



February 16, 2010

Professor Manfred Nowak
U.N. Special Rapporteur on Torture
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10
Switzerland

Dear Professor Nowak,

We represent “Robert Doe,”¹ an eighteen year old boy who has been incarcerated by the State of Montana, U.S.A, since he was fifteen years old following his September 20, 2007 conviction on two counts of assault on a peace officer while incarcerated in a state juvenile facility.

We are writing to inform you about our client’s mistreatment by State authorities in Montana and to request that you intervene as a matter of urgency to bring an end to this mistreatment and to urge Montana State officials, for the remainder of his term of imprisonment, to treat Robert in a manner that is consistent with applicable international human rights laws and standards, including his right to be free from torture and other forms of cruel, inhuman or degrading treatment.²

¹ Because Robert was a minor at the time the complaint was filed, and because of the personal and sensitive nature of the information contained in the complaint, a pseudonym is used. However, his name may be released on a confidential basis should it be necessary for purposes of an investigation.

² It is important to bear in mind that Robert’s case is not isolated; rather, it is a stark example of a widespread and systemic practice in the United States of treating child prisoners as adults and subjecting them to tortuous and inhumane conditions of confinement. The United States itself has highlighted the problem in a number of recent investigations the United States Department of Justice has conducted into state prison facilities and the media frequently reports on the issue. *See e.g.*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Residential Facility Census, 2006: Selected Findings* (December 2009), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/228128.pdf>; Carrie Johnson, *Justice Study Tracks Rape, Sexual Abuse of Juvenile Inmates*, WASH. POST., Jan. 8, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/01/07/AR2010010703849.html>; Martha T. Moore, *Youth Prison System Under Pressure*, USA TODAY, Feb. 3, 2010 available at http://www.usatoday.com/news/nation/2010-02-02-youth-prison-juvenile_N.htm; *Va. Legislators Should Embrace Bills to Protect Juveniles in Prison*, WASH. POST. Feb. 5, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/04/AR2010020404418.html>.

Robert is presently incarcerated at the Montana State Prison, an adult detention facility. He has been diagnosed as suffering from mental illness, including Post-traumatic Stress Disorder, Major Depression, and Conduct Disorder. Despite his child status and known history of mental illness, not only has Robert been incarcerated in an adult facility and placed in the general prison population, he has also been assigned to the Special Housing Unit (“SHU”) of that prison and repeatedly placed on Behavior Management Plans (“BMPs”) while in the SHU.

By way of background, the SHU, otherwise known as Restricted Administrative Segregation, is a minimum of two-year punitive segregation, where inmates are housed in solitary confinement for 23-hours a day, five days a week. Inmates placed in the SHU are not permitted visits or phone calls until achieving one year of clear conduct. A BMP, another counter-therapeutic and inhumane procedure used by Montana State Prison, is aimed at changing dangerous or assaultive behavior that is not associated with a mental illness. While on an active BMP, an inmate is stripped naked and deprived of all privileges until conformed conduct is exhibited.

We attach copies of Montana Department of Corrections policy on the SHU and administration of BMPs. These documents set forth in detail the conditions which apply in the SHU and treatment applied pursuant to BMPs in the Montana State Prison.

Like many children incarcerated in prisons around the United States,³ Robert has a long, well-documented history of severe physical and emotional abuse and neglect. For several years during his early childhood, Robert’s father would beat him with belt buckles and wire clothes hangers and encourage his half-siblings to beat him with bats. Several times, Robert’s father locked him in a room for days or a week at a time, and would verbally abuse him.

On September 20, 2007, following his plea agreement on 2 counts of assault on a peace officer, Robert was sentenced to the Montana Department of Corrections for five years, with a recommendation that he be placed in a three-month “boot camp” program before being paroled for the remainder of his sentence.⁴ Robert was sent to the Department’s assessment center immediately following his plea agreement, however, after he was involved in a verbal and physical altercation with a supervisor in February 2008, Robert, then age fifteen, was transferred to the Montana State Prison. Despite his young age and record of mental illness, Robert was placed with adults in the general population of the prison. After his involvement in a series of

³ Moore, *supra* note 2; *See also* Human Rights Watch Statement for the Record, Senate Judiciary Committee, Subcommittee on Human Rights and the Law, *Mental Illness, Human Rights, and U.S. Prisons*, Sept. 22, 2009 and associated references available at http://www.hrw.org/sites/default/files/related_material/Human%20Rights%20Watch%20Statement%20for%20the%20Record_9_22_09.pdf.

⁴ Boot camps have traditionally been part of the juvenile correctional system in the U.S. They implement the same training techniques applied to military recruits with a purported aim to reform and teach young offenders more socially acceptable patterns of behavior. Boot camps can be governmental as well as private institutions.

incidents at MSP for which he received disciplinary sanctions, in February 2009, Robert was transferred to the SHU facility of the prison and has been held there ever since, nearly twelve months now.

ROBERT'S CONDITIONS OF IMPRISONMENT

While in the SHU, Robert has been subjected to prolonged periods of isolated confinement and sensory deprivation. He is unable to receive phone calls or visits from family or friends. In accordance with policies implemented by the Montana Department of Corrections, only after he maintains one year of clear conduct will Robert be permitted contact with the outside world; one visit per month and one 15-minute phone call per month to immediate family members.

To date, Robert has spent almost ten months in isolation, deprived of normal, social interactions with his family and even other inmates. Apart from the times when he showers or spends in recreation, Robert is confined to his cell. His recreation time consists of walking alone in a small, concrete-enclosed caged pen, with only a small area open to the outside for fresh air and sunlight. His interaction with prison staff is minimal, and interaction with other inmates is virtually nonexistent.

In SHU, Robert is deprived of personal property and provided with only the minimum of canteen items. Every meal is delivered to his cell and he eats on his own. He is not permitted to apply for prison jobs or to engage in hobbies. He is also denied access to educational and recreational opportunities that other inmates enjoy.

While detained in MSP, Robert has been subjected to conditions of imprisonment that have caused him to relive his childhood trauma. Robert has twice attempted suicide by biting through the skin on his wrist, puncturing a vein with his teeth and then spraying his blood on the window and walls of his cell. Despite his history, these recent suicide attempts and the overall fragile state of his mental health, Robert is not provided with adequate mental health treatment; it is rudimentary at best. It consists of a mental health staff member walking through the unit once a week. During these rounds, the staff member knocks on each cell door and asks if the inmate has any mental health concerns. If he believes he does, he is forced to relay his mental health concerns by shouting from behind the cell door, within hearing range of other inmates and no allowance for confidentiality.

Moreover, while in the SHU, if Robert exhibits conduct that prison staff deems unacceptable, he may be subjected to a BMP. Since arriving at Montana State Prison, Robert has been placed on a BMP at least six times.

In accordance with DoC practice, the first step of a BMP lasts at least 48 hours. During this phase, Robert is virtually stripped naked, except for a short gown which provides minimal coverage and warmth. He is then placed in a bare, padded cell that is constantly illuminated. There is no running water in the cell and a hole in the floor serves as a toilet. Robert is provided with a security mattress and blanket for sleeping, which is almost impossible given the brightness of the cell. Robert receives minimal water and is only allowed to eat NutraLoaf, a

food substitute comprised of different ingredients mixed together. If Robert maintains what prison staff consider good behavior over this initial 48-hour period he progresses to the second phase of the program. Although housed in isolation in the same illuminated cell, during this phase, Robert is given regular prison clothing and a pillow. If he maintains good conduct for a further 24 hour period, Robert then progresses to phase three; water is turned on in his cell and he is given regular meals and regular bedding materials. While the BMP is in effect, if Robert breaks any of the prescribed rules during these three phases or even after returning to solitary confinement, the BMP is implemented commencing at phase 1 until he maintains the requisite period of good conduct. BMPs can be in place for 6 months at any one time.

STATE COURT LEGAL PROCEEDINGS

On December 16, 2009, we filed a law suit on behalf of our client in Montana State court. We enclose a copy of the legal complaint for your information. As you will note, the complaint contains detailed factual allegations, which we would be grateful if you would take into consideration during your investigation. The law suit challenges our client's conditions of confinement, alleging that they violate federal, state and customary international laws.

ROBERT'S CONDITIONS OF CONFINEMENT VIOLATE INTERNATIONAL HUMAN RIGHTS LAWS AND STANDARDS

The United States is a party to the International Covenant on Civil and Political Rights (ICCPR) and the U.N. Convention on Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The United States is also a signatory to the United Nations Convention on the Rights of the Child (CRC).⁵ All three prohibit the treatment to which our client has been and continues to be subjected.

Article 7 of the ICCPR and Articles 2 and 16 of CAT prohibit torture and all other forms of cruel, inhuman or degrading treatment. Neither treaty recognizes any restrictions on these prohibitions. Article 10(1) of the ICCPR⁶ and The United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) specifically require that any detained person not be subjected to such treatment. Articles 2 and 37 of the CRC, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty⁷ the United Nations Guidelines for the Prevention of Juvenile Delinquency ("The Riyadh Guidelines")⁸ and the United Nations Standard Minimum Rules for

⁵ As a signatory to the CRC, the United States has an obligation not to take any measures "which would defeat the object and purpose of [the] treaty." Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, *entered into force* Jan. 27, 1980. International law, including article 1 of the CRC, recognizes that everyone eighteen years or younger is a child and entitled to the protections of the CRC. The U.S. Supreme Court has also recognized this standard in the juvenile criminal justice context. *Roper v. Simmons*, 543 U.S. 551 (2005).

⁶ Article 10(1) in relevant part requires that prisoners be "treated with humanity and with respect for the inherent dignity of the human person."

⁷ G.A. res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990).

⁸ G.A. res. 45/112, annex, 45 U.N. GAOR Supp. (No. 49A) at 201, U.N. Doc. A/45/49 (1990).

the Administration of Juvenile Justice (“The Beijing Rules”)⁹, require that state authorities take special measures to ensure that children in particular are not subjected to torture and other forms of mistreatment.

International law has long recognized in assessing whether treatment constitutes torture or the lesser, cruel, inhuman or degrading treatment or punishment, that the status of the victim be taken into consideration.¹⁰ Elements such as a victim’s age and mental health may therefore aggravate the effect of certain treatment so as to make it torture as opposed to cruel, inhuman or degrading treatment. In addition, in view of their status, international law and standards require that children in the custody of the state should be separated from the adult populace.¹¹ And, that detaining children with adults may in itself constitute a form of cruel and inhuman treatment or punishment.¹²

Numerous international and regional human rights courts and bodies that have assessed conditions of imprisonment or detention similar to those to which Robert is currently subjected have found them to amount to cruel, inhuman or degrading treatment or punishment rising to the level of torture.¹³

REQUEST FOR THE URGENT INTERVENTION OF THE SPECIAL RAPPORTEUR

Based on the information above and which we have enclosed, we respectfully request that you take up our client’s case with the United States and Montana state officials, and undertake an

⁹ G.A. res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

¹⁰ See e.g., *Vuolanne v. Finland*, HRC Communication No. 265/1987 (April 7, 1989) at ¶ 9.2.

¹¹ See ICCPR, arts. 10(2)(b) and 10 (3); SMR, RULES 85(2) and 8(d); U.N. Rules for the Protection of Juveniles Deprived of their Liberty, UNGA Res 45/113 (December 14, 1990) rules 28 and 29.

¹² See e.g., Human Rights Committee, *Damian Thomas v. Jamaica* (1999) U.N. Doc. CCPR/C/65/D/8001998, ¶ 6.5.

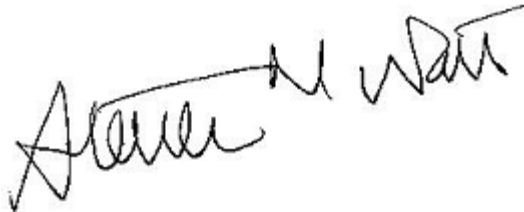
¹³ See Human Rights Committee, ICCPR, General Comments 7 and 20 at ¶ 6 (noting “that prolonged solitary confinement . . . may amount to acts prohibited by article 7”); Committee Against Torture, Concluding Observations on the United States of America (2006) U.N. Doc CAT/C/USA/CO/2 (July 25, 2006) at ¶ 36 (expressing concerns about the prolonged isolation periods to which adult detainees were subjected in maximum security prisons and noting in particular “the effect such treatment has on their mental health, and that its purpose may be retribution, in which case it would constitute cruel, inhuman or degrading treatment or punishment.”); *Brough v. Australia* (2006) U.N. Doc CCPR/C/86/D/1184/200317 at ¶ 9.4 (finding a violation of article 10 of the ICCPR where the complainant, a juvenile aboriginal boy with a known history of mental illness, was subjected to extended *incommunicado* confinement, exposed to artificial light for a prolonged period and had his clothes and blanket removed.); Istanbul Statement on the Use and Effects of Solitary Confinement adopted at the International Psychological Trauma Symposium in Istanbul (December 9, 2007) (noting that “[a]s a general principle solitary confinement should only be used in exceptional cases, for as short a time as possible and only as a last resort; that meaningful contacts must be maintained for prisoners subjected to solitary confinement; that the use of solitary confinement should be absolutely prohibited for . . . mentally ill prisoners, and children under the age of 18 . . .” U.N. Special Rapporteur on Torture, Report to the General Assembly, U.N. Doc A/63/175 (July 28, 2008) ¶¶ 77-85; *C v. Australia* (2002) U.N. Doc CCPR/C/76/D/900/1999, ¶ 8.4 (finding “the continued detention of the author when the State Party was aware of the author’s mental condition and failed to take steps necessary to ameliorate the author’s mental deterioration constituted a violation of his rights under article 7.”)

immediate review of Robert's treatment under the Urgent Appeal procedure. We request that you advise prison officials to refrain from subjecting Robert to these tortuous and inhumane conditions of confinement and urge Montana state prison officials to treat Robert in a manner that is consistent with international human rights laws and standards.

If you have any additional questions please do not hesitate to contact us.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven M. Watt". The signature is written in a cursive style with a long horizontal line extending from the first letter.

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A handwritten signature in black ink, appearing to read "Niki Zupanic". The signature is written in a cursive style with a prominent loop at the end.

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