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10
11 Attorneys for Plaintiffs

12 IN THE UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14

15 ROBERT MITCHELL, ALVARO QUEZADA,
TONY TRUJILLO, and HANIF ABDULLAH, on
16 behalf of themselves and others similarly situated,

17 Plaintiffs,

18 vs.

19 MATTHEW CATE, SCOTT KERNAN, TERRI
MCDONALD, GEORGE GIURBINO, JAMES
20 TILTON, TOM FELKER, M. WRIGHT, F.
FOULK, D. VANDERVILLE, J. OWEN, D.
21 HELLWIG,

22 Defendants.
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Case No. 08-CV-1196-RAJ

SECOND AMENDED COMPLAINT

CLASS ACTION

JURY TRIAL DEMANDED

I. NATURE OF THE ACTION

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2 1. This is an action challenging explicit and invidious racial discrimination in California
3 prisons.

4 2. It is the official policy of the California Department of Corrections and Rehabilitation
5 (CDCR) to respond to potential security threats by locking down all members of the involved prisoner's
6 race, regardless of whether all the prisoners in that racial group have any involvement in the incident.
7 During a lockdown – which can last for months or years – prisoners of the affected race are typically
8 locked in their cells twenty-four hours a day, deprived of any outdoor exercise, religious services, visits
9 and even phone calls with family members; all the while, prisoners of other races move freely through
10 their regular activities in the prison.
11

12 3. Each year, CDCR imposes more than 350 race-based lockdowns. Defendants cannot
13 show that their racially discriminatory lockdown policy is narrowly tailored to serve a compelling state
14 interest. CDCR justifies its lockdowns as a means to manage prison violence and prison gangs. But
15 while violence and gangs are serious problems, the blanket race-based lockdowns that Defendants
16 implement are ineffective – and impermissible – responses to those problems. CDCR locks down entire
17 racial groups even when the incidents leading to the lockdown are not racially motivated, and it
18 maintains the lockdowns on entire racial groups without conducting timely individualized assessments to
19 determine if every member of the affected race poses a security risk. These racially discriminatory
20 policies exacerbate – rather than ameliorate – racial tensions and violence inside the prisons.
21

22 4. A separate but related violation arises from the excessive length of the lockdowns. CDCR
23 regularly imposes lockdowns that last for months and years, well beyond the time when any
24 “emergency” situation would have passed. Some lockdowns have lasted as long as ten years. In the last
25 two years, four prisons imposed lockdowns lasting longer than a year, and another eight prisons imposed
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1 lockdowns lasting longer than 200 days. More than 80 lockdowns in the California prisons lasted longer
2 than 60 days. There is no legitimate penological interest supporting such excessively lengthy lockdowns.

3 5. CDCR is vastly out of step with other State prison systems. Most state systems isolate
4 those involved in disruptive behavior, and quickly return all other prisoners to normal programming.

5 6. Plaintiffs are California prisoners subject to CDCR's illegal policy and practice of
6 implementing lockdowns based upon race, and maintaining lockdowns for excessive periods of time.
7 Plaintiffs, acting for themselves and all similarly situated prisoners, bring this action pursuant to the
8 Eighth and Fourteenth Amendments to the United States Constitution, seeking declaratory and injunctive
9 relief requiring CDCR to cease implementing race-based and excessively lengthy lockdowns.
10

11 7. Plaintiff Robert Mitchell further seeks damages against Defendants for the excessively
12 lengthy race-based lockdown that he suffered while housed at High Desert State Prison.
13

14 II. JURISDICTION

15 8. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343 and 1367.
16 Plaintiffs seek declaratory and injunctive relief under 28 U.S.C. §§ 1343, 2201 and 2202, 42 U.S.C. §§
17 1981 and 1983.

18 III. VENUE

19 9. Venue is proper in the Eastern District of California under 28 U.S.C. § 1391(b) because a
20 substantial part of the events giving rise to Plaintiffs' claims occurred within the judicial district, and
21 because several of the Defendants reside in the district.
22

23 IV. PARTIES

24 10. Plaintiff Robert Mitchell is a prisoner at Folsom State Prison in Folsom, California. Mr.
25 Mitchell suffered deprivations of his Eighth and Fourteenth Amendment rights as a result of a series of
26 race-based lockdowns at California prisons, as described herein.
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1 11. Plaintiff Alvaro Quezada is a prisoner at California State Prison, Corcoran, in Corcoran,
2 California. Mr. Quezada suffered deprivations of his Eighth and Fourteenth Amendment rights as a
3 result of a series of lockdowns at California prisons, as described herein.

4 12. Plaintiff Tony Trujillo is a prisoner at Ironwood State Prison in Blythe, California. Mr.
5 Trujillo suffered deprivations of his Eighth and Fourteenth Amendment rights as a result of a series of
6 race-based lockdowns at California prisons, as described herein.

7 13. Plaintiff Hanif Abdullah is a prisoner at California State Prison, Solano in Vacaville,
8 California. Mr. Abdullah suffered deprivations of his Eighth and Fourteenth Amendment rights as a
9 result of a series of race-based lockdowns at California prisons, as described herein.

10 14. Defendant Matthew Cate is the Secretary of the California Department of Corrections and
11 Rehabilitation (CDCR). He is sued in his official capacity. The CDCR is responsible for the operation
12 of the California state prison system. As Director, Defendant Cate is personally responsible for the
13 operation of all the prison facilities, including prison lockdown policies and practices.

14 15. Defendant Scott Kernan is the Undersecretary of CDCR for Operations. He is sued in his
15 official capacity. As Undersecretary, Defendant Kernan is responsible for the operation of all the prison
16 facilities, including prison lockdown policies and practices, and he reviews and approves decisions by
17 individual prisons to impose and maintain lockdowns.

18 16. Defendant Terri McDonald is the Chief Deputy Secretary for Adult Operations. She is
19 sued in her official capacity. As Chief Deputy Secretary of Adult Operations, Defendant McDonald is
20 responsible for the operation of all the prison facilities, including prison lockdown policies and practices,
21 and she reviews and approves decisions by individual prisons to impose and maintain lockdowns.

22 17. Defendant George Giurbino is the Director of the CDCR Division of Adult Institutions.
23 He is sued in his official capacity. As Director of the Division of Adult Institutions, Defendant Giurbino
24 is responsible for the operation of all adult prison facilities, including prison lockdown policies and
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1 practices, and he reviews and approves decisions by individual prisons to impose and maintain
2 lockdowns.

3 18. Defendant James Tilton was the Secretary of CDCR in 2006 and 2007, when Plaintiff
4 Mitchell was subjected to excessively lengthy race-based lockdowns. As Director of CDCR, Defendant
5 Tilton was responsible for the operation of all the prison facilities, including the implementation of
6 prison lockdown policies and practices. He is sued in his individual capacity.
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8 19. Defendant Tom Felker was the Warden of High Desert State Prison at all relevant times
9 herein. The warden of a prison “is the chief executive officer of that institution, and is responsible for the
10 custody, treatment, training and discipline of all inmates under his or her charge.” 15 C.C.R. §3380(a).
11 Defendant Felker was responsible for implementing the lengthy race-based lockdowns at High Desert
12 State Prison suffered by Plaintiff Mitchell. He is sued in his individual capacity.
13

14 20. Defendant M. Wright was an Associate Warden at High Desert State Prison at all relevant
15 times herein. As Associate Warden, Defendant Wright was responsible for implementing the lengthy
16 race-based lockdowns at High Desert State Prison suffered by Plaintiff Mitchell. He is sued in his
17 individual capacity.

18 21. Defendant F. Foulk was a Facility Captain at High Desert State Prison at all relevant times
19 herein. As Facility Captain, Defendant Foulk was responsible for implementing the lengthy race-based
20 lockdowns at High Desert State Prison suffered by Plaintiff Mitchell. He is sued in his individual
21 capacity.
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23 22. Defendant D. Vanderville was a Facility Captain at High Desert State Prison at all
24 relevant times herein. As Facility Captain, Defendant Vanderville was responsible for implementing the
25 lengthy race-based lockdowns at High Desert State Prison suffered by Plaintiff Mitchell. He is sued in
26 his individual capacity.
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1 23. Defendant J. Owen was a correctional counselor at High Desert State Prison at all relevant
2 times herein. Plaintiff Mitchell sues him in his individual capacity.

3 24. Defendant D. Hellwig was a correctional counselor at High Desert State Prison at all
4 relevant times herein. Plaintiff Mitchell sues him in his individual capacity.

5
6 V. CLASS ACTION ALLEGATIONS

7 25. Plaintiffs Mitchell, Quezada, Trujillo, and Abdullah (“the Named Plaintiffs”) bring this
8 action on their own behalf and, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on
9 behalf of two classes of prisoners:

10 a) all prisoners who are now or will in the future be housed in a men’s prison under
11 the jurisdiction of CDCR and who are now or will in the future be subject to CDCR’s policy and practice
12 of implementing race-based lockdowns; and

13 b) all prisoners who are now or will in the future be housed in a men’s prison under
14 the jurisdiction of CDCR and who are now or will in the future be subject to CDCR’s policy and practice
15 of implementing excessively lengthy lockdowns.

16 26. The size of the classes are so numerous that joinder of all members is impracticable.
17 There are more than 150,000 men who are prisoners under the jurisdiction of CDCR. Each year, CDCR
18 implements more than 350 race-based lockdowns, and dozens of excessively-lengthy lockdowns,
19 affecting tens of thousands of male prisoners. CDCR implements excessively lengthy and race-based
20 lockdowns frequently and at all men’s prisons. All men who are CDCR prisoners are at risk of being
21 subjected to CDCR’s policy and practice of implementing race-based and excessively lengthy
22 lockdowns.

23 27. There are questions of law and fact common to the members of the class, including 1)
24 whether Defendants’ policy and practice of imposing race-based lockdowns constitutes racial
25 discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the United
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1 States Constitution, and 2) whether Defendants' policy and practice of imposing excessively lengthy
2 lockdowns deprives Plaintiffs of their Eighth Amendment Right to be free from cruel and unusual
3 punishment.

4 28. Defendants have acted on grounds that apply generally to the class, so that final injunctive
5 relief or corresponding declaratory relief is appropriate respecting the class as a whole.

6 29. The claims of the Named Plaintiffs are typical of the claims of the classes, and the Named
7 Plaintiffs, though counsel, will fairly and adequately protect the interests of the classes.

8
9 VI. FACTUAL ALLEGATIONS

10 A. CDCR's Policy and Practice of Imposing Racially Discriminatory Lockdowns

11 30. California prisons have an express policy and practice of implementing lockdowns in a
12 racially discriminatory manner. CDCR freely acknowledges that its policy is to "manage[] inmate
13 populations by ethnicity and subcultures." Appendix A. Thus, it is official CDCR policy that "when
14 there is an incident involving any race, all inmates of that race are locked up." Appendix B; Appendix C
15 (same). CDCR acknowledges that the "unfortunate[]" result of this policy is that "those inmates not
16 involved in the violence may be impacted by the actions of a few." Appendix D.

17 31. In order to implement their racially discriminatory policies, Defendants label each
18 prisoner by race from the moment they step foot in prison. Pursuant to CDCR policy, prisoners are
19 divided into the following racial categories: "Black," "White," "Hispanic," and "Other." Under the
20 direction and supervision of Defendants, CDCR personnel note the race of each prisoner transferred to
21 CDCR custody on an "initial housing form," and renew that notation on a myriad of other paperwork
22 used by CDCR personnel throughout the prison system.

23 32. Some men's prisons, including High Desert State Prison, California State Prison, Solano,
24 Ironwood State Prison, California State Prison, Corcoran, and others, have an official policy of posting a
25 *color-coded sign* outside each prison cell to show the race of the prisoners housed therein. Other prisons,
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1 including Kern Valley State Prison, have an official policy of keeping color-coded cards with prisoners'
2 names on them at the correctional officers' station in each prison unit. These tracking mechanisms
3 enable Defendants to segregate prisoners and lock them down by race.

4 33. When a prison imposes a lockdown, CDCR policy requires that the prison provide regular
5 "status reports" to CDCR headquarters, including Defendants, describing each lockdown. (As used
6 herein, the term "lockdown" refers to restrictions on the rights or privileges of prisoners, including rights
7 or privileges with respect to movement, feeding, ducats, visiting, work, shower, medical, library,
8 dayroom, recreation, canteen, packages, phone calls, or religious services, which is imposed by the
9 prison as a result of an incident at the prison, and that is applied to a group of inmates. As used herein,
10 the term "lockdown" refers to all such restrictions, whether they are formally labeled by the prison a
11 "lockdown," "modified program," "state of emergency" or other term.)

12
13 34. The form that CDCR requires prisons to use for lockdown "status reports" promotes racial
14 discrimination. The form has a field in which the institution is required to identify the "inmates affected"
15 by the lockdown. In that field, the institution may choose from the following pre-printed categories:
16 "All, Black, White, Hispanic," and "Other." Appendix E.

17
18 35. On an annual basis, Defendants impose more than 350 lockdowns upon groups identified
19 solely by their shared racial or ethnic characteristics. Race-based lockdowns occur at all men's prisons
20 under CDCR's jurisdiction. Men who are Black, White, Hispanic, American Indian, and Asian all
21 suffered from race-based lockdowns.

22
23 36. The race-based lockdowns cause Plaintiffs to suffer from extreme anxiety and depression
24 – the result of being locked up for 24-hours per day in a tiny cell, typically with another prisoner, where
25 both prisoners must eat, use the toilet, sleep, exercise and carry on all aspects of daily life, even though
26 there is barely enough room for two prisoners to stand up at the same time – and severe humiliation, as a
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1 result of being segregated and punished solely on account of race, while members of other racial groups
2 move freely throughout the prison.

3 37. Defendants maintain their racially discriminatory policies by contending that all prisoners
4 of a racial group will fight with other prisoners if released from their cells during a lockdown. However,
5 Defendants do not make individualized determinations of risk when imposing blanket race-based
6 lockdowns. Since many prisoners do not engage in violence, much less racial violence, and pose no
7 security threat when members of their own race are involved in an incident, Defendants' policy is not
8 narrowly drawn to serve a compelling interest. To the contrary, Defendants' racially discriminatory
9 lockdown policy foments racial tension and violence.
10

11 38. In July 2010, Plaintiffs' counsel wrote to Defendant Cate asking that he modify the State's
12 lockdown policy. Defendant Cate and his subordinates met with Plaintiffs' counsel, and the Parties
13 discussed the illegal lockdowns on several occasions over the following eight months, but Defendants did
14 not modify their lockdown policies.
15

16 39. In January 2011, Plaintiffs' counsel informed Defendants of their intent to file suit to stop
17 the ongoing race-based lockdowns if the matter was not resolved within thirty days. Defendants did not
18 agree to stop imposing race-based lockdowns, nor did they propose any other alternatives.
19

20 B. CDCR's Policy and Practice of Imposing Excessively Lengthy Lockdowns

21 40. Not only do they illegally lock prisoners down by race, Defendants also impose
22 lockdowns frequently, and for excessively lengthy periods of time. In this respect, too, California is out
23 of step with other prison systems. Other state prison systems impose lockdowns very infrequently; when
24 an incident occurs, they isolate those involved in the disruptive behavior and promptly return all other
25 prisoners to normal programming.

26 41. CDCR regularly imposes lockdowns that last for months and years. For example, in the
27 last two years, California State Prison, Sacramento, imposed a single lockdown that lasted for more than
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1 2,400 days; California State Prison, Corcoran, imposed a lockdown lasting more than 1,300 days; Avenal
2 State Prison imposed a lockdown lasting more than 500 days; Pleasant Valley State Prison imposed a
3 lockdown lasting more than 400 days; at least eight other prisons imposed lockdowns lasting more than
4 200 days. More than 80 lockdowns in California prisons lasted longer than 60 days.

5
6 42. In addition to the lengthy individual lockdowns, prisons throughout the California prison
7 system regularly impose multiple lockdowns of shorter duration but which, imposed back-to-back, result
8 in deprivation of outdoor exercise, religious services, family visits and other rights and privileges for
9 months and years at a time.

10 43. There is no legitimate penological interest supporting such excessively lengthy
11 lockdowns.

12
13 44. During the lockdowns, Defendants typically confine Plaintiffs to their cells for 24-hours
14 per day, where Plaintiffs must eat, use the toilet, sleep, and carry on all aspects of daily life, usually with
15 a cellmate. Defendants deny Plaintiffs any access to outdoor exercise for months or years at a time,
16 during which time muscles atrophy and cramp, and prisoners often become physically and mentally ill.
17 Defendants prohibit most prisoners on lockdown from visiting with or telephoning their families, and
18 deny Plaintiffs access to even basic prison programs, such as religious services, education programs, and
19 drug and alcohol treatment programs.

20
21 45. Defendants impose the lockdowns and attendant deprivations on those prisoners who they
22 do *not* suspect of being involved in the incident giving rise to the lockdown. Prisoners who *are*
23 suspected of being involved in the incident receive different – and in some instances more favorable –
24 treatment.

25 46. Prisoners suspected of being involved in violent incidents are typically separated from the
26 general population, investigated, and, if found guilty of a rules violation, disciplined. Most often, these
27 individuals are sent to an Administrative Segregation Unit or a Security Housing Unit during the
28

1 investigation and as punishment for rules violations. In Administrative Segregation and Security
2 Housing Units, prisoners are guaranteed certain basic rights, including at least one hour of out-of-cell
3 time each day and outdoor exercise at least three days per week for a total of 10 hours per week. 15
4 C.C.R. § 3433. They are also allowed non-contact visits with their families, and provided with access to
5 programs such as education and drug and alcohol counseling. *Id.* All of those basic privileges are
6 typically denied to the prisoners on lockdown who are not suspected of being involved in the incident.
7

8 C. Named Plaintiff Allegations

9 Plaintiff Robert Mitchell

10 47. Plaintiff Robert Mitchell is an African American prisoner who has suffered from illegal
11 race-based lockdowns – and excessively lengthy lockdowns – on account of his race.

12 48. Mr. Mitchell was first transferred to CDCR custody in 2000. Between March 2006 and
13 December 2007, Mr. Mitchell was housed in High Desert State Prison. From December 2007 through
14 April 2010, he was housed in the California State Prison, Sacramento. From April 2010 to the present,
15 Mr. Mitchell has been housed in Folsom State Prison. Throughout the decade that Mr. Mitchell has been
16 incarcerated, CDCR documents have always identified him as “Black.”
17

18 49. High Desert State Prison posted a color-coded sign outside Mr. Mitchell’s cell door to
19 inform all staff that a “Black” prisoner was housed there. This sign helped the facility to impose its
20 racially discriminatory lockdowns.
21

22 50. Between May 2006 and December 2007, High Desert State Prison imposed an
23 overlapping series of lockdowns that resulted in prisoners identified as “Black”– including Mr. Mitchell
24 – being locked down nearly continuously over the entire 18-month period. Defendants Felker, Wright,
25 Vanderville, Foulk, Owen and Hellwig were responsible for implementing these lockdowns, pursuant to
26 a policy and practice implemented by Defendant Tilton. Mr. Mitchell was not alleged to have any
27 involvement in any of the incidents giving rise to the lockdowns, and was not alleged to be a member or
28

1 associate of any gang or disruptive group. Defendants locked Mr. Mitchell down solely on account of his
2 race.

3 51. Prior to the lockdowns, Mr. Mitchell had been suffering from an injury to his hip and leg
4 that left him mobility impaired, and he was under doctor's orders – contained in his prison medical
5 records – stating that he must ambulate and exercise regularly. Defendants Felker, Wright, Vanderville,
6 Foulk, Owen and Hellwig were aware of Mr. Mitchell's medical need to exercise, but nonetheless kept
7 Mr. Mitchell on lockdown from May 2006 through December 2007, preventing him from exercising as
8 required. As a result, Mr. Mitchell suffered physical injuries including muscle atrophy, loss of bone
9 density, swelling to the left leg, hip and ankle, and severe pain. In addition, Mr. Mitchell suffered severe
10 headaches, dizziness, blurred vision, nightmares, humiliation, and emotional distress, and continued
11 anxiety as a result of being confined to his tiny cell for 24-hours per day for months on end.

12
13 52. Mr. Mitchell filed a grievance about the lockdowns, and exhausted his administrative
14 remedies. The final "director's level" denial of Mr. Mitchell appeal, dated June 26, 2007, and attached
15 hereto as Appendix C, states that "the CDCR policy is that when there is an incident involving any race,
16 all inmates of that race are locked up."

17
18 53. Since leaving High Desert State Prison, Mr. Mitchell has been subjected to other race
19 based lockdowns, including race-based lockdowns at Folsom State Prison in July, August, September,
20 October and November 2010. Mr. Mitchell was not involved in the incidents giving rise to these
21 lockdowns, but was locked down solely on the basis of his race.

22
23 Plaintiff Alvaro Quezada

24 54. Plaintiff Alvaro Quezada has been incarcerated by CDCR since 2001. He was housed at
25 various institutions between 2001 and 2005. In 2005, he transferred to Kern Valley State Prison, and in
26 January 2011 he transferred to California State Prison, Corcoran, where he now resides. Throughout the
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1 decade that Mr. Quezada has been incarcerated, CDCR documents have variously identified Mr.
2 Quezada as “Hispanic” and Hispanic “Other.”

3 55. Mr. Quezada has never been a member of a gang, and official CDCR documents confirm
4 that Mr. Quezada is not suspected of being a member or affiliate of any gang or disruptive group. Nor
5 has Mr. Quezada ever been involved in any incident giving rise to a lockdown of a CDCR prison.
6 Nonetheless, pursuant to CDCR policy, Mr. Quezada has been locked down for lengthy periods of time
7 solely because of his ethnicity.
8

9 56. Because he is classified as Hispanic “Other,” Mr. Quezada has been locked down when
10 CDCR locks down all “Hispanics” and he has also been locked down when CDCR locks down prisoners
11 with the “ethnicity” of “Other.”

12 57. In February, 2010, after an incident involving a prisoner classified as “Asian Other,” Kern
13 Valley State Prison imposed a lockdown on all prisoners classified with the ethnicity “Other,” including
14 Mr. Quezada. Mr. Quezada was not involved in the incident giving rise to the lockdown, but for a period
15 of approximately 90 days, Mr. Quezada and all prisoners identified by CDCR as Hispanic “Others” were
16 locked down solely because of their racial classification.
17

18 58. In March 2010, Mr. Quezada filed an appeal challenging the February 2010 race-based
19 lockdown. His appeal was denied. Mr. Quezada exhausted his appeal. The final “director’s level”
20 denial of Mr. Quezada’s appeal, attached hereto as Appendix A, acknowledges that CDCR’s policy is to
21 “manage[] inmate populations by ethnicity and subcultures.”
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23 59. Since that time, Mr. Quezada has been subjected to other race-based lockdowns pursuant
24 to CDCR policy, including race-based lockdowns at Kern Valley State Prison in December 2010 and
25 January 2011. Mr. Quezada was not involved in the incidents giving rise to these lockdowns, but was
26 locked down solely on the basis of his race.
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1 60. During the lockdowns, Mr. Quezada was typically confined to his cell for 24-hours per
2 day, deprived of outdoor exercise, and deprived of visits with his family. Each of the lockdowns have
3 exacted a serious toll on Mr. Quezada. The lockdowns caused Mr. Quezada to suffer from sleep
4 disorders, headaches, anxiety, exhaustion, numbness and depression, and these effects have lingered for a
5 significant period of time even after the lockdowns were lifted.
6

7 Plaintiff Tony Trujillo

8 61. Plaintiff Tony Trujillo has been incarcerated by CDCR since 1982. He is identified by
9 CDCR as “Southern Hispanic” because he is of Hispanic origin and comes from Southern California. He
10 has never been a member, affiliate or associate of any gang or disruptive group. Mr. Trujillo has suffered
11 from illegal-race based lockdowns – and excessively lengthy lockdowns – on account of his ethnicity.
12

13 62. Mr. Trujillo has been housed at Ironwood State Prison since 2007. In that time,
14 Defendants have locked down Mr. Trujillo on at least four occasions solely because of his ethnicity.

15 63. Mr. Trujillo and all prisoners classified as “Hispanic” were locked down pursuant to
16 CDCR policy from approximately October 2007 through February 2008, in July 2009, in December
17 2009, from February 2010 through March 2010, and from October 2010 through November 2010. Mr.
18 Trujillo was not involved in any of the incidents giving rise to these lockdowns.

19 64. During the lockdowns, Mr. Trujillo was typically confined to his cell for 24-hours per day,
20 deprived of outdoor exercise, and denied visits and phone calls with his family. As a result of these
21 deprivations, and the explicitly racial nature of the lockdowns, Mr. Trujillo felt an overwhelming sense
22 of anxiety, frustration, stress, and deep humiliation.
23

24 65. Also, during the lockdowns, Mr. Trujillo was prevented from completing educational
25 programs, and was unable to participate in drug and alcohol treatment programs, which may negatively
26 impact his ability to obtain parole.
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1 66. Mr. Trujillo exhausted his administrative remedies. The final “director’s level” denial of
2 Mr. Trujillo’s appeal, attached hereto as Appendix D, acknowledges that Defendants “placed the
3 Hispanic inmate population on modified program following an incident where the Hispanic population
4 was the only race involved in the incident.” It acknowledges that as a result of this race-based policy,
5 “those inmates not involved in the violence may be impacted by the actions of a few.”
6

7 Plaintiff Hanif Abdullah

8 67. Plaintiff Hanif Abdullah is an African American prisoner who has been incarcerated by
9 CDCR since 2000. He has been subjected to many race-based lockdowns pursuant to CDCR policy
10 during that time.

11 68. Mr. Abdullah is currently housed in Facility 1 at California State Prison, Solano, where he
12 has been living since 2008. California State Prison, Solano posts color-coded signs on each cell door to
13 denote the race of prisoners living in them. Mr. Abdullah and his cellmate are both classified by CDCR
14 as “Black,” and so the prison has posted a blue sign on his door to denote that Black prisoners live there.
15

16 69. The color-coded signs facilitate the prison’s regular imposition of race-based lockdowns.
17 Most recently, Defendants locked down Mr. Abdullah and all prisoners in his unit who are classified as
18 “Black” from June 2009 through July 2009, from May 2010 through June 2010, for an additional two
19 weeks in July 2010, from on or about October 2010 through at least November 2010, and from March
20 2011 through April 2011. Mr. Abdullah suffered from these race-based lockdowns even though he is not
21 a member or affiliate of any gang or disruptive group, and had no involvement in any of the incidents
22 giving rise to the lockdowns.
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24 70. As a result of the limited access to medical care during the lockdowns, Mr. Abdullah was
25 unable to obtain regular dressing changes for a wound on his leg, causing the leg wound to become
26 infected, impeding his recovery, and causing physical injury and pain and suffering.
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1 71. Mr. Abdullah is a devout Muslim, and during the lockdowns he was unable to attend
2 Islamic religious services.

3 72. While on lockdown, Mr. Abdullah typically spent 24-hours each day in his cell with his
4 cellmate. His cell is a tiny room with bunk beds, a toilet, desk, and a sink, and with barely enough room
5 left over for the two men to stand up at the same time. That small box was where Mr. Abdullah and his
6 cellmate slept, ate, used the toilet, washed themselves, prayed, and carried on all aspects of daily life.
7 They were allowed out of their cell for less than an hour every several days to shower, or to obtain
8 medical care, and then they were returned back to their tiny cell. Mr. Abdullah's cell door has a small
9 window facing the interior of the housing unit, and through that window Mr. Abdullah could see
10 prisoners of other races – White, Hispanic, and Other – walking freely throughout the unit, going to
11 programs and to exercise on the yard according to normal prison schedules. He could hear staff
12 announcing the privileges available to other races, “School release for everyone except those [Blacks] on
13 lockdown,” “Yard release for everyone except those [Blacks] on lockdown.” Mr. Abdullah suffered
14 from the indignity, humiliation, and inhumanity, of the stark race discrimination. As the lockdowns wore
15 on, Mr. Abdullah suffered from anxiety and depression after enduring weeks of confinement to his cell,
16 even as his leg became progressively more painful. He began to sleep for ever-longer stretches of time to
17 block the pain and humiliation. When he was awake, the anxiety returned.

18 73. Mr. Abdullah filed an administrative appeal, and exhausted his administrative remedies.
19 The final “director’s level” denial of Mr. Abdullah’s appeal, dated February 24, 2010 and attached hereto
20 as Appendix B, states that “the CDCR policy is that when there is an incident involving any race, all
21 inmates of that race are locked up.”
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VII. CLAIM FOR RELIEF NO. 1

(All Plaintiffs and the Plaintiff class v. Defendants Cate, Kernan, McDonald and Giurbino)
(injunctive relief pursuant to Section 1983; Fourteenth Amendment Equal Protection Clause)

74. Plaintiffs reallege and incorporate by reference all the previous numbered paragraphs as if fully set forth below.

75. Defendants have violated Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Specifically, Defendants have designed, implemented, and administered a policy and practice that causes Plaintiffs to be locked down based on race, and this policy and practice is not narrowly tailored to serve a compelling state interest.

76. The conduct described herein has been and continues to be performed by Defendants and their agents or employees in their official capacities under color of state law and is the proximate cause of the Named Plaintiffs' and the Plaintiff Class's ongoing deprivation of rights secured by the United States Constitution under the Equal Protection Clause of the Fourteenth Amendment.

77. The constitutional deprivations described herein are the proximate result of the official policies, customs and pervasive practices of Defendants.

78. Defendants have been and are aware of all of the deprivations complained of herein, and have condoned or been deliberately indifferent to such conduct.

79. The Named Plaintiffs and many Plaintiff class members have already been subjected to discriminatory race-based lockdowns, and all Plaintiffs are in imminent danger of being subjected to discriminatory race-based lockdowns in the immediate future because Defendants continue to impose race-based lockdowns pursuant to their discriminatory policies and practices. Defendants have imposed race-based lockdowns very frequently (approximately one per day) at prisons across the State. Based on Defendants' past conduct, and their official policies and practices, Defendants are likely to continue imposing lockdowns with similar frequency in the future. Plaintiffs are unable to affect the timing,

1 frequency or length of the lockdowns by their own conduct, since Defendants impose the lockdowns on
2 Plaintiffs solely based on their race or ethnicity.

3 80. Plaintiffs are entitled to reasonable attorneys' fees, litigation expenses and costs for
4 maintaining this claim pursuant to 42 U.S.C. § 1988.

5
6 VIII. CLAIM FOR RELIEF NO. 2

7 (All Plaintiffs and the Plaintiff class v. Defendants Cate, Kernan, McDonald and Giurbino)

8 (injunctive relief pursuant to Section 1983; Eighth Amendment)

9 81. Plaintiffs reallege and incorporate by reference all the previous numbered paragraphs as if
10 fully set forth below.

11 82. Defendants have violated Plaintiffs' rights under the Eighth Amendment to the U.S.
12 Constitution. Specifically, Defendants have designed, implemented, and administered a policy and
13 practice that causes Plaintiffs to be locked down and deprived of basic human needs for excessive
14 periods of time.

15 83. The conduct described herein has been and continues to be performed by Defendants and
16 their agents or employees in their official capacities under color of state law and is the proximate cause
17 of the Named Plaintiffs' and the Plaintiff Class's ongoing deprivation of rights secured by the Eighth
18 Amendment.

19 84. The constitutional deprivations described herein are the proximate result of the official
20 policies, customs and pervasive practices of Defendants.

21 85. Defendants have been and are aware of all of the deprivations complained of herein, and
22 have condoned or been deliberately indifferent to such conduct.

23 86. The Named Plaintiffs and many Plaintiff class members have already been subjected to
24 excessively lengthy lockdowns, and all Plaintiffs are in imminent danger of being subjected to
25 excessively lengthy lockdowns in the immediate future because Defendants continue to impose
26 excessively lengthy lockdowns pursuant to their ongoing lockdown policies and practices. Defendants
27
28

1 have imposed excessively lengthy lockdowns frequently. Based on Defendants' past conduct, and their
2 official policies and practices, Defendants are likely to continue imposing excessively lengthy lockdowns
3 with similar frequency in the future. Plaintiffs are unable to affect the timing, frequency or length of the
4 lockdowns by their own conduct, since they are not involved in the incidents giving rise to the
5 lockdowns.

6
7 87. Plaintiffs are entitled to reasonable attorneys' fees, litigation expenses and costs for
8 maintaining this claim pursuant to 42 U.S.C. § 1988.

9 IX. CLAIM FOR RELIEF NO. 3

10 (Plaintiff Mitchell on his own behalf vs. Defendants Tilton, Felker, Wright, Vanderville, Foulk,
11 Owen and Hellwig, in their individual capacities)

12 (Section 1983; Denial of Rights under the 8th and 14th Amendments to the Constitution)

13 88. Plaintiffs reallege and incorporate by reference all the previous numbered paragraphs as if
14 fully set forth below.

15 89. Defendants Tilton, Felker, Wright, Vanderville, Foulk, Owen and Hellwig implemented,
16 ratified and approved race-based and excessively lengthy lockdowns in violation of Mr. Mitchell's
17 Fourteenth Amendment right to Equal Protection of the Laws and Eighth Amendment Right to be free
18 from cruel and unusual punishment.

19 90. The conduct described herein was unnecessary, unreasonable, excessive, deliberate, and is
20 the proximate cause of the deprivation of Plaintiff's constitutional rights.

21 91. The aforementioned acts of Defendants caused Mr. Mitchell to suffer physical and
22 emotional injury, were humiliating and antithetical to human dignity, deprived Plaintiff of the minimal
23 civilized measures of life's necessities, and were done with deliberate indifference to and callous
24 disregard for Plaintiffs rights.

25 92. Plaintiff Mitchell is entitled to recover nominal, compensatory, and punitive damages, and
26 pre-and post-judgment interest, against the individual named Defendants.

1 93. Plaintiff is entitled to reasonable attorneys' fees, litigation expenses and costs for
2 maintaining this claim pursuant to 42 U.S.C. § 1988.

3 X. CLAIM FOR RELIEF NO. 4

4 (Plaintiff Mitchell on his own behalf vs. Defendants Tilton, Felker, Wright, Vanderville, Foulk,
5 Owen and Hellwig)

6 (Intentional Infliction of Emotional Distress)

7
8 94. Plaintiffs reallege and incorporate by reference all the previous numbered paragraphs as if
9 fully set forth below.

10 95. Defendants Tilton, Felker, Wright, Vanderville, Foulk, Owen and Hellwig intentionally
11 implemented lengthy race-based lockdowns. That conduct was outrageous, and was made with reckless
12 disregard of the probability that Plaintiff Mitchell would suffer emotional distress as a result.

13 96. Plaintiff Mitchell suffered physical injuries and emotional distress caused by defendants'
14 conduct.

15 97. Plaintiff submitted a timely claim for damages with the State Government Claims Board
16 (Claim No. G-569735), which was denied in its entirety on March 20, 2008.

17 98. Plaintiff Mitchell is entitled to recover nominal, compensatory, and punitive damages, and
18 pre-and post-judgment interest, as well as fees, expenses and costs of litigation, against the individual
19 named Defendants.
20

21 XI. CLAIM FOR RELIEF NO. 5

22 (Plaintiff Mitchell on his own behalf vs. Defendants Tilton Felker, Wright, Vanderville, Foulk,
23 Owen and Hellwig, in their individual capacities)

24 (Negligence, Negligent Infliction of Emotional Distress)

25
26 99. Plaintiffs reallege and incorporate by reference all the previous numbered paragraphs as if
27 fully set forth below.
28

1 100. Defendants Tilton, Felker, Wright, Vanderville, Foulk, Owen and Hellwig were negligent
2 and negligently inflicted emotional distress on Mr. Mitchell by implementing excessively lengthy and
3 race-based lockdowns, and failing to end those lockdowns in a timely manner.

4 101. Defendants Tilton, Felker, Faulk and Vanderville owed a legal duty of care to Mr.
5 Mitchell, and breached that duty by imposing excessively lengthy and race-based lockdowns,
6 disregarding the high probability that their conduct would likely result in physical injuries and emotional
7 distress, shock and anguish to Plaintiff Mitchell.
8

9 102. Defendants' actions were unreasonable under the circumstances.

10 103. Defendants' actions caused Mr. Mitchell to suffer physical and emotional injury, as
11 alleged herein.

12 104. Plaintiff submitted a timely claim for damages with the State Government Claims Board
13 (Claim No. G-569735), which was denied in its entirety on March 20, 2008.

14 105. Plaintiff Mitchell is entitled to recover nominal, compensatory, and punitive damages, and
15 pre-and post-judgment interest, as well as fees, expenses and costs of litigation, against the individual
16 named Defendants.
17

18 XII. PRAYER FOR RELIEF

19 WHEREFORE, the Named Plaintiffs and the class they represent request that this Court grant them the
20 following relief:
21

22 (a) Declare the suit is maintainable as a class action pursuant to Federal Rule of Civil
23 Procedure 23(b)(2);

24 (b) Adjudge and declare that the acts, omissions, policies, and conditions described above are
25 in violation of the Eighth and Fourteenth Amendments, which grant constitutional protection to the
26 Plaintiffs and the classes they represent;
27
28

1 (c) Preliminarily and permanently enjoin Defendants their agents, employees and all persons
2 acting in concert with them, from subjecting the named Plaintiffs and the class they represent to the
3 unconstitutional and unlawful acts, omissions, policies, and conditions described above;

4 (d) Award Plaintiff Mitchell monetary damages, compensatory and punitive, in an amount to
5 be determined at trial;

6 (e) Award Plaintiffs the costs of this suit, and reasonable attorneys' fees and litigation
7 expenses pursuant to 42 U.S.C. § 1988 and any other applicable statute;

8 (f) Retain jurisdiction of this case until Defendants have fully complied with the orders of
9 this Court, and there is a reasonable assurance that Defendants will continue to comply in the future
10 absent continuing jurisdiction; and

11 (g) Award such other and further relief as the Court deems just and proper.
12

13
14
15 Dated: April 27, 2011

16 Respectfully submitted,
17 PRISON LAW OFFICE
18 /s/ Rebekah Evenson
19 Rebekah Evenson
20 Attorney for Plaintiffs
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27
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Appendix A

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Received on Sept 15, 2010 (Wed.)

Date: SEP 03 2010

Group Appeal

In re: Alvaro Quesada, P90436
Kern Valley State Prison
P.O. Box 6000
Delano, CA 93216

IAB Case No.: 0924608

Local Log No.: KVSP-10-00481

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner R. Davis, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that as of February 11, 2010, the appellants have been confined beyond ten days in which they have not been provided any outdoor exercise program. The appellant contends that the Kern Valley State Prison (KVSP) exceeded the 72 hour mark of modifying all major programs. The appellant stated that the Facility "B" has resumed normal program for the Southern Hispanics/Paises, but the Others/American Indians have remained on lockdown status. The appellant requests that the appellants be restored their suspended "A-1/A" privileges immediately and that there be no retaliation for filing the appeal.

II SECOND LEVEL'S DECISION: The reviewer found that on February 11, 2010, an inmate classified as an "Other" approached a correctional officer from behind and attempted to stab the officer in the neck. As a result of this incident, the reviewer stated all inmates were immediately placed on lockdown status. The reviewer added that a Program Status Report (PSR) dated March 3, 2010, restricted the lockdown to all inmates listed as "Other" which applies to the appellant. The reviewer stated that the management of the inmate population by ethnicity and or subcultures has long been recognized by correctional professionals as an effective technique for establishing and maintaining control of inmate populations during periods of emergency. The reviewer added that the warden approved the modified program and meets daily with administrative staff to determine the necessary restrictions on routine activities. The appellant's appeal was denied at the Director's Level of Review (DLR).

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: It is noted at the DLR the appellant feels the KVSP has kept inmates listed as "Other" on lockdown status too long. The DLR reviewed the issues of the appellant's appeal and reaffirms the institution's examination and conclusions as addressed within the Second Level of Review. The appellant has failed to present compelling evidence and convincing argument to warrant modification of the decision reached by the institution. On July 22, 2010, the examiner spoke with Facility Captain (FC) Garza in reference to this appeal. FC Garza stated that the inmates listed as "Other" and of ethnic decent other than Asian and Pacific Islanders were returned to normal program on May 6, 2010, which would have lifted the restriction on the appellant. Additionally, FC Garza provided a copy of the effective PSR dated May 6, 2010.

The examiner notes that it is standard practice in the Department to place a facility on lockdown or modified program after disturbances or major incidents. It is also appropriate for staff to investigate and question the inmate population to ascertain the current safety of staff and other inmates on a given facility. The appellant must understand that pursuant to California Code of Regulations, Title 15, Section (CCR) 3380 the warden of an institution of the department is the chief executive officer of that institution, and is responsible for the custody, treatment, training and discipline of all inmates under his or her charge. The goal of a lockdown is to permit investigation of the incident, identification of those involved and to ensure a safe prison environment. Normal programming is resumed once inmate tension and the threat of more violence are lessened. The examiner concurs with the Second Level of Review decision. Further review at the DLR is not warranted.

ALVARO QUESADA, P90436
CASE NO. 0924608
PAGE 2

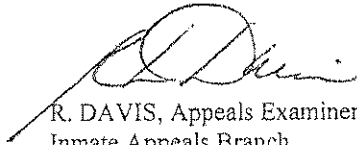
B. BASIS FOR THE DECISION:

CCR: 3001, 3270, 3300, 3301, 3303, 3380, 3383

C. ORDER: No changes or modifications are required by the Institution.

The appellant shall, pursuant to CCR section 3084.2(f) (2), share this response with the other inmates who signed this appeal.

This decision exhausts the administrative remedy available to the appellant within CDCR.



R. DAVIS, Appeals Examiner
Inmate Appeals Branch



D. FOSTON, Chief
Inmate Appeals Branch

cc: Warden, KVSP
Appeals Coordinator, KVSP

Appendix B

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: FEB 24 2010

In re: Hanif Abdullah, H00735
California State Prison, Solano
P.O. Box 4000
Vacaville, CA 95696-4000

IAB Case No.: 0906319

Local Log No.: SOL-09-01445

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner R. Pimentel, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that the institution is in direct violation of his Constitutional rights, State law, case law, regulation and policy in relation to locking down the black inmate population and denying inmate's access to programs. The appellant asserts that he his being punished for the actions of other inmates based upon an incident that he was not involved with. The appellant asserts that the incident that caused the disturbance was isolated and that he should not be punished for the actions of others. The appellant contends that he is not affiliated with any disruptive group of inmates and that he harbors no ill will towards other races; however, he was unfairly punished for the actions of others. The appellant asserts that on May 13, 2009 the Solano County Superior Court ruled that California State Prison - Solano (SOL) could not place all inmates of a particular ethnicity on lockdown/modified program for extended periods of time absent review of individual case factors. The appellant contends that the SOL is failing to comply with the court order. The appellant requests that the SOL stop using race as a basis for locking down the inmate population and that the CDCR investigate the actions of the SOL warden.

II SECOND LEVEL'S DECISION: The Second Level of Review (SLR) noted that the incident that occurred which prompted the modified program posed a severe threat to the safety and security of the institution. The SLR noted that the black, and northern hispanic, inmate population was placed on lockdown/modified program due to a riot. The staff gathered intelligence to make the necessary decisions relative to managing the institution. The SLR noted that the facility was searched, the inmate population was interviewed to determine the potential for future violent incidents, and the institution then began to slowly release the population back to normal program. The SLR noted that the SOL is in compliance with the court's order in that ethnicity is not being used as the sole basis for placing the facility on lockdown/modified program. The SLR cited California Code of Regulations, Title 15, Section (CCR) 3270 relative to the need to maintain security. The SLR partially granted the appeal.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The documentation and arguments are persuasive that the appellant has failed to support his appeal issues with sufficient evidence or facts to warrant a modification of the SLR. The institution has presented the appellant a thorough and comprehensive review of the appellant's issue and the Director's Level of Review (DLR) finds no basis to alter said decision. Pursuant to CCR 3380 the warden of an institution of the department is the chief executive officer of that institution, and is responsible for the custody, treatment, training and discipline of all inmates under his or her charge. Based upon this directive the warden of SOL determined that there was security threats which threatened the safety and security of the institution, staff and inmates. Therefore, the warden placed the institution's black, and northern hispanic, inmate population on lockdown/modified program. The DLR notes that the CDCR policy is that when there is an incident involving any race, all inmates of that race are locked up. The DLR notes that subsequent to violent incidents it is appropriate to segment the inmate population by ethnic groups as a means to establish a regular program. As information is received to narrow the group of involved inmates, a more refined criteria is used. The same process is used, regardless of involved ethnic group. Each violent inmate incident is evaluated on its own merit because each has its own

HANIF ABDULLAH, H00735

CASE NO. 0906319

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dynamics. The purpose of a modified program is to preserve the safety of the institution, staff and inmates. The goal of a modified program is to permit investigation of the incident, identification of those involved, and to ensure a safe prison environment. Normal programming is resumed once inmate tension and the threat of more violence are lessened. There is no merit to the appellant's claim that the institution management inappropriately placed the facility on modified program. The DLR acknowledges the court's ruling and finds that the SOL is adhering to the order. The DLR notes that the court conceded that immediately after an incident it is appropriate to place the entire facility on lockdown and that the institution began to identify the specific individuals who were involved. The DLR notes that the SOL used a uniform policy in that the entire facility was initially locked down and all housing units were searched. The SLR then released the uninvolved ethnic groups off of lockdown and began to identify the individuals who were involved. This process involved the SOL interviewing the affected inmate population. Subsequent to the interview process the entire facility population was released on a controlled feeding program. Subsequently the critical workers from the affected population was released to their work assignments. Subsequently the entire population was released on normal program. The DLR finds that the process the SOL used was orderly and intended to identify the involved individuals. The interview process was used to identify persons who wanted to engage in further acts of violence. The SOL used an inmates case factors relative to releasing them to their work assignments. The DLR finds that the SOL procedures could be compared to a funnel in that initially the entire facility population was placed on lockdown, the facility was searched for weapons, then the unaffected ethnic groups were released, then the affected ethnic groups were interviewed, then the entire population was integrated via a controlled feeding program, then the inmates who had work assignments were released to these assignments, and then the entire population was released to normal program. The DLR notes that the institution's security would be jeopardized if the SOL did not enact an orderly process to return to normal operations. Therefore no relief is provided at the DLR.

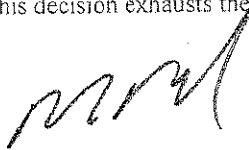
B. BASIS FOR THE DECISION:

California Penal Code Section: 5058

CCR: 3000, 3001, 3005, 3270, 3286, 3300, 3301, 3380, 3383

C. ORDER: No changes or modifications are required by the Institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



R. PIMENTEL, Appeals Examiner
Inmate Appeals Branch



D. FOSTON, Chief(A)
Inmate Appeals Branch

cc: Warden, SOL
Appeals Coordinator, SOL

Appendix C

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date: JUN 26 2007

In re: Mitchell, P-87230
High Desert State Prison
P.O. Box 270220
Susanville, CA 96127

LAB Case No.: 0613008

Local Log No.: HDSP 06-02672

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner R. Pimentel, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that the institution is in direct violation of State law, regulation and policy in relation to locking down the black inmate population and denying inmate's access to programs. The appellant asserts that he is being punished for the actions of other inmates based upon an incident that he was not involved with. The appellant asserts that he is a non-affiliated inmate and that the facility was placed on lockdown due to a "phantom kite." The appellant requests that routine inmate activities and privileges be returned to normal program, and that he be released from the lockdown.

II SECOND LEVEL'S DECISION: The reviewer found that the institution is making every effort to return to normal program. The Second Level of Review (SLR) noted that the incidents that occurred that prompted the lockdown pose a severe threat to the safety and security of the institution. The staff is continually gathering intelligence to make the necessary decisions relative to managing the institution. The SLR noted that initially the facility was placed on modified program due to an incident that occurred on December 13, 2006; however, since this incident several other security threats have been identified which required continuing the lockdown. The SLR cited California Code of Regulations, Title 15, Section (CCR) 3270 relative to the need to maintain security. The SLR denied the appeal.

III DIRECTOR'S LEVEL DECISION: Appeal is denied.


A. FINDINGS: The documentation and arguments are persuasive that the appellant has failed to support his appeal issues with sufficient evidence or facts to warrant a modification of the SLR. The institution has presented the appellant a thorough and comprehensive review of the appellant's issue and the Director's Level of Review (DLR) finds no basis to alter said decision. Pursuant to CCR 3380 the warden of an institution of the department is the chief executive officer of that institution, and is responsible for the custody, treatment, training and discipline of all inmates under his or her charge. Based upon this directive the Warden of High Desert State Prison (HDSP) has determined that there are numerous security threats that threaten the safety and security of the institution, staff and inmates. Therefore, the Warden has placed the institution's inmate population on modified program. The DLR notes that the CDCR policy is that when there is an incident involving any race, all inmates of that race are locked up. Ethnic groups are appropriate in segmenting the inmate population during the process of establishing a regular program following an incident. As information is received to narrow the group of involved inmates, a more refined criteria is used. The same process is used, regardless of involved ethnic group. Each violent inmate incident is evaluated on its own merit because each has its own dynamics. The purpose of a lockdown is to preserve the safety of the institution, staff and inmates. The goal of a lockdown is to permit investigation of the incident, identification of those involved and to ensure a safe prison environment. Normal programming is resumed once inmate tension and the threat of more violence are lessened. There is no merit to the appellant's claim that the institution management has inappropriately placed the facility on lockdown. Therefore no relief is provided at the DLR.

B. BASIS FOR THE DECISION:

CCR: 3000, 3001, 3270, 3274, 3282, 3300, 3380, 3383

C. ORDER: No changes or modifications are required by the institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, HDSP
Appeals Coordinator, HDSP

Appendix D

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
INMATE APPEALS BRANCH
P. O. BOX 942883
SACRAMENTO, CA 94283-0001

DIRECTOR'S LEVEL APPEAL DECISION

Date:

JUL 21 2008

In re: Tony Trujillo, C65910
Ironwood State Prison
P.O. Box 2229
Blythe, CA 92226

IAB Case No.: 0722046

Local Log No.: ISP-07-01825

This matter was reviewed on behalf of the Director of the California Department of Corrections and Rehabilitation (CDCR) by Appeals Examiner P. D. Vera, Facility Captain. All submitted documentation and supporting arguments of the parties have been considered.

I APPELLANT'S ARGUMENT: It is the appellant's position that on October 14, 2007, there was an altercation between two Hispanic inmates on Facility "D" at Ironwood State Prison (ISP). The appellant claims that immediately thereafter, all inmates of Mexican descent were placed on lockdown. The appellant states that all black, white and Other inmates were not lockdown. It is the appellant's belief that the sole reason he was placed on lockdown was because someone of his race committed an infraction. The appellant states that other than race there was not a single "iota" of evidence that to suggest he was involved. It is also the appellant's belief that based upon only his race he was denied all privileges, to include visits. The appellant also contends that these actions by the Warden and the Captain violate California Code of Regulations, Title 15, Section (CCR) 3004(c), CCR 3044(2) and CCR 3176.4. The appellant requests that the Warden state why she is violating the ruling in the Johnson vs. California, 125 S. Ct. 1146(2005), when she used race alone as the sole determining factor to place the appellant on lockdown status.

II SECOND LEVEL'S DECISION: The reviewer found that the CDCR from 3022-B, Program Status Report (Plan of Operations Staff and Inmate Notification) was signed and approved by Warden Dexter. The aforementioned plan placed the Hispanic inmate population on modified program following an incident where the Hispanic population was the only race involved in the incident. The plan outlined the daily operation in handling the Hispanic population on Facility "D." The Program Status Report is an appropriate and departmentally approved document. The course of action documented within the Program Status Report was within departmental policy and procedure for establishing a portion of the inmate population back onto regular program status following an incident.

Johnson vs. California does prohibit housing based solely on race as a determining factor and the CDCR is in the process of integrating the provisions of integrated housing over an approved graduated timeframe. However, this issue is not about who the appellant is housed with, but rather whether one segment of the entire population, which is based upon race and involvement can be safely re-integrated back into the general inmate population with other races. Programs are modified based upon safety and security issues between and amongst races. When the Warden is approving a Modified Program Plan of Operation, safety and security of the institution is the primary objective, which involves more than just the appellant's race or a temporary suspension of his access or loss of privileges. The provisions of Johnson vs. California do not apply to this appeal and no explanation for allegedly violating it by the Warden is necessary. For the reasons stated above, the appellant's appeal is denied at the Second Level of Review (SLR).

III DIRECTOR'S LEVEL DECISION: Appeal is denied.

A. FINDINGS: The examiner reviewed the issues of the appellant's appeal and reaffirms the institution's examination and conclusions as addressed within the SLR. It is noted that the appellant's complaint focuses on lockdown policy in general. The SLR adequately describes the rationale for securing all of the Facility "D" Hispanic inmates following a disturbance. Some disturbances are racially motivated, requiring increased controls to be employed with only the involved groups, as in this case. The Hispanic inmate population is handled no differently than other racial groups. Despite thorough investigation of such incidents, the true motive or future intent of the perpetrators is often unknown. This makes it

TONY TRUJILLO, C65910

CASE NO. 0722046

PAGE 2

unclear as to how the rest of the inmate population will react, requiring the added security measures. Unfortunately, those inmates not involved in the violence may be impacted by the actions of a few. Institution programming is resumed once the conditions are believed to be safe. The institution implemented increased controls to be employed with only the involved group, as in this case. The appellant has failed to provide any new evidence or facts to warrant a modification of the decision reached by the SLR. Therefore, no relief is warranted at the DLR.

B. BASIS FOR THE DECISION:

CCR: 3001, 3002, 3022, 3044, 3084.1, 3220, 3220.1, 3270, 3274, 3383

C. ORDER: No changes or modifications are required by the Institution.

This decision exhausts the administrative remedy available to the appellant within CDCR.



N. GRANNIS, Chief
Inmate Appeals Branch

cc: Warden, ISP
Appeals Coordinator, ISP

Appendix E

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

PROGRAM STATUS REPORT PART A – INITIAL NOTIFICATION CONFIDENTIAL

INSTITUTION _____	DATE OF INITIAL NOTIFICATION _____	PROGRAM STATUS NUMBER _____
-------------------	------------------------------------	-----------------------------

MODIFIED PROGRAM
 LOCKDOWN
 STATE OF EMERGENCY

AREA AFFECTED	INMATES AFFECTED	REASON
<input type="checkbox"/> INSTITUTION <input type="checkbox"/> FACILITY: _____ <input type="checkbox"/> HOUSING UNIT: _____ <input type="checkbox"/> VOCATION: _____ <input type="checkbox"/> EDUCATION: _____ <input type="checkbox"/> OTHER: _____	<input type="checkbox"/> ALL <input type="checkbox"/> BLACK <input type="checkbox"/> WHITE <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER: _____	<input type="checkbox"/> BATTERY <input type="checkbox"/> DEATH <input type="checkbox"/> RIOT / DISTURBANCE <input type="checkbox"/> GROUPING <input type="checkbox"/> OTHER: _____

BRIEF DESCRIPTION OF CIRCUMSTANCES: _____

STAFF	INJURIES	INMATE	ESTIMATED DATE OF RETURN TO NORMAL PROGRAM: _____			
<input type="checkbox"/>	ABRASIONS	<input type="checkbox"/>	INMATES INVOLVED IN INCIDENT CAUSING CHANGE IN PROGRAM		POPULATION OF AFFECTED AREA	
<input type="checkbox"/>	CONTUSIONS	<input type="checkbox"/>	TOTAL # INVOLVED	ETHNIC	TOTAL	# AFFECTED %
<input type="checkbox"/>	LACERATIONS	<input type="checkbox"/>	# PLACED IN AD SEG	BLACK	_____	_____ %
<input type="checkbox"/>	PUNCTURES	<input type="checkbox"/>	# CONFINED TO CELLS/BEDS	WHITE	_____	_____ %
<input type="checkbox"/>	BROKEN BONES	<input type="checkbox"/>	# TAKEN TO ORMD	HISPANIC	_____	_____ %
<input type="checkbox"/>	BITES	<input type="checkbox"/>		OTHER	_____	_____ %
<input type="checkbox"/>	_____	<input type="checkbox"/>		TOTAL	_____	_____ %

ASSOCIATED INCIDENT REPORT(S)

LOG NUMBER: _____ LOG NUMBER: _____
 LOG NUMBER: _____ LOG NUMBER: _____

ACTION PLAN(S)

INTERVIEWS: _____

SEARCHES: _____

OTHER: _____

NAME / SIGNATURE (WARDEN)	DATE
NAME / SIGNATURE OF REGIONAL ADMINISTRATOR'S APPROVAL	DATE

PROGRAM STATUS REPORT PART B – PLAN OF OPERATION / STAFF & INMATE NOTIFICATION

INSTITUTION	EFFECTIVE DATE OF PLAN	PROGRAM STATUS NUMBER:
-------------	------------------------	------------------------

<input type="checkbox"/> NORMAL PROGRAM	<input type="checkbox"/> MODIFIED PROGRAM	<input type="checkbox"/> LOCKDOWN	<input type="checkbox"/> STATE OF EMERGENCY
<input type="checkbox"/> INITIAL	<input type="checkbox"/> UPDATE	<input type="checkbox"/> CLOSURE	

RELATED INFORMATION (CHECK ALL THAT APPLY)

AREA AFFECTED	INMATES AFFECTED	REASON
<input type="checkbox"/> INSTITUTION <input type="checkbox"/> FACILITY: _____ <input type="checkbox"/> HOUSING UNIT: _____ <input type="checkbox"/> VOCATION: _____ <input type="checkbox"/> EDUCATION: _____ <input type="checkbox"/> OTHER: _____	<input type="checkbox"/> ALL <input type="checkbox"/> BLACK <input type="checkbox"/> WHITE <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER <input type="checkbox"/> _____	<input type="checkbox"/> BATTERY <input type="checkbox"/> DEATH <input type="checkbox"/> RIOT / DISTURBANCE <input type="checkbox"/> GROUPING <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> _____
MOVEMENT <input type="checkbox"/> NORMAL <input type="checkbox"/> ESCORT ALL MOVEMENT <input type="checkbox"/> UNCLOTHED BODY SEARCH PRIOR TO ESCORT <input type="checkbox"/> CONTROLLED MOVEMENT <input type="checkbox"/> OTHER: _____	WORKERS: <input type="checkbox"/> CRITICAL WORKERS ONLY <input type="checkbox"/> CULINARY <input type="checkbox"/> CLERKS <input type="checkbox"/> VOCATION/EDUCATION <input type="checkbox"/> CANTEEN <input type="checkbox"/> CLOTHING ROOM <input type="checkbox"/> RESTRICTED WORK PROGRAM <input type="checkbox"/> PORTERS <input type="checkbox"/> NO INMATE WORKERS	DAYROOM <input type="checkbox"/> NORMAL <input type="checkbox"/> NO DAYROOM ACTIVITIES <input type="checkbox"/> MODIFIED: _____ RECREATION <input type="checkbox"/> NORMAL <input type="checkbox"/> NO RECREATIONAL ACTIVITIES <input type="checkbox"/> MODIFIED: _____
FEEDING <input type="checkbox"/> NORMAL <input type="checkbox"/> CELL FEEDING <input type="checkbox"/> CONTROLLED FEEDING IN DINING ROOM <input type="checkbox"/> HOUSING UNIT/DORM AT A TIME <input type="checkbox"/> DORM POD AT A TIME <input type="checkbox"/> TIER AT A TIME <input type="checkbox"/> HOUSING UNIT SECTION AT A TIME <input type="checkbox"/> SACK MEAL BREAKFAST <input type="checkbox"/> SACK MEAL LUNCH <input type="checkbox"/> SACK MEAL DINNER	SHOWERS <input type="checkbox"/> NORMAL <input type="checkbox"/> ESCORTED <input type="checkbox"/> ONE INMATE PER SHOWER – OWN TIER <input type="checkbox"/> CELL PARTNERS TOGETHER – OWN TIER <input type="checkbox"/> DORM SHOWERING BY GROUP <input type="checkbox"/> CRITICAL WORKERS ONLY <input type="checkbox"/> NO SHOWERS	CANTEEN <input type="checkbox"/> NORMAL <input type="checkbox"/> NO CANTEEN <input type="checkbox"/> MODIFIED: _____ PACKAGES <input type="checkbox"/> NORMAL <input type="checkbox"/> NO PACKAGES <input type="checkbox"/> MODIFIED: _____
DUCATS <input type="checkbox"/> ALL DUCATS HONORED <input type="checkbox"/> MEDICAL DUCATS ONLY <input type="checkbox"/> CLASSIFICATION DUCATS <input type="checkbox"/> PRIORITY DUCATS ONLY	MEDICAL <input type="checkbox"/> NORMAL MEDICAL PROGRAM <input type="checkbox"/> PRIORITY DUCATS ONLY <input type="checkbox"/> MTA CONDUCT ROUNDS IN UNITS <input type="checkbox"/> INMATES ESCORTED TO SICK CALL <input type="checkbox"/> EMERGENCY MEDICAL ONLY <input type="checkbox"/> OTHER: _____	PHONE CALLS <input type="checkbox"/> NORMAL <input type="checkbox"/> NO PHONE CALLS <input type="checkbox"/> MODIFIED: _____
VISITING <input type="checkbox"/> NORMAL VISITING <input type="checkbox"/> NON-CONTACT ONLY <input type="checkbox"/> NO VISITING <input type="checkbox"/> OTHER: _____	LEGAL LIBRARY <input type="checkbox"/> NORMAL <input type="checkbox"/> APPROVED COURT DEADLINES	RELIGIOUS SERVICES <input type="checkbox"/> NORMAL <input type="checkbox"/> NO RELIGIOUS SERVICES <input type="checkbox"/> MODIFIED: _____

REMARKS:

PREPARED BY:	DATE	NAME / SIGNATURE (WARDEN)	DATE
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STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

**PROGRAM STATUS REPORT
PART C - WEEKLY STATUS / CLOSURE**

CONFIDENTIAL

INSTITUTION:	DATE OF INITIAL NOTIFICATION:	CLOSURE DATE / WEEK ENDING DATE:	PROGRAM STATUS NUMBER:
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NORMAL PROGRAM
 MODIFIED PROGRAM
 LOCKDOWN
 STATE OF EMERGENCY

SEARCHES
(IF NONE CONDUCTED, EXPLAIN REASON IN COMMENTS SECTION)

AREAS	CONTRABAND SECURED
<input type="checkbox"/> CELL <input type="checkbox"/> HOUSING UNIT <input type="checkbox"/> FACILITY <input type="checkbox"/> YARD <input type="checkbox"/> VOCATION <input type="checkbox"/> EDUCATION <input type="checkbox"/> ROOFS <input type="checkbox"/> CHASES <input type="checkbox"/> NO MAN'S LAND <input type="checkbox"/> INNER PERIMETER <input type="checkbox"/> OUTER PERIMETER <input type="checkbox"/> OTHER: _____	<input type="checkbox"/> WEAPONS: STABBING _____ SLASHING _____ <input type="checkbox"/> NARCOTICS _____ <input type="checkbox"/> ESCAPE PARAPHERNALIA _____ <input type="checkbox"/> GANG INFORMATION _____ <input type="checkbox"/> ALCOHOL _____ <input type="checkbox"/> MINOR CONTRABAND <input type="checkbox"/> OTHER: _____ <input type="checkbox"/> NONE
METAL DETECTOR <input type="checkbox"/> MATTRESSES <input type="checkbox"/> YARD <input type="checkbox"/> BODY ION SCAN (Y OR N) <input type="checkbox"/>	

NUMBER OF INTERVIEWS CONDUCTED (IF NONE, EXPLAIN REASON IN COMMENTS SECTION)	RUMOR	INFORMATION	CONFIRMED	SUBSTANTIATED BY/THROUGH
I.A.C. / M.A.C. / W.A.C. UTILIZED (IF NOT, EXPLAIN REASON IN COMMENTS SECTION) (Y OR N) <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	ONE ON ONE GANG RELATED "STREET" RELATED STAFF COMPLAINTS NARCOTICS / ALCOHOL _____ _____ _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	CONFIDENTIAL SOURCES PHYSICAL EVIDENCE MAIL INTERVIEWS DOCUMENTS TOTALITY OF CIRCUMSTANCES _____ _____

DECISION

CONTINUE PROGRAM STATUS
 RETURN TO NORMAL PROGRAM

COMMENTS

REASON(S) FOR DECISION

EFFORTS MADE TO RETURN TO NORMAL PROGRAM

NAME / SIGNATURE (WARDEN)	DATE
NAME / SIGNATURE OF REGIONAL ADMINISTRATOR'S APPROVAL (CLOSURE ONLY)	DATE

WEEKLY PROGRAM STATUS REPORT
WEEK OF MONDAY THROUGH SUNDAY

CONFIDENTIAL

PART D

INSTITUTION	FACILITY	BLDG(S)	ETHNIC	TYPE	DATE	PROGRAM STATUS #	REASON	PROGRAM CHANGES THIS WEEK	POPULATION	
									TOTAL	AFFECTED %

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTION

**PROGRAM STATUS REPORT
PART E – SIXTY DAY STATUS / UNLOCK
STRATEGY**

CONFIDENTIAL

INSTITUTION:	DATE OF INITIAL NOTIFICATION:	SIXTY DAY NOTIFICATION TO REGIONAL:	PROGRAM STATUS NUMBER:
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NORMAL PROGRAM
 MODIFIED PROGRAM
 LOCKDOWN
 STATE OF EMERGENCY

COMMENTS ON CONFERENCE WITH REGIONAL ADMINISTRATOR:

DATE OF LAST RECREATIONAL YARD FOR AFFECTED INMATE (S):	DATE OF LAST DAYROOM ACCESS FOR AFFECTED INMATE (S):	DATE OF LAST CANTEEN ACCESS FOR AFFECTED INMATE (S):
DATE OF LAST TELEPHONE ACCESS FOR AFFECTED INMATE (S):	DATE OF LAST CONTACT VISITS FOR AFFECTED INMATE (S):	DATE OF LAST DINING HALL FEEDING FOR AFFECTED INMATE (S):
UNLOCK CONFERENCE:	UNLOCK PLAN TO REGIONAL:	UNLOCK PLAN INITIATED:
		UNLOCK COMPLETED / SUBSEQUENT CONFERENCE (S):

UNLOCK CONCLUSION

CONTINUE UNLOCK PLAN
 RETURN TO NORMAL PROGRAM
 UNLOCK STOPPED

COMMENTS:

CURRENT ACTION TAKEN BY INSTITUTION:

NAME / SIGNATURE (WARDEN)	DATE
NAME / SIGNATURE OF REGIONAL ADMINISTRATOR'S APPROVAL (CLOSURE ONLY)	DATE