



Yale Law School

ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC

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VIA ELECTRONIC MAIL SUBMISSION

Nils Melzer

Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
c/o Office of the High Commissioner for Human Rights

United Nations Office at Geneva
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Dear Special Rapporteur Melzer:

We write to alert you to recent developments at Northern Correctional Institution (Northern) in Somers, Connecticut. In response to the spread of COVID-19 through its prisons, Connecticut has explicitly refused to de-densify its prison population¹ and is instead placing infected individuals in makeshift medical isolation at Northern, a supermax facility that is punitive by design and wholly inappropriate for medical purposes. In addition, the Connecticut Department of Correction (DOC) may be sending incarcerated people to Northern in retaliation for protesting the Department's failure to safely protect them from the virus. Just before the outbreak—on February 28, 2020—you publicly stated that Connecticut's overly harsh tactics at Northern “may well amount to torture.”² The State's continued reliance on those same punitive measures in the midst of the pandemic is simply unacceptable. We urge you to declare the DOC's current practices to be in violation of international law to send a clear message that, especially in a time of crisis, punishment may not be substituted for humane treatment and sound medical practices.

In 2019, the Allard K. Lowenstein International Human Rights Clinic³ submitted a report

¹ Governor Ned Lamont stated on March 24, 2020, that he was not planning to release any prisoners as a COVID-19 response measure. Since then, he has continued to reiterate that the Department of Correction (DOC) has sufficient space to effectively quarantine prisoners as necessary and has cancelled two separate meetings with the families of incarcerated people. The second meeting, cancelled just half an hour before its scheduled start time, has not been rescheduled. See Lisa Backus, *State Reports First Inmate Death From COVID-19; Advocates Demand Meeting*, CT NEWS JUNKIE (Apr. 14, 2020), https://www.ctnewsjunkie.com/archives/entry/20200413_first_inmate_dies_of_covid-19_advocates_demand_meeting; Kelan Lyons, *First Incarcerated Person Dies as COVID-19 Spikes Behind Bars*, CT MIRROR (Apr. 13, 2020), <https://ctmirror.org/2020/04/13/first-incarcerated-person-dies-as-covid-19-spikes-behind-bars>; Kelan Lyons, *Lamont Says No Prison Releases Because of COVID-19 Despite Pressure from Advocates*, CT MIRROR (Mar. 24, 2020), <https://ctmirror.org/2020/03/24/lamont-says-no-prison-releases-because-of-covid-19-despite-pressure-from-advocates>.

² Press Release, Office of U.N. High Comm'r for Human Rights, United States: Prolonged Solitary Confinement Amounts to Psychological Torture, Says UN Expert, (Feb. 28, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633&LangID=E>.

³ This submission reflects the efforts and views of the Lowenstein Clinic and does not necessarily represent the position of Yale Law School, which is listed here for identification purposes only.

to your office detailing the systemic physical and psychological torture taking place at Northern and other Connecticut prisons.⁴ Individuals held at Northern are subject to extended solitary confinement, physically painful shackling, and unsanitary conditions.⁵ In response, you affirmed that the DOC appears to be engaged in “a State-sanctioned policy aimed at purposefully inflicting severe pain or suffering, physical or mental, which may well amount to torture.”⁶ As noted by your office, “even if permitted by domestic law, prolonged or indefinite solitary confinement cannot be regarded as a ‘lawful sanction’ under the Mandela Rules.”⁷

Unfortunately, the Connecticut DOC has refused to improve its treatment of the people in its care to reach the minimum level required by international law. Instead, the DOC has responded to the novel coronavirus pandemic by transferring individuals who have tested positive for COVID-19 and individuals who have sought additional health and safety measures to Northern.

Conditions in Medical Isolation at Northern Are Unsafe and Degrading

Over the course of the pandemic, Connecticut has significantly expanded the number of individuals held at Northern. As of March 1, 2020, Northern held approximately 74 individuals; as of April 20, that figure was 275. A primary cause of that increase is that the DOC’s explicit policy is to house COVID-19 patients at Northern. On April 8, 2020, the DOC announced that “all offenders who have tested positive for COVID-19” except “women, youth, [and] those with acute mental health issues” will be transferred to the supermax facility for medical isolation.⁸ As of April 20, 2020, the last time the DOC updated its publicly available data, 183 people are being held at 2-West, the Northern unit that the DOC has now designated for COVID-19 isolation.⁹

Based on our understanding of the facility and recent conversations with individuals held there, Northern cannot function as a hygienic, safe, and dignified place of care for infected individuals. Furthermore, because 92 individuals who are not infected also reside at Northern, and medical staff interact with both populations, DOC practice endangers the health of all individuals held at Northern.

Public health and correctional experts have emphasized the necessity of distinguishing medical isolation from solitary confinement, warning that using solitary confinement as a method of medical isolation harms the health of those infected with COVID-19 and deters people from reporting symptoms to correctional staff.¹⁰ Medical isolation is intended to describe a transparent process, overseen by medical staff and with consistent access to medical and mental healthcare, without additional restrictions on privileges such as outdoor exercise and access to phone calls.¹¹ “Medical isolation” at Northern does not resemble this practice. Individuals medically isolated at

⁴ Letter from Allard K. Lowenstein Int’l Human Rights Clinic, Yale Law Sch., to Nils Melzer, United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (May 14, 2019), https://law.yale.edu/sites/default/files/area/clinic/document/2019-05-14_lowenstein_clinic_un_special_rapporteur_final_submission_to_post.pdf.

⁵ *Id.*

⁶ Press Release, Office of U.N. High Comm’r for Human Rights, *supra* note 2.

⁷ *Id.*

⁸ Press Release, State of Conn. Dep’t of Corr., The Department of Correction Transfers COVID-19 Positive Offenders to Northern CI (Apr. 8, 2020), <https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/PRESS-RELEASE-COVID19-Positives-to-Northern-040820.pdf?la=en>.

⁹ *Health and Information Advisories*, CONN. STATE DEP’T OF CORR., <https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Health-Information-and-Advisories>.

¹⁰ David Cloud et al., *The Ethical Use of Medical Isolation—Not Solitary Confinement—to Reduce COVID-19 Transmission in Correctional Settings*, AMEND (Apr. 9, 2020), https://amend.us/wp-content/uploads/2020/04/Medical-Isolation-vs-Solitary_Amend.pdf.

¹¹ *Id.*

Northern have no access to recreation, property, or even showers. For the past several weeks, they were denied access to all external communication, including legal calls. Recently, individuals have been allowed up to two calls per day, including legal calls. Northern was designed for the express purpose of punitive isolation, and providing the safe and dignified care that true medical isolation demands is impossible at this facility.

The extent of quarantined individuals' access to medical care has been daily temperature and blood pressure checks, and it is unclear whether Northern is capable of providing any additional care; medical and correctional staff are already working 12-hour shifts in the medical isolation unit. Based on the fact that the first incarcerated person to die of COVID-19 was transferred to the University of Connecticut Health Center five days before his death, it appears that the DOC is moving prisoners to hospitals if their illness becomes severe. However, as experts have noted, when sick people are placed in solitary confinement rather than true medical isolation, it limits the ability of medical providers to monitor symptoms effectively,¹² potentially compromising the DOC's capacity to determine whether an individual is in need of more intensive care.

We are further concerned about the DOC's ability to separate those infected with the virus from the healthy population. In multiple cases, visibly symptomatic individuals have remained in general population for days or even weeks before being moved to medical isolation. We have also received credible reports that the DOC is transferring some symptomatic individuals to Northern *before* they test positive. Consequently, there is increasing reluctance in the general population to report symptoms for fear of being sent to Northern where they will get infected (if they aren't already), and, at a minimum, they will be subjected to Northern's inhumane conditions. This practice is likely to create a pattern of increasing confinement at Northern without reducing rates of infection in the general population. Indeed, the DOC's reliance on Northern will likely expose *more* people to the virus.

Risk of Retaliation Against Individuals Protesting Unsafe Conditions

In addition to transferring infected people to Northern for medical isolation, we are concerned about transfers into the supermax facility being used by the DOC to retaliate against incarcerated individuals who protest their unsafe conditions. At Carl Robinson Correctional Institution (CRCI), a medium-security facility, a group of prisoners who organized a hunger strike and threatened work stoppages in response to the DOC's handling of COVID-19 were transferred to Northern. The DOC told media that the protests were sparked by increased restrictions on movement to limit virus transmission, and that the 19 individuals moved from CRCI to Northern were "transferred for safety" after a guard was punched in the face.¹³ That account conflicts with multiple reports we have received from individuals transferred to Northern, who have stated that they were not protesting limitations on movement but instead were concerned about CRCI's unsanitary conditions and the CRCI warden's failure to provide bleach for cleaning as promised. These individuals reported being transferred to Northern for administrative segregation 24-48 hours after refusing a meal or expressing their frustration about the lack of protective equipment.

Despite the extremely restrictive and isolating conditions at Northern, individuals outside the medical isolation unit are nonetheless at high risk of exposure to the virus. For example, handcuffs and shackles are not sanitized between uses and are used repeatedly on multiple prisoners throughout the day. Correctional staff do not regularly change their gloves, including when

¹² *Id.*

¹³ Don Stacom, *Unrest at Enfield Prison Leads to Fight Saturday Afternoon; Guard Punched and 105 Inmates Get Transferred*, HARTFORD COURANT (Apr. 4, 2020), <https://www.courant.com/breaking-news/hc-news-breaking-robinson-prison-fight-20200405-quxsj7ea5vf6begqkw3ehe3qqe-story.html>.

handling handcuffs and delivering food. Prisoners are shackled and escorted whenever they leave the cell. As a result, we have received reports of individuals refusing to leave their cells so as to avoid being escorted by guards with contaminated gloves. Furthermore, access to soap and cleaning supplies is inconsistent and insufficient for many prisoners. While some units appear to be adequately supplied, other prisoners have not been given any soap or been given only one bar of soap since the crisis began and are expected to purchase any additional soap from the commissary. They also have not been provided with enough cleaning solution to sanitize cells after guards enter and exit.

The conditions in which individuals incarcerated at Northern are kept also makes effective social distancing impossible. Recreation takes place in small outdoor cages with multiple people in them: four or more people are forced to occupy the same nine-by-five foot space. Meanwhile, multiple correctional officers enter cells each day, again increasing the risk of the disease spreading. Prisoners cannot safely clean themselves. In Unit 1-East of the prison, one shower is shared by 40 prisoners, all of whom must keep their towels in the same location. Individuals are now forced to make perverse choices: sacrifice their health by avoiding exercise and cleaning or risk exposure to the virus through close contact with other prisoners.

Detention at Northern Violates International Law

Connecticut is subjecting incarcerated individuals to conditions that amount to cruel, inhuman, and degrading treatment, in violation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)¹⁴ and the International Covenant on Civil and Political Rights (ICCPR).¹⁵ Both of these treaties have been ratified by the United States and require humane conditions in prisons.¹⁶ The Committee Against Torture—which monitors implementation of the CAT—has stated that “[I]iving conditions in police detention centres and prisons” and “[i]ssues related to overcrowding, . . . medical and sanitary conditions, [and] most common illnesses and their treatment in prison” are of “particular” interest in determining whether individuals are subject to cruel, inhuman, or degrading treatment or punishment.¹⁷ Previously, the Committee has condemned the “extensive use of solitary confinement and other forms of isolation in United States prisons, jails and other detention centres, for purposes of punishment, discipline and protection, *as well as for health-related reasons.*”¹⁸ The Committee called “[f]ull isolation of 22 to 23 hours a day in super-maximum security prisons . . . unacceptable,” no matter the reason.¹⁹ Additionally, the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) require

¹⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 16, Dec. 10, 1984, 1465 U.N.T.S. 85.

¹⁵ International Covenant on Civil and Political Rights art. 7, Dec. 19, 1966, 999 U.N.T.S. 171. The Human Rights Committee—which monitors implementation of the ICCPR—has expressed concern about the United States’ “continued practice of holding persons deprived of their liberty . . . in prolonged solitary confinement,” indicating that such conditions violate articles 7 and 10 of the ICCPR as well as the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) even without the healthcare concerns discussed above. Concluding Observations on the Fourth Periodic Report of the United States of America, U.N. Doc. CCPT/C/USA.CO/4 (23 April 2014), at 9, para. 20.

¹⁶ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 11, Dec. 10, 1984, 1465 U.N.T.S. 85; International Covenant on Civil and Political Rights art. 10.1, Dec. 19, 1966, 999 U.N.T.S. 171.

¹⁷ Guidelines on the Form and Content of Initial Reports Under Article 19 to Be Submitted by States Parties to the Convention Against Torture, U.N. Doc. CAT/C/4/Rev.3 (18 July 2005), at 10, para. 25.

¹⁸ Concluding Observations on the Combined Third to Fifth Periodic Reports of the United States of America, U.N. Doc. CAT/C/USA/CO/3-5 (19 December 2014), at 10, para. 20 (emphasis added).

¹⁹ *Id.*

that prisoners' accommodations "meet all requirements of health"²⁰ and that prisoners "enjoy the same standards of health care that are available in the community."²¹ In an environment like Northern, this is impossible. The DOC is required to provide safe and sanitary conditions to all of the people in its care. Current practice falls far short of that.

Further, to the extent that Connecticut is using Northern to silence prisoner protest, those actions constitute torture. The Mandela Rules instruct that solitary confinement may be used "only in exceptional cases as a last resort, for as short a time as possible"²² and *never* as collective punishment. The rules also prohibit prolonged solitary confinement (confinement for 22 or more hours a day for a period in excess of 15 consecutive days).²³ At Northern, the DOC regularly uses isolation as a tool to punish prisoners, inflicting "severe pain or suffering" on them.²⁴ Under international law, this retaliation against inmates amounts to torture.

We are deeply troubled by how the Connecticut DOC has responded to this international crisis—by increasing the population of a prison known for "purposefully inflicting severe pain or suffering" on incarcerated individuals in "dehumanizing conditions," now including those infected with COVID-19.²⁵ It is in moments of stress and confusion like this that international law provides a source of stability, holding us accountable for how we treat all members in society. We hope you will condemn the DOC's ongoing policy of torture and/or cruel, inhuman and degrading treatment of the people in its custody.

Respectfully Submitted,

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²⁰ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, G.A. Res. 70/175 (17 December 2015), at rule 13, https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

²¹ *Id.* at rule 24.

²² *Id.* at rule 45.

²³ *Id.* at rule 44.

²⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 1, Dec. 10, 1984, 1465 U.N.T.S. 85.

²⁵ Press Release, Office of U.N. High Comm'r for Human Rights, *supra* note 2.