



PRISON LAW OFFICE

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Matthew Cate
Secretary
California Department of Corrections and Rehabilitation
1515 S Street, Room 113S
Sacramento, CA 95811
Matthew.Cate@cdcr.ca.gov

Via U.S. Mail and Email PDF

Dear Matt:

We are writing to request that you take steps to stop CDCR's ongoing policy and practice of locking down prisoners on the basis of their race.

The evidence we have reviewed demonstrates that prison staff throughout the state are instituting and perpetuating lockdowns of entire racial groups, well past the period when any arguable emergency warranting such a blanket lockdown has passed. We analyzed all Program Status Reports (PSRs) issued by California's 30 men's prisons over a six-month period. Those PSRs reveal that there were 379 security-related lockdowns imposed between January 1 and June 30, 2009.¹ Of those 379 lockdowns, we found troubling evidence of racial discrimination in more than 100 lockdowns – more than a quarter of the sample. Of the thirty men's prisons in California, twenty-five were involved in one or more discriminatory lockdown:

- On more than 75 occasions during that six month period, prisons imposed and maintained restrictions on all inmates of a particular race in response to an incident that is reported to involve only a small number of identified inmates of that race, or in response to more indeterminate security risks, such as anonymous threats against staff or the discovery of inmate-manufactured weapons. Based on the PSRs, it appears that the prison staff never conducted individualized assessments of individuals within the affected racial groups to assess whether they in fact pose a threat to security.
- On more than 25 occasions during the first six months of 2009, the prisons imposed lockdowns on all individuals of a specific race after a so-called "race riot" and then maintained the lockdown on the entire racial group for more than two weeks. Based on the PSRs, it appears that prison staff never conducted individualized assessments of individuals to determine whether all members of the racial group posed a security risk.

¹ This figure excludes all lockdowns imposed for health reasons, such as medical quarantines.

The lockdowns in the six-month sample lasted an average of 109 days, meaning that prison staff typically had almost four months to make individualized risk determinations, but did not do so.²

The information in the PSRs is further supported by extensive communications we have had with prisoners at more than a dozen institutions, all of whom complain of extended lockdowns based on racial classifications, for incidents in which they had no involvement.³ For example, African-American prisoners from CSP-Solano wrote to us complaining that the institution continues its practice of locking prisoners down based only on racial classification, despite a decision by a California Superior Court that this practice was unlawful. See *In re Tucker*, Solano Co. Super. Ct. Case No. FCR233502 (May 13, 2009). Several Northern Hispanic prisoners in one facility at CSP-Sacramento have written to us stating that they have been on “modified program” more or less continuously for the last ten years, and as a result receive fewer privileges, job opportunities and yard time than prisoners of other races. More than twenty African-Americans prisoners housed at Kern Valley State Prison informed us that all African-American prisoners in certain facilities have been locked down frequently as a consequence of fights between individual African-American prisoners, and that even African-American prisoners who are “unaffiliated” must endure extended denials of their rights or privileges with respect to movement, feeding, ducats, visiting, work, shower, medical, library, dayroom, recreation, canteen, packages, phone calls, family visits and religious services. Over a dozen White prisoners in one facility at SATF wrote to us complaining of multiple lengthy lockdowns; some informed us that they had been locked down for over a year. These deprivations of rights are imposed purely on the basis of race and even apply to prisoners who arrived at the prison after the date of the incident which provoked the lockdown.

In short, the data, and our ongoing communication with prisoners and investigations of lockdowns at individual prisons, point to a disturbing policy and practice of racial discrimination within the prison system in violation of the Equal Protection Clause.

As you know, the Equal Protection Clause prohibits prisons from segregating or disciplining prisoners on the basis of race unless such policy is narrowly tailored to a compelling state interest. *Johnson v. California* (2005) 543 U.S. 499, 515. The Ninth Circuit Court of Appeals has explained that this same standard applies to race-based lockdowns, and that the strict scrutiny standard cannot be satisfied where race is the only connection between the perpetrators of an incident and the prisoners subjected to lockdown. *Richardson v. Runnels* (9th Cir. 2010) 594 F.3d 666, 671.

² In fact, this is a conservative estimate. Many of the lockdowns in our sample had not yet concluded by the end of June 2009, such that their end date was beyond the scope of the records produced to us. A concluding date of June 30, 2009 was therefore used for the purposes of our calculations. It is likely that several of these lockdowns actually carried on for a longer period than estimated.

³ Much of the correspondence we have received indicates that prisoners are exhausting their administrative remedies and pursuing formal legal action regarding the race-based lockdowns they are experiencing. In fact, our research confirms that in the last year, federal courts in California have heard at least eight civil rights complaints brought by CDCR prisoners suffering from race-based lockdowns. See, e.g. *Richardson v. Runnels*, 2007 WL 586722 (E.D. Cal. Feb. 22, 2007), *rev'd*, 594 F.3d 666 at 671 (9th Cir. 2010) (reversing the lower court’s summary judgment for defendants and finding that defendants “made no evidentiary showing at all concerning the basis for regarding all African-Americans as a security risk when one or a few African-American inmates are responsible for an assault.”)

We understand that CDCR's rationale for maintaining lockdowns on entire racial groups is that such policy is necessary to preserve security in the prisons. Yet the *Johnson* Court rejected that rationale, finding that "racial classifications 'threaten to stigmatize individuals by reason of their membership in a racial group and to *incite racial hostility*.' . . . By perpetuating the notion that race matters most, racial segregation of inmates 'may exacerbate the very patterns of [violence that it is] said to counteract.'" *Johnson* at 507 (quoting *Shaw v. Reno*, 509 U.S. 630, 643, 648 (1993)). The *Richardson* court, too, squarely rejected "the assertion that it [is] sufficient for prison officials simply to believe there to be a link between an individual incident perpetrated by one or two inmates, and the risk of violence from all the [prisoners of the same racial group in that facility]." *Richardson*, 594 F.3d at 671.

Even if the prisons were permitted to enforce race-based lockdowns for brief periods of time "as a *necessary and temporary* response to a race riot or other serious threat of race-related violence," *Johnson*, at 509 (emphasis added), such race-based policies cannot remain in effect for weeks and even months as CDCR's lockdowns too often do. Thus, one California court noted that "inmates in California prisons "may be separated on the basis of ethnicity for security purposes" only "*in emergency situations[] and on a short-term basis.*" *In re Tucker*, Solano Co. Super. Ct. Case No. FCR233502, at 6, 7 n.5 (May 13, 2009) [emphasis added]. Lockdowns lasting on average more than three months, as CDCR's lockdowns do, surely fail this test.

CDCR must immediately end its policy and practice of implementing race-based lockdowns. To resolve this matter without engaging in costly and time consuming litigation, the Prison Law Office asks that CDCR enter a binding agreement requiring the Department to 1) stop imposing racially-discriminatory lockdowns and implement a formal policy of conducting individualized assessments of all prisoners on lockdown status as soon as possible after the incident causing the lockdown and 2) create an accurate and reliable monitoring mechanism. We are willing to meet with you in an attempt to resolve this matter informally, but to do so the parties must enter a tolling agreement to ensure that aggrieved prisoners' claims are not time-barred as a result of the negotiations.

Please contact Rebekah Evenson or Donald Specter to set up a meeting to discuss this matter further.

Sincerely yours,

/s/ Donald Specter
Rebekah Evenson
Zoe Schonfeld