty states reported some form of supermax housing. Angela Browne, Alissa Cambier & Suzanne Agha, *Prisons within Prisons: The Use of Segregation in the United States*, 24 FED. SENT’G REP. 46 (2011).

<sup>36</sup> Smith, *supra* note 4, at 443.

<sup>37</sup> *Id.*; see also, INTER-AM. COMM’N ON H.R., REPORT ON IMMIGRATION IN THE UNITED STATES: DETENTION AND DUE PROCESS ¶¶ 326-327 (Dec. 30, 2010) (noting immigrant detainees in a Pinal County Arizona facility must videoconference all visits with family members, and often meet attorneys through videoconferencing as well).

<sup>38</sup> Interview with Marilyn Walker, mother of John Lindh, S.F., Cal. (Jan. 5, 2013); Interview with Frank Lindh, father of John Lindh, Berkeley, Cal., (Apr. 2, 2011).

<sup>39</sup> *Id.*

<sup>40</sup> International Psychological Trauma Symposium, *supra* note 30.

<sup>41</sup> A Yale Law School study provides a similar breakdown regarding isolation in the U.S: “most systems separate prisoners for three basic purposes: to protect an individual from particular threats (generally termed protective custody); to impose a sanction for a discrete act (punitive or disciplinary segregation); or to control an individual perceived to pose a current or future risk (administrative segregation). Overlap exists among the different kinds of segregation. For example, a few policies list an inmate’s own protection as a reason to put him or her into administrative segregation.” Metcalf, *supra* note 27, at 3.

purposes overlap with the rationale behind administrative segregation, which often creates confusion among the terms.<sup>42</sup>

¶29 Solitary confinement is also sometimes used as a substitute for proper medical or psychiatric care for mentally disordered individuals<sup>43</sup> and it has been used as a coercive interrogation practice.<sup>44</sup>

¶30 Importantly, the Special Rapporteur has defined prolonged solitary confinement as any period in excess of 15 days.<sup>45</sup> The Special Rapporteur chose this limit because some of the literature identifies harmful psychological effects of isolation that can become irreversible after 15 days.<sup>46</sup> The U.S. has not adopted the 15-day standard. Instead the U.S. uses a 30-day cycle of review, but not necessarily release.<sup>47</sup>

¶31 In one situation, the U.S. has parsed the term “isolation” in order to circumvent acknowledging that a juvenile detainee was even being held in isolation. In describing the isolation of child soldier Omar Khadr in Guantanamo, Khadr’s defense counsel, Lt. Col. Colby Vokey<sup>48</sup> told W2G the following: when Khadr was put in a solitary cell, the military officials explained to Col. Vokey that Khadr was not truly in isolation because there was a tiny slit at the very bottom of his cell door. Khadr could presumably shout out to other inmates through this slit. Col. Vokey added that a huge fan roared next to Khadr’s cell.<sup>49</sup>

### B. *Incommunicado Detention*

¶32 Incommunicado detention is often used interchangeably with “enforced disappearance.”<sup>50</sup> The International Convention for the Protection of All Persons from Enforced Disappearance of December 2006 defines enforced disappearance as, “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons acting with the authorization, support or acquiescence of the State,

<sup>42</sup> See Vera Institute of Justice, *Prisons within Prisons: The Use of Segregation in the United States*, 24 FED. SENT’G REP. 46, 47 (2011) (in which disciplinary segregation, administrative segregation, protective custody, temporary confinement and supermax prisons are all identified as “Types of Segregation”).

<sup>43</sup> Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶ 67.

<sup>44</sup> See, e.g., the description of former detainee Feroz Ali Abassi who was kept in isolation until he “broke,” and agreed to talk. Part II(5), *infra*.

<sup>45</sup> Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶ 26.

<sup>46</sup> *Id.*

<sup>47</sup> The thirty-day period is a federal guideline and states have different re-evaluation cycles. U.S. DEPT. OF JUSTICE, FED. BUREAU OF PRISONS, SPECIAL HOUSING UNITS, PROGRAM STATEMENT § 541.26 (2011); Cal. Code Regs. tit. 15, § 3341.5(c)(2)(A)(1). See also Smith, *supra* note 4, at 442; Inter-Am. Comm’n on H.R., *supra* note 37, at ¶ 338 (“The United States also points out that the maximum sanction is ‘30 days in disciplinary segregation per violation with a review every seven days’ . . .”). Despite the required reviews, U.S. detainees may spend years in solitary confinement. See Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶ 60, 61 (“In a joint report on the situation of detainees at Guantanamo Bay, experts found that although 30 days of isolation was the maximum period permissible, some detainees were returned to isolation after very short breaks over a period of 18 months.” Report also notes that two prisoners in Louisiana were held in solitary confinement for 40 years).

<sup>48</sup> Interview with Lt. Col. Colby Vokey, in S.F., Cal. (Sep. 29, 2012).

<sup>49</sup> *Id.*

<sup>50</sup> See, e.g., Human Rights Council, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights Including the Right to Development: Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, 2, U.N. Doc. A/HRC/13/42 (Feb. 19, 2010).

followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”<sup>51</sup> Nevertheless, one could seemingly be held in incommunicado detention, but not have been “disappeared.”

¶33 In incommunicado detention, the prisoner may have contacts and communication with prisoners inside the detention center, but does not have access to people outside the facility, including family members and lawyers. Thus, when a prisoner is in incommunicado detention, his family may not know his or her location. In that situation, he has disappeared. Incommunicado detention differs from solitary confinement in that the prisoner is prohibited from contact with other individuals inside the detention center, but may have contacts with individuals outside the facility. Moreover, incommunicado detention can put detainees at risk of other forms of torture and CID, since there is no one on the outside who can look out for him.<sup>52</sup>

¶34 When prisoners were first brought to Guantanamo, they were held in incommunicado detention. Until the International Committee for the Red Cross, or ICRC was permitted to visit with the men in the prison, the detainees had no opportunity to inform their families of their circumstances.<sup>53</sup> After the Red Cross visited, the detainees were generally permitted to send letters to their loved ones. However, the letters were often heavily redacted.<sup>54</sup> There were also times when the families did not receive the letters at all.<sup>55</sup>

¶35 Of course, people held in incommunicado detention can also be placed in solitary confinement. In that situation they are denied contacts with people both inside and outside the detention facility. Such examples would include people who were captured and held under the CIA’s extraordinary rendition program during the years following 9/11. In this program, the detainees were kidnapped and transported to CIA “black sites” or to brutal prisons in countries such as Egypt, Jordan, Thailand, Poland, Romania and Syria, where they were tortured.<sup>56</sup> Mamdouh Habib explained to W2G how he was seized and flown to Egypt under the CIA’s extraordinary rendition program and tortured in a filthy prison for six months. They also told him that his wife was dead.<sup>57</sup> For a period of time that he was in Egypt, his wife, Maha Habib, did not know what happened to him, or where he was. She learned about his fate through the media.<sup>58</sup>

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<sup>51</sup> International Convention for the Protection of All Persons from Enforced Disappearance, art. 2, G.A. Res. A/RES/61/177, 14 Int’l. Hum. Rts. Rep. 582 (Dec. 20, 2006).

<sup>52</sup> Special Rapporteur on the Commission of Human Rights, *Report on torture and other cruel, inhuman or degrading treatment or punishment, submitted by Sir Nigel Rodley, Special Rapporteur of the Commission on Human Rights, in accordance with General Assembly resolution 53/139*, ¶ 42, U.N. Doc. A/54/426 (Oct. 1, 1999).

<sup>53</sup> Peter Jan Honigsberg, *In Search of a Forum for the Families of the Guantanamo Disappeared*, 2 DENV. U. L. REV. 433 (2013).

<sup>54</sup> Interview with Bisher Al Rawi, in London, U.K. (Aug. 2, 2011).

<sup>55</sup> Interview with Maha Habib, in Sydney, Austl. (Jan. 5, 2012); Interview with Ayub Muhammed, in Tirana, Alb. (Aug. 5, 2009).

<sup>56</sup> PETER JAN HONIGSBERG, *OUR NATION UNHINGED* 180 (2009).

<sup>57</sup> Interview with Mamdouh Habib, in Sydney, Austl. (Dec. 30, 2011). *See also* Dana Priest and Dan Eggen, *Terror Suspect Alleges Torture*, WASHINGTON POST, Jan. 6, 2005, at A01.

<sup>58</sup> Interview with Maha Habib, *supra* note 55.

### C. Administrative Segregation

¶36 In administrative segregation, similarly situated individuals may be detained together, but separated from the general prison population. That is, administrative segregation relies on a system of classification of individuals using certain characteristics.<sup>59</sup> It is distinguishable from situations in which an individual prisoner is removed from the general population for violating prison rules. In some situations, individuals held in administrative segregation may also be placed in solitary confinement. Nevertheless, this article will define administrative segregation as group, rather than individual, isolation.

¶37 The administratively segregated groups are designed to include people with similar characteristics that could make them vulnerable or unsafe if they were placed in the general prison population. Examples of people held together in administrative segregation would be lesbian, gay, bisexual and transgender, or LGBT, inmates.<sup>60</sup> Child molesters, religious minorities, mentally challenged inmates or gang members would be other such groups. Individuals who have been arrested but have not yet been tried are also often placed in administrative segregation, separate from the general prison population of convicted felons.

¶38 Although administrative segregation is a form of isolation, and can be subjectively destructive on the individual, the experience is qualitatively different. The individual is usually not alone, but has interactions with other inmates. Inmates held in administrative segregation may have the opportunity for meaningful conversations with others.

### D. Sensory Deprivation as a Characteristic of Isolation

¶39 Prisoners subjected to isolation may also be further subjected to “sensory deprivation,” sometimes known as “perceptual deprivation.” Sensory deprivation will, necessarily, intensify the isolation.<sup>61</sup> In sensory deprivation, the inmate is deprived of the use of one or more of his senses, or his senses are subjected to assault. An example would include the detainees who were transported from Afghanistan to Guantanamo while wearing thick, blackened goggles, sound-muffling earmuffs, and hoods during their 18-hour plane ride.<sup>62</sup>

¶40 In another example, Bisher al Rawi and Jamal El-Bamma were seized in Gambia and flown to Afghanistan, where they were held in the notorious “dark prison” for two to four weeks.<sup>63</sup> Neither man was exposed to any light, natural or artificial, except the flashlight of a guard checking on them. They had to crawl around their tiny cells and feel their way for their food and for their “honey buckets.” Al Rawi told W2G how he had

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<sup>59</sup> SOLITARY WATCH, *supra* note 17. See also Kirsten Weir, *Alone, in the ‘Hole,’* AMERICAN PSYCHOLOGICAL ASSOCIATION (May 2012), <http://www.apa.org/monitor/2012/05/solitary.aspx>

<sup>60</sup> The Inter-American Commission on Human Rights finds that, “[u]sing confinement to protect a threatened population amounts to a punitive measure.” It adds that, “[e]qually troubling is the extent to which this measure is used as a disciplinary tool.” INTER-AM. COMM’N H.R., *supra* note 37, at ¶ 337.

<sup>61</sup> See Grassian, *supra* note 16, at 345-46 (describing a study on sensory deprivation in which he also uses the term perceptual deprivation); Smith, *supra* note 4, at 442.

<sup>62</sup> Interviews with Shafiq Rasul and Ahmed Ruhail, in Tipton, U.K. (Aug. 16, 2009).

<sup>63</sup> Interview with Bisher al Rawi, in London, U.K. (Aug. 2, 2011). Given the circumstances of being held in the pitch-black prison, Mr. al Rawi could not be sure on exactly how long he was held in the dark prison.

knocked over his honey bucket while crawling in his pitch-black cell.<sup>64</sup> In addition to being severely sensory deprived, both men, while kept in the dark prison, also suffered incommunicado detention before they were transported to Guantanamo.

¶41 Former detainee Feroz Ali Abbasi told W2G how he did not see sunlight for what he described as a “long time.” He had been kept in isolation for nearly one year.<sup>65</sup>

¶42 American citizen and accused terrorist Jose Padilla, when held in the Naval Brig in South Carolina, was held in solitary confinement and incommunicado detention, and was also severely sensory deprived.<sup>66</sup> For twenty-one months he was allowed no contact with his family or lawyers, personal visits, letters or phone calls. Nor was he permitted to visit with or even see other prisoners in the brig. His only human contacts were interrogators and guards.

¶43 Black paint covered the windows in his cell. There was no natural light, and Padilla did not know whether it was day or night. He had no watch or timepiece to tell the time. He had no mirror to see how he looked or how he might be changing. The cells around him were all empty. Sometimes he was subjected to harsh lights or noxious odors pumped into his cell. There was no table in his cell. He sat on a metal bed with the meal tray balanced on his knees. The meals were passed through a bean hole in the door. He had no mattress or pillow. When he was taken to the shower or outside his cell, he wore thick blackened goggles designed not only to block vision, but also to block out all light, natural and artificial, and conical headphones designed to lock out all sounds.

¶44 Staff at the naval brig informed Padilla’s lawyer that his behavior was like that of a “piece of furniture.”<sup>67</sup> Padilla is now a changed person. According to his mother, Estela Lebron, he “is no longer the same person he was before.”<sup>68</sup>

#### *E. Common Effects/Symptoms of Isolation*

¶45 Although the literature on isolation often speaks of solitary confinement, a prisoner experiencing one of the other forms of isolation described in this essay may suffer similar effects. The effects can be both psychological and physiological, and include insomnia, confusion, hallucinations, and psychosis.<sup>69</sup> Prisoners can become incapable of an adequate state of alertness and of processing external stimuli, as well as becoming hyper-responsive to stimulation. Inmates can also become agitated and obsessional, or reach a stage of stupor.<sup>70</sup> Specifically, inmates in isolation can suffer hyper-responsivity to external stimuli, perpetual distortions, illusions, hallucinations, panic attacks, difficulties with thinking, concentration and memory, intrusive obsessional thoughts, overt paranoia, problems with impulse control, and delirium.<sup>71</sup>

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<sup>64</sup> Interview with Bisher al Rawi, in London, U.K. (Aug. 2, 2011).

<sup>65</sup> Interview with Feroz Ali Abassi, in London, U.K. (Aug. 7, 2010).

<sup>66</sup> HONIGSBERG, *supra* note 56, at 1-3.

<sup>67</sup> *Id.*

<sup>68</sup> Interview with Estela Lebron, in San Francisco, Cal. (July 8, 2011). Today, Padilla is a convicted prisoner in the federal Supermax prison in Florence Colorado.

<sup>69</sup> International Trauma Symposium, *supra* note 40. *See also* Smith, *supra* note 4, at 490-92.

<sup>70</sup> Grassian *supra* note 61, at 330-332. *See also* Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶¶ 62-65.

<sup>71</sup> Grassian, *supra* note 16, at 330-332.

¶46 Prisoners and detainees who have suffered lengthy periods of solitary have described their real life experiences in terms that reflect the clinical terms identified in the previous paragraph. Sarah Shroud, an American citizen who was held in isolation by the Iranians in the notorious Evin prison in 2010, described how her mind would begin to slip. She heard phantom footsteps coming down the hall, and would spend large portions of her days crouched down on all fours by a small slit in the door listening. She beat the walls until her knuckles bled, and cried herself into a state of exhaustion. At one point she heard someone screaming. When a guard arrived to check on her, she realized that the screams she was hearing were her own.<sup>72</sup>

¶47 In another example, Adnan Latif, a Yemeni detainee in Guantanamo, who was housed in solitary confinement in the psychiatric ward several times, explained to his lawyers how he “sees ghosts in the darkness, hears frightening voices and suffers from nightmares” when he is asleep.<sup>73</sup> In September 2012, Latif was the ninth man to die in Guantanamo; the government stated that Latif had committed suicide.<sup>74</sup> There were indications that he had been overmedicated immediately before his death.<sup>75</sup>

¶48 In a third example, British citizen Feroz Ali Abbasi informed W2G that he was kept in solitary confinement for one year. At the beginning of his isolation, he had convinced himself that he could withstand it. He kept his sanity, he believed, by focusing on one specific item each day, as a coping mechanism.<sup>76</sup> For example, he would control each step he took. He had assured himself that by having power over each step, he could withstand the isolation. He lived during these days in isolation largely in his head. However, after nearly one year of solitary confinement, Ali Abbasi began feeling that “they’re taking my sanity away from me.” He experienced “panic attacks.” He told W2G that it was not long after the panic attacks when “I broke.”<sup>77</sup>

¶49 Canadian citizen Maher Arar was held in a Syrian prison under the CIA’s extraordinary rendition program. Years after his release, he wrote in a tweet “Isolation 4

<sup>72</sup> Sarah Shroud, *Tortured by Solitude*, N.Y. TIMES (Nov. 5, 2011), [http://www.nytimes.com/2011/11/06/opinion/sunday/in-an-iranian-prison-tortured-by-solitude.html?\\_r=0](http://www.nytimes.com/2011/11/06/opinion/sunday/in-an-iranian-prison-tortured-by-solitude.html?_r=0).

<sup>73</sup> Andy Worthington, *Obama, the Courts, and Congress Are All Responsible for the Latest Death at Guantanamo*, THE FUTURE OF FREEDOM FOUNDATION (Sep. 14, 2012), <http://fff.org/explore-freedom/article/obama-the-courts-and-congress-are-all-responsible-for-the-latest-death-at-guantanamo/>.

<sup>74</sup> He was found unconscious in his cell. The government first said that he had taken a drug overdose, although it has not been established whether the medical personnel erred in the prescriptions they gave him, or whether he had hoarded the extra medication. His lawyer, David Remes, says that because he was under constant vigil and continually searched, he could not have hoarded any drugs. Weeks after announcing the drug overdose, the government added that Latif had acute pneumonia when he died. Latif had been approved for release by both the Bush and Obama administrations. He had also won his habeas case for release in federal district court, but that decision was overturned by the D.C. Circuit Court of Appeals in 2011. He had been a troubled man, as he watched his hopes for release slip away. Charles Savage, *Investigators Said to Question How Detainee Died of Overdose*, N.Y. TIMES (Nov 28, 2012), [http://www.nytimes.com/2012/11/29/us/yemeni-detainee-at-guantanamo-died-of-overdose.html?\\_r=0](http://www.nytimes.com/2012/11/29/us/yemeni-detainee-at-guantanamo-died-of-overdose.html?_r=0); Jason Leopold, *Latif Autopsy Report Calls Gitmo Death a Suicide: Questions Remain*, TRUTHOUT (Nov. 26, 2012, 13:46), <http://truth-out.org/news/item/12967-latif-autopsy-report-calls-gitmo-death-a-suicide-mystery-endures>; Carol Rosenberg, *NCIS still investigating Yemeni prisoner’s Guantanamo death*, MIAMI HERALD (Dec. 18, 2012), <http://www.miamiherald.com/2012/12/18/3148083/yemenis-death-in-guantanamo-still.html>.

<sup>75</sup> Rosenberg, *supra* note 74.

<sup>76</sup> Interview with Feroz Ali Abassi, in London, U.K. (Aug. 7, 2010).

<sup>77</sup> Interview with Feroz Ali Abassi, in London, U.K. (Aug. 7, 2010).

long time becomes worse than physical beating.”<sup>78</sup> Another tweet of his read, “1 thing isolation inflicted on me is that my cognitive skills have been greatly & permanently diminished.”

¶50 Sarah Shroud, Adnan Latif, Feroz Ali Abbasi and Maher Arar all suffered the symptoms and effects of torture and CID while held in isolation. So did Jose Padilla,<sup>79</sup> Omar Khadr<sup>80</sup> and Mamdouh Habib.<sup>81</sup> They were all held in isolation for periods significantly longer than 15 days under the standard for prolonged solitary confinement as defined by the Special Rapporteur.<sup>82</sup> In fact, all these people were held in isolation for months or longer. For Ali Abbasi, it was 12 months. For Khadr and Padilla, it was years. Sunnat, the Uzbek held in Guantanamo, suffered isolation by language barriers for not just months, but for years. His form of isolation is addressed next.

### III. ISOLATION BY LANGUAGE BARRIERS, OR LINGUISTIC ISOLATION

#### A. *Introducing a New Form of Isolation*

¶51 As explained in the introduction through the anecdotal account of Sunnat, an inmate who is unable to communicate through language with the prisoners in neighboring cells suffers isolation. The inmate also would seemingly suffer symptoms and effects similar to what other detainees in isolation suffer. For example, the pain that Sunnat suffered in crying every day is likely similar to what detainees held in other forms of isolation experience. That is, it is logical to think that people who experience different forms of isolation suffer similar symptoms and effects. Of course, researchers should undertake studies to confirm this theory.

¶52 An inmate who experiences linguistic isolation cannot hold meaningful conversations with other prisoners, but must limit his communications to gestures, eye contact and halting words. While held in Guantanamo, Sunnat did not speak Arabic or English, the languages spoken by the men nearby. He only spoke Uzbek, his native language. He explained to W2G how the prisoners would converse with each other and build a community. He could sense the warm and communal contacts among his neighbors, but could not join with them in prison life. Instead, he awoke each morning and cried.<sup>83</sup>

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<sup>78</sup> “That’s called torture. I say this from experience. Isolation 4 long time becomes worse than physical beating.” Maher Arar, TWITTER (Aug. 2, 2012, 3:12 pm), <http://twitter.com/ArarMaher/status/231150614904c725504>; “1 thing isolation inflicted on me is that my cognitive skills have been greatly & permanently diminished.” Maher Arar, TWITTER (Aug. 2, 2012, 3:58 pm), <http://twitter.com/ArarMaher/status/231161984496844800>; “If u want 2 know what solitary confinement does 2 humans try locking urself in the bathroom 4 only 24hrs.” Maher Arar, TWITTER (Aug. 2, 2012, 4:47 pm), <https://twitter.com/ArarMaher/status/231174310969094145>.

<sup>79</sup> See Part II (4), *supra*.

<sup>80</sup> See Part II (1), *supra*.

<sup>81</sup> See Part II (2), *supra*.

<sup>82</sup> As noted above, the Special Rapporteur chose the 15-day limit because some of the literature identifies harmful psychological effects of isolation that can become irreversible after 15 days. Interim Rep. of the Special Rapporteur, *supra* note 7, at ¶ 26.

<sup>83</sup> Lawyers and human rights advocates focus on the due process of the detainees and how third language issues can cause problems at meetings with counsel and at hearings. However, this essay does not address

¶53 The inmate who suffers linguistic isolation is not environmentally isolated. He is not physically separated from other prisoners, as is someone in solitary.<sup>84</sup> Nevertheless, the inmate is socially isolated and denied meaningful conversations with others. Imagine a stroke victim who sees the community of conversations around him, but cannot participate. Communication through speech allows one to more fully express him or herself, providing for richer conversations about one's family, friends, work, interests, opinions and culture.

¶54 International bodies and tribunals have acknowledged that isolation by language barriers is problematic, even if it does not rise to the level of torture or CID. In its recommendation on foreign prisoners, the European Committee on Crime Problems noted that the "inability to communicate in the language most commonly spoken in a prison is a severe barrier to foreign prisoners' ability to participate in prison life. It is the root cause of many problems such as isolation . . ." The committee recommended that prison authorities make every effort to facilitate communication and to enable offenders to overcome language barriers.<sup>85</sup>

¶55 Requiring inmates to speak only the lingua franca of the prison should be recognized as a human rights violation. In a European Court of Human Rights (ECtHR) case<sup>86</sup> a Tajik inmate in a Russian prison was required to speak Russian to his family. The Russian prison guards wanted to listen in on his conversations. His family did not know Russian. The ECtHR found that requiring him to speak Russian violated Article 3 of the European Convention of Human Rights, prohibiting torture or inhuman or degrading treatment or punishment.<sup>87</sup>

¶56 Isolation by language barriers will differ with each individual. Someone who is able to learn languages with little effort will have an easier time in the prison. W2G interviewed a number of detainees who spoke no English when they arrived in

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these due process issues of communication with the justice system. The focus here is on confinement and the resulting CID damage. *See e.g.*, LAURA ABEL, LANGUAGE ACCESS IN STATE COURTS (2009), <http://www.brennancenter.org/sites/default/files/legacy/Justice/LanguageAccessinStateCourts.pdf>; NATIONAL IMMIGRANT JUSTICE CENTER, *Policy Brief: Data Suggests Language Barriers Lead Immigrants to Waive Right to Hearing Before Deportation*, <http://www.immigrantjustice.org/publications/policy-brief-stipulated-orders>.

<sup>84</sup> A study by the European Committee on Crime Problems recognizes that housing foreign prisoners in prisons where there are others who speak their language may reduce their sense of isolation. However, the report also acknowledges that it could be undesirable "from the point of view of safety and security."

EUROPEAN COMMITTEE ON CRIME PROBLEMS, DRAFT COMMENTARY ON THE RECOMMENDATION CONCERNING FOREIGN PRISONERS 4 (2012),

[http://www.coe.int/t/dghl/standardsetting/prisons/PCCP%20documents%202012/PC-CP%20\\_2011\\_%205%20E%20REV%207%20\\_vs%2010.04.%202012\\_%20-%20Draft%20Recommendation%20concerning%20Foreign%20Prisoners.pdf](http://www.coe.int/t/dghl/standardsetting/prisons/PCCP%20documents%202012/PC-CP%20_2011_%205%20E%20REV%207%20_vs%2010.04.%202012_%20-%20Draft%20Recommendation%20concerning%20Foreign%20Prisoners.pdf).

<sup>85</sup> *Id.*

<sup>86</sup> Khudoyorov v. Russia, App. No. 6847/02, Eur. Ct. H.R. ¶ 108 (2006).

<sup>87</sup> *See also*, European Committee on Crime Problems, Rule 22.2, which emphasizes the right of foreign prisoners to speak in their own language when communicating with family and friends. Where there is a possible security problem when the prison authorities do not understand the language, the commentary suggests using interpreters. *Recommendation CM/Rec(2012)12* □ *of the Committee of Ministers to member States concerning foreign prisoners*, 1152nd Meeting, COUNCIL OF EUROPE COMM. OF MINISTERS (2012), <https://wcd.coe.int/ViewDoc.jsp?id=1989353&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>; European Comm. on Crime Problems, *Draft Commentary on the Recommendation Concerning Foreign Prisoners*, at 11, Doc. No. pc-cp/docs 2011\pc-cp (2011) 6 e rev 4 (Apr. 11, 2012).



Guantanamo, but had the facility to learn English quickly.<sup>88</sup> Perhaps only a few months or even a year may pass before a prisoner is able to have meaningful contacts with other inmates. Naturally, that inmate will still have suffered linguistic isolation for some period of time, even if he or she is a quick learner. Again, researchers will need to determine whether the timeframe for linguistic isolation mirrors that of physical isolation.

## B. Contexts in Which Language Barriers May Be Found

### 1. Isolation by language in Guantanamo

¶57 Guantanamo—which held 779 people, nearly all without charges, and many for over a decade—created the shocking conditions that allowed Sunnat to suffer torture or CID for years in American custody.<sup>89</sup> Because lawyers were not permitted to represent the detainees until after the *Rasul v. Bush*<sup>90</sup> Supreme Court decision was issued in the summer of 2004, lawyers could not enter the prison in the early years and identify whether a client was suffering linguistic isolation.<sup>91</sup> Even after attorneys were permitted in Guantanamo, many detainees did not have access to attorneys immediately. Volunteer attorneys needed to be prepped and trained in representing detainees in habeas before meeting their clients.<sup>92</sup> The attorneys also had to undergo security clearances, which could take up to six months.<sup>93</sup>

¶58 Of the 45 detainees interviewed by W2G, we did not hear any other detainee relate a story as heartbreaking as Sunnat’s. Nor could we find any documentation in the literature on isolation of someone who experienced isolation by language barriers for as long as Sunnat had. However, two habeas lawyers representing detainees identified to W2G other situations in Guantanamo where detainees were linguistically isolated. In both situations, the attorneys referred to Urdu prisoners from Pakistan who did not speak English or Arabic.

¶59 Habeas attorneys Gitanjali Gutierrez and David Remes told us how Urdu speakers were isolated when the military placed them in cells near Arab speakers. David Remes explained that he knew of three Urdu speakers, none of whom spoke Arabic. Two of them were brothers. For some reason, the two brothers were housed together but the third man was separated from them. He was placed in a cell with neighbors who only spoke Arabic or English. This third Urdu prisoner, like Sunnat, suffered linguistic isolation.

¶60 Gutierrez believed that the isolation of the Urdu prisoners was purposeful, and that they were deliberately housed among only English and Arabic speakers. “Language is a

<sup>88</sup> See e.g., Interview with Ayub Mohammed, in Tirana, Alb. (Aug. 5, 2009); Interview with Murat Kurnaz, in Bremen, Ger. (Aug. 19, 2009); Interview with Mustafa Ait Idir, in Sarajevo, Bosn. (Aug. 7, 2009).

<sup>89</sup> *Guantánamo by the Numbers: What You Should Know & Do About Guantánamo*, CENTER FOR CONSTITUTIONAL RIGHTS (Dec. 20, 2012),

[http://www.ccrjustice.org/files/2013.1.3\\_GTMO%20Numbers%20Factsheet.pdf](http://www.ccrjustice.org/files/2013.1.3_GTMO%20Numbers%20Factsheet.pdf).

<sup>90</sup> *Rasul v. Bush*, 542 U.S. 466 (2004).

<sup>91</sup> Except in the case of Australian David Hicks, family members have never been allowed to visit Guantanamo to visit their loved ones. Interview with Terry Hicks, father of David Hicks, in Adelaide, Austl. (Jan. 2, 2012).

<sup>92</sup> Interview with Michael Ratner, in New York City, N.Y. (Apr. 16, 2010).

<sup>93</sup> Interview with Gitanjali Gutierrez, in San Francisco, Cal. (Oct. 21, 2011) (Gutierrez was the first lawyer to fly to Guantanamo after the *Rasul v. Bush* Supreme Court decision); Interview with Joseph Margulies, in San Francisco, Cal. (Feb. 16, 2012).

way to isolate someone,” she explained. “They might as well be alone.” I asked her to reconfirm that she thought it was deliberate. “Absolutely. It is artfully manipulating their environment to be unable to communicate,” she replied.<sup>94</sup>

¶61 Another example of linguistic isolation used in Guantanamo came to light in Mohamed Jawad’s Military Commission hearing based on the accusation that he threw a grenade at an American military convoy in Afghanistan in December 2002.<sup>95</sup> During the hearing, Major David Frakt<sup>96</sup> asked witness Army Major Jason Orlich about sleep deprivation tactics used on Jawad, a juvenile, in the military’s “frequent flyer” program. Under the frequent flyer program, detainees were transported from cell to cell every two to three hours for several weeks.

¶62 “Was part of the reason for the [frequent flyer] program linguistic isolation?” Frakt asked.

¶63 Orlich replied, “Linguistic segregation, yes, we divided the detainees up linguistically, which prevented them from communicating within the camp and organizing.”<sup>97</sup>

¶64 When I asked Frakt about this exchange at Jawad’s hearing, Frakt responded,

¶65 “I saw several documents in discovery in the Jawad case that referred to linguistic isolation . . . I saw some documents that referred to efforts to linguistically isolate people . . . From what I learned, linguistic isolation was done to increase dependence on the interrogator as the only person the detainee could talk to, but also to limit communications in an effort to maintain good order and discipline in the camps. For example, if there was a hunger strike, they didn't want the leaders of the strike to be able to communicate with others who spoke the same language and encourage them to join. I knew from my conversations with Jawad that from the detainee's perspective, one of the worst things they could do to a detainee was put him on a cell block without others who spoke his language. It was definitely viewed by detainees as a form of punishment to take them away from their friends and countrymen. Then, they really were essentially in solitary confinement . . .”<sup>98</sup>

¶66 Similarly, the head of the U.S. Southern Command, General John Craddock, has stated that detainees who refused food were separated from the prison population to deter them from supporting each other in hunger strike efforts.<sup>99</sup> Also, in a W2G interview with Michael Gelles, an NCIS psychologist, Gelles noted that isolation could also be an effective interrogation tool when attempting to establish a rapport with a detainee. “[I]f I need to develop a relationship with you and you’re going to talk with me, then . . . why

<sup>94</sup> Interview with Gitanjali Gutierrez, in San Francisco, Cal. (Oct. 21, 2011).

<sup>95</sup> Two American soldiers and an Afghani translator were injured. The defense attorney, Major David Frakt, argued that Jawad had been coerced into signing a false confession in a language he did not understand. Jo Becker, *American credibility on trial*, SALON (August 20, 2008), [http://www.salon.com/2008/08/20/gitmo\\_jawad\\_2/](http://www.salon.com/2008/08/20/gitmo_jawad_2/); see also Interview with David Frakt, Lt. Col. (JAG Attorney), Irvine, C.A. (May 17, 2010), <http://witnessstoguantanamo.com/interviews/lt-col-david-frakt-jag-attorney/>.

<sup>96</sup> He is now a retired Lieutenant Colonel.

<sup>97</sup> Transcript of Hearing at 453, *United States v. Jawad* (Military Comm’n, Guantánamo Bay, Cuba Aug. 13, 2008) (on file with author).

<sup>98</sup> Email from David Frakt to author (Apr. 4, 2013) (on file with author).

<sup>99</sup> Julian E. Barnes, *Military Says Special Chair Stops Gitmo Hunger Strikes*, U.S. NEWS & WORLD REPORT (Feb. 22, 2006) <http://www.usnews.com/usnews/news/articles/060222/22gitmo.htm>.

do I want you to have access to lots of other people who can support you being resistant . . .”<sup>100</sup>

¶67 When we met Sunnat, he did not seem to be a leader, or even someone who would join a hunger strike. But perhaps the military was not taking any chances, and placing Sunnat away from other Uzbek speakers helped assure that he would not become a participant in a hunger strike if there were one.

¶68 There may also be other reasons to explain why detainees who spoke minority languages were placed with neighbors who did not speak their languages. For example, it is possible that the military placed Sunnat and others in empty or convenient cells in that area, with no thought of the consequences.

¶69 In one situation, a detainee who was a Uyghur from East Turkestan<sup>101</sup> and who spoke Uyghur explained how he deliberately caused a problem so that he would be ERF’ed – a brutal cell extraction procedure<sup>102</sup>—and moved to a different cell.<sup>103</sup> He had been housed among neighbors who did not speak his language or know his culture. His hope was that when he was returned to the general prison population after being ERF’ed, he would be placed in a cell closer to other Uyghurs. His plan worked.<sup>104</sup>

¶70 Sunnat sought to obtain books and materials to learn English and Arabic. Yet, for nearly all of his years in Guantanamo, the military refused to provide Sunnat with any materials.<sup>105</sup> There was a belief among the detainees and others that the military did not want detainees to listen into conversations between prison guards and others in the prison.<sup>106</sup> Interestingly, under the Crime Control Act of 1990, limited English proficient inmates housed in federal prisons are required to attend English language classes until they function at an eighth grade level proficiency.<sup>107</sup> However, because Guantanamo was not part of the U.S. prison system, the military was not required to provide such lessons. It was not until 2007 that the military proactively facilitated an inmate’s learning English.<sup>108</sup>

¶71 There may have been yet another reason for the military’s denial of materials or library books in any language to the detainees. The military was afraid that the detainees would write notes to each other in the margins of the reading materials. The military

<sup>100</sup> Interview with Michael Gelles, in Wash., D.C. (Mar. 3, 2011).

<sup>101</sup> The Uyghurs in Guantanamo were from East Turkestan, which has been under Chinese domination since the mid-20<sup>th</sup> century. The Uyghurs speak Uyghur and are, generally, not conversant in Arabic or English.

<sup>102</sup> ERF, or Emergency Response Force, is sometimes called Extreme Reaction Force or Internal Reaction Force (IRF). It usually involves six to eight soldiers in riot gear entering a cell, spraying the detainee with mace, beating the detainee, and forcibly extracting him from his cell. HONIGSBERG, *supra* note 57, at 104-05. The military now uses the term “Forcible Cell Extraction” or FCE’d, in place of ERF. Declaration of Clive Stafford Smith (April 11, 2013) (on file with author).

<sup>103</sup> See Alexa Koenig, *From Man to Beast: Imprisonment and Social Death*, AMERICAN SOCIOLOGICAL ASSOCIATION (Aug. 20, 2011), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2208918](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2208918).

<sup>104</sup> *Id.* The dissertation chapter explained that the Uyghur had picked up a few words from his Pakistani neighbors describing the ERF procedure and how the Pakistanis had used it to move from a “very bad cell block.”

<sup>105</sup> Interview with Sunnat, in Riga, Lat. (Aug. 4, 2011).

<sup>106</sup> Carol Rosenberg, *Guantanamo Detainees Get a Dose of Culture*, MIAMI HERALD (Nov. 23, 2008), <http://www.miamiherald.com/2008/11/23/v-print/783923/guantanamo-detainees-get-a-dose.html>.

<sup>107</sup> Crime Control Act of 1990, 18 U.S.C. § 3624(f) (2008).

<sup>108</sup> *US military plans English lessons for Gitmo detainees*, THE DAILY TIMES (October 11, 2007), [http://www.dailytimes.com.pk/default.asp?page=2007%5C10%5C11%5Cstory\\_11-10-2007\\_pg4\\_4](http://www.dailytimes.com.pk/default.asp?page=2007%5C10%5C11%5Cstory_11-10-2007_pg4_4).

feared that it would not always be able to translate what was written, or perhaps even overlook the writings.<sup>109</sup> And, as discussed above, the military constantly sought to minimize the detainees' ability to reinforce each other's will to resist.

¶72 Of course, if the military did not want to provide books and learning materials, it could have provided an interpreter to visit Sunnat each day. The interpreter could have inquired as to how he was doing, and whether he had any medical or other concerns. Sunnat and the interpreter could have had a daily meaningful conversation, and if Sunnat explained that he was frightfully lonely and wanted company, the interpreter could have reported that information to prison personnel.

¶73 Whether the military actions were willful or a product of benign neglect, the military did nothing to discover the problem or fix it. Consequently, by not acting to ameliorate Sunnat's extreme isolating circumstances, the military was committing torture or CID under international law.

¶74 Sunnat's experience, the experiences suffered by the Urdu prisoners, and possibly the experiences suffered by others in Guantanamo of whom we are currently unaware, are not the only situations of isolation by language barriers in detention centers and prisons. Linguistic isolation has also been found in other contexts, as described below.

## 2. Isolation by language barriers in immigration detention and refugee centers

¶75 Linguistic isolation also exists in immigration detention and refugee centers, although, apparently, not to the extreme that Sunnat suffered. According to service providers, immigrant detainees can suffer linguistic isolation for a month or longer before they connect with other detainees who share the same language.<sup>110</sup> However, there has been at least one documented case in which the detainee suffered for more than two years.<sup>111</sup> Service providers who have worked in immigration detention centers have observed that people who suffer language barriers experience intense loneliness, disorientation, a deterioration of decision-making skills,<sup>112</sup> and are unable to share daily experiences.<sup>113</sup>

<sup>109</sup> The military guide explained this to me on my visit to Guantanamo in May 2007.

<sup>110</sup> For example, an immigration attorney related an anecdote at an Arizona facility, where she had once worked, concerning a South Pacific Islander who was in detention and not able to communicate with authorities. It took approximately one month to determine what language the detainee spoke and to find an interpreter. Telephone Interview by Wendy Betts with an immigration attorney for Texas asylum project (May 24, 2012).

<sup>111</sup> Human Rights Watch in *Locked Away, Immigration Detainees in Jails in the United States* included the following comment: "Some detainees are totally linguistically isolated without other detainees to translate for them. For example, a Sri Lankan asylum seeker who speaks no English has been detained at Orleans Parish Prison in Louisiana since December 1995, more than two-and-a-half years at the time of the writing. For a time, another Tamil-speaking detainee translated for him, but once the other detainee was deported, he had no way of communicating with jail staff or other detainees." HUMAN RIGHTS WATCH, *LOCKED AWAY: IMMIGRATION DETAINEES IN JAILS IN THE UNITED STATES* (1998).

<sup>112</sup> Telephone Interview by Wendy Betts with an immigration attorney for Texas asylum project (June 22, 2012).

<sup>113</sup> Physicians for Human Rights notes that "solitary confinement is particularly inappropriate for detainees in immigration detention facilities *and national security detention facilities* (emphasis added). Unlike prisons and jails, these detention facilities are used to detain people for administrative purposes—not as punishment for having been convicted of a crime. CENTER FOR CONSTITUTIONAL RIGHTS, *supra* note 15.

¶76 Immigration service providers reported situations of linguistic isolation suffered by Somali, Tamil, Nepali and indigenous Guatemalan detainees.<sup>114</sup> In one example, a Somali detainee told an immigration attorney through an interpreter how he was by himself all day, all the time, “alone, alone, alone.”<sup>115</sup>

¶77 Immigration attorneys and workers also identified other problems suffered by people who were isolated by languages. Two workers in immigration centers observed that language barriers have at times prolonged detention for the detainee. The providers needed the time to determine what language the person spoke and how to obtain an interpreter.<sup>116</sup>

¶78 To further complicate issues, even if linguistic isolation did not amount to torture in a particular circumstance, there would still be serious implications for the health and safety of the inmate. For example, empirical evidence has found that guards often become frustrated with detainees who do not speak English.<sup>117</sup> Because detainees who suffer linguistic isolation do not often know the rules, they may violate them unknowingly, or experience the anger of a prison guard when they do not provide the expected response to the guard. In an immigration report written by Physicians for Human Rights and the National Immigrant Justice Center, the authors point to a sign at an immigration center that reads, “English shall be the primary language” and notes that, “Failure to speak English when able” is a punishable offense.<sup>118</sup> Apparently, not speaking English could result in a detainee being placed in solitary confinement.<sup>119</sup>

¶79 Moreover, if prisoners who experience linguistic isolation suffer abuse, whether by other prisoners or the guards, they often have no means by which to report the abuse, or to respond effectively to the abuse.<sup>120</sup> Furthermore, the inmates cannot explain a medical issue they are having. Nor are they as likely to be prepared when there is a fire drill or other emergency.

¶80 An immigration attorney observed that the problem for those isolated by language also impacted their ability to represent themselves. For example, she observed that the decision-making skills of people who had language barriers deteriorated over time. This

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<sup>114</sup> In Guatemala, there are many regional variations of indigenous languages. Telephone Interview by Wendy Betts with a legal assistant for an immigrant rights organization (May 15, 2012).

<sup>115</sup> Telephone Interview by Wendy Betts with an immigration attorney for Texas asylum project (June 22, 2012). Although deprivations in asylum and immigration centers have been ongoing for decades, if not for Sunnat’s interview with W2G, W2G would not have identified this new kind of CID.

<sup>116</sup> Telephone Interview by Wendy Betts with Tally Kingsnorth, Pro Bono Coordinator and Senior Staff Attorney, Florence Immigrant and Refugee Rights Project (May 15, 2012); Telephone Interview by Wendy Betts with a legal assistant for an immigrant rights organization (May 15, 2012). Some courts have “language day,” on which they schedule people who require a telephonic interpreter for a less common language. Email from Tally Kingsnorth to Wendy Betts (January 24, 2013) (on file with author).

<sup>117</sup> Telephone Interview by Wendy Betts with an immigration attorney for Texas asylum project (May 24, 2012). *See also* INVISIBLE IN ISOLATION, *supra* note 16, at 17.

<sup>118</sup> INVISIBLE IN ISOLATION, *supra* note 16, at 18.

<sup>119</sup> *Id.*

<sup>120</sup> Telephone Interview by Wendy Betts with Raha Jorjani, Supervising Attorney, Univ. of Cal. Davis Immigration Law Clinic, (May 23, 2012), and Email from Raha Jorjani to Wendy Betts (January 24, 2013) (on file with author).

deterioration, which is also found in people who suffer solitary confinement, could seriously impact their ability to defend themselves at a subsequent hearing.<sup>121</sup>

¶81 Similarly, where a detainee speaks a “minority” language, the immigration attorney cannot communicate with the inmate to learn what the impact of the isolation was having on the detainee.<sup>122</sup> Compared to undocumented immigrants housed in the detention centers, asylees detainees are sometimes more at risk. They are usually detained under circumstances where they may be the only person from their country of origin.<sup>123</sup>

¶82 Service providers often do not have much experience with immigrants who have language barriers. A supervising attorney observed that it can be difficult to find service providers who can work with detainees who speak a language less commonly heard in the detention center. This is likely because the providers, who have limited resources, usually work with clients with whom they share a common language.<sup>124</sup>

¶83 Naturally, non-native speakers suffering linguistic isolation will be more common in pre-trial situations. Once it is time for trial, the judicial process, no matter how rudimentary, will be aware of the language issue. At a minimum, the officials will seek out an interpreter. However, the interpreter may only focus on the legal issues, and the detainee will still not have the opportunity for meaningful conversations.<sup>125</sup>

### 3. Isolation by language suffered by deaf inmates

¶84 Deaf inmates also have difficulty communicating with their neighbors and prison guards. If they speak the native language, a sign language interpreter will probably be available. It is more problematic when the deaf prisoner speaks a language not common

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<sup>121</sup> Telephone Interview by Wendy Betts with an immigration attorney for Texas asylum project (June 22, 2012).

<sup>122</sup> *Id.*

<sup>123</sup> It can be even more problematic with children held in immigration centers. Children may not always know the name of the language they speak or they may know the name but the interpreter speaks the wrong dialect. Telephone Interview by Wendy Betts with Tally Kingsnorth, Pro Bono Coordinator and Senior Staff Attorney, Florence Immigrant and Refugee Rights Project (May 15, 2012); Telephone Interview by Wendy Betts with a legal assistant for an immigrant rights organization (May 15, 2012). However, children can often learn English since it is taught in American detention centers. They may also learn rudimentary Spanish through their Spanish-speaking peers. A South Asian child learned both English and Spanish while detained. Telephone Interview by Wendy Betts with a legal assistant for an immigrant rights organization (May 15, 2012).

<sup>124</sup> Telephone Interview by Wendy Betts with Raha Jorjani, Supervising Attorney, Univ. of Cal. Davis Immigration Law Clinic (May 23, 2012).

<sup>125</sup> Furthermore, it is possible that post-conviction prisoners may continue to have linguistic isolation problems. An attorney in Louisiana contacted me after an earlier version of this article was posted. He wrote that his client, a woman who spoke only Mandarin, was sentenced to five years for aggravated battery. The attorney noted that the state prison system did not provide Mandarin translators and that daily routines and rules required constant translation. He added that not only was she linguistically isolated, but the state had placed her apart from the general prison population because of communication issues. The attorney has been working with the Department of Corrections and the deputy warden in trying to arrange for her to be sent home to China. Emails from attorney to author (May 7, 20, 2013) (on file with author). On June 19, 2013, the attorney wrote that the sentencing judge denied his motion for reconsideration of sentence. Email from attorney to author (June 19, 2013) (on file with author).

in the prison. Sign is different with each spoken language.<sup>126</sup> Thus, a sign interpreter in American Sign Language cannot communicate to a deaf inmate whose native language is Spanish. Even the sign language in Great Britain may differ from American sign.<sup>127</sup> It is possible that studies of how deaf people communicate and manage in prisons may be helpful in understanding how people who are isolated by language may cope.<sup>128</sup>

#### IV. SUGGESTED REMEDIES

¶85 Prison officials could begin to fix the problem of isolation by language barriers by adopting and implementing certain existing standards and procedures in every detention center. The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders Standard Minimum Rules for the Treatment of Prisoners<sup>129</sup> requires that every prisoner have the opportunity each weekday to make requests and complaints to the institution.<sup>130</sup> Whenever necessary, the prison officials must provide the services of an interpreter.<sup>131</sup> In addition, a 1990 General Assembly resolution on the Basic Principles for the Treatment of Prisoners requires that the abolition of solitary confinement or the restriction of its use “should be undertaken and encouraged.”<sup>132</sup>

##### A. *Implementing Existing Principles to Correct the Problem*

¶86 Generally, the following standards and procedures for assuring that no detainee suffer isolation by language barriers, whether in Guantanamo or elsewhere, should be implemented:

1. Inquire as to the language of each detainee when the inmate enters the system. Then, after initial screening in a language that the detainee can understand, house the detainee, if possible, with others who speak the language<sup>133</sup>—unless there are legitimate and recognized administrative reasons to isolate the individual. The detainee should also be provided a “foreign prisoners information pack” in a language the detainee understands. The pack would set out the basic rules and regulations of the prison,

<sup>126</sup> “No one form of sign language is universal. Different sign languages are used in different countries or regions.” *American Sign Language*, NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS, <http://www.nidcd.nih.gov/health/hearing/pages/asl.aspx#2>,

<sup>127</sup> *Id.*

<sup>128</sup> For studies of how deaf people communicate and manage in detention situations, *see e.g.*, Bonnie P. Tucker, *Deaf Prison Inmates: Time to be Heard*, 22 LOY. L.A. L. REV. 1 (1988); Vernon McCay & Katrina Miller, *Obstacles Faced by Deaf People in the Criminal Justice System*, 150 AM. ANNALS OF THE DEAF 283 (2005); Vernon McCay, *The Horror of Being Deaf in Prison*, 155 AM. ANNALS OF THE DEAF 311 (2010); N.R. Schneider & B.D. Sales, *Deaf or Hard of Hearing Inmates in Prison*, 19 DISABILITY & SOC. 77 (2004).

<sup>129</sup> Standard Minimum Rules for the Treatment of Prisoners, *supra* note 12.

<sup>130</sup> *Id.* ¶ 36.

<sup>131</sup> *Id.* ¶ 51(2)

<sup>132</sup> Basic Principles for the Treatment of Prisoners, *supra* note 12.

<sup>133</sup> European Committee on Crime Problems Rule 15 provides that prisoners should be provided with information in a language that they understand orally and if possible in writing, although the language need not be the prisoner’s first language. *Recommendation CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners*, *supra* note 87, at ¶ 15, *See also* ¶¶ 16.1, 16.3, 17.

prisoners' rights and duties, complaint procedures, legal aid and medical treatment.<sup>134</sup>

2. Apply the U.S. federal prison system requirement—that everyone in the prison system take English classes if they do not speak English,<sup>135</sup> to inmates in military prisons.<sup>136</sup>
3. Identify and make available to the detainee an interpreter who speaks the language of the prisoner until the prisoner learns proficient English.<sup>137</sup>
4. Employ members of the prison staff who are familiar with the cultures and languages of the various foreign prisoners and who have the ability and skills to communicate with the foreign prisoners.<sup>138</sup>
5. Include advice on addressing language barrier issues in all U.S. and international prison and detention manuals.

*B. Legal Recognition of Linguistic Isolation or Isolation by Language Barriers as a Human Rights Violation*

¶87 The international community should also seek to adopt standards specifically recognizing the harm caused by linguistic isolation.

1. Recommendations should be presented to the Special Rapporteur of the Human Rights Council for Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment encouraging him to initiate worldwide recognition of linguistic isolation.
2. The U.S. and other nations should recognize linguistic isolation as a specific form of isolation that can constitute torture or CID. Linguistic isolation should be considered comparable in seriousness to solitary confinement and incommunicado detention.
3. Linguistic isolation should be recognized as a violation of due process under the U.S. Constitution.<sup>139</sup>

<sup>134</sup> *Id.* ¶ 15.1.

<sup>135</sup> Crime Control Act of 1990, 18 U.S.C. § 3624(f) (2008). *See also Recommendation CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners, supra* note 87, at ¶ 29.1.

<sup>136</sup> *Recommendation CM/Rec (2012) 12 of the Committee of Ministers to member States concerning foreign prisoners, supra* note 87, at ¶ 8.

<sup>137</sup> Rule 8 also emphasizes the importance of access to interpretation and translation facilities. Rule 9 encourages that special welfare measures—such as vocational and language training as well as a flexible approach to contact with the outside world—be put in place to assist prisoners who are isolated by language barriers. *Id.* at ¶ 8.

<sup>138</sup> Rule 38 provides that certain persons with well-developed interpersonal communication skills be selected to work with foreign prisoners, and that these persons should be familiar with different cultures and have language skills to communicate with the foreign prisoners. Rule 39 adds that staff should be provided with information about the different languages spoken by the prisoners, and have opportunities to learn those languages. EUROPEAN COMMITTEE ON CRIME PROBLEMS, *supra* note 85. *See also* INTER-AM. COMM'N H.R., PRINCIPLES AND BEST PRACTICES ON THE PROTECTION OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS, Principle XX (2008) (regarding the training required for personnel working in and supervising places of detention or imprisonment).

<sup>139</sup> *See Jules Lobel, Prolonged Solitary Confinement and the Constitution*, 11 U. PA. J. CONST. L. 115, 125 (2009).



4. Denying inmates and detainees access to others who speak their language, resulting in linguistic isolation, should be recognized as a form of language discrimination, which is prohibited under international human rights treaties.<sup>140</sup>
5. Detainees should have avenues for redress when the prison does not adhere to the fundamental requirements identified in this section.<sup>141</sup>

¶88 International legal recognition of linguistic isolation as a human rights abuse would deliver an important tool for human rights advocates. Legal recognition would lead to creating standards against which to evaluate state behavior and hold states accountable for violations. As more research is conducted on the effects of linguistic isolation, these standards would be refined. Most importantly, international recognition of linguistic isolation as a violation of a state's human rights obligation would begin the process of providing victims a cause of action and a forum for obtaining redress.

### *C. An Appeal for Further Research*

¶89 Because, by definition, there are likely other cases of linguistic isolation that have not yet been identified, researchers should conduct studies on detainees who suffer linguistic isolation in prisons around the world. Experts should also examine the symptoms and effects of linguistic isolation and whether and how they may rise to the level of torture or CID.

### CONCLUSION

¶90 It is this author's hope that all detention center and prison officials will make it their established practice to be on constant vigil for new detainees who may become isolated because of language barriers. As Atul Gawande wrote, in a powerful article on the impact of isolation on the individual, "Simply to exist as a normal human being requires interaction with other people."<sup>142</sup>

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<sup>140</sup> The ICCPR prohibits discrimination on the basis of language in relation to detention and humane treatment. International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 2, 6 I.L.M. 368, 999 U.N.T.S. 171 (1967). Similar provisions appear in the International Covenant on Economic and Social and Cultural Rights, or ICESCR, International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 2, 6 I.L.M. 368, 999 U.N.T.S. 171 (1967); the Convention on the Rights of the Child, or CRC, Convention on the Rights of the Child, Nov. 20, 1989., art. 2, 1577 U.N.T.S. 3; and the Universal Declaration of Human Rights, or UDHR. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948). The U.S. is a party to the ICCPR; however, though the ICCPR is a binding treaty, the U.S. does not recognize the authority of the Human Rights Committee to hear complaints from individuals against the U.S. The U.S. is also a member of the United Nations General Assembly which adopted the UDHR; however, the principles enumerated in the UDHR are nonbinding. The U.S. is not a party to the ICESCR or the CRC.

<sup>141</sup> See e.g., Comm. Against Torture, *General Comment No. 3*, ¶ 1, U.N. Doc. CAT/C/GC/3 (Dec. 13, 2012) (regarding implementing Article 14 of the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment). The convention has been ratified by the U.S. Unfortunately, however, CAT is non-self executing. Am. Soc'y of Int'l Law, *ASIL Sidebar*, INT'L JUDICIAL MONITOR (July 2006), [http://www.judicialmonitor.org/archive\\_0706/asilsidebar.html](http://www.judicialmonitor.org/archive_0706/asilsidebar.html).

<sup>142</sup> Atul Gawande, *Hellhole*, THE NEW YORKER, Mar. 30, 2009, at 1.