IN RE McCLAIN ANGELINO

Civil Action No. 14-172

Supreme Court, Trial Division
Republic of Palau

Decided: November 25, 2014

Counsel for Petitioner ..... Allison Jackson
Counsel for Respondent ..... John Bradley

[1] **Criminal Procedure**: Habeas Corpus

There are multiple ways imprisonment or restraint can be unlawful. One is the most classic case: a defendant's very conviction may, itself, have been contrary to law, and in such cases the writ serves to order his release from imprisonment. But the situation or conditions of a defendant's confinement can also be the subject of a habeas petition, as no government entity—be it law enforcement, the courts, the prisons, or any other state agent—may lawfully detain a defendant in a fashion or in a place that is legally forbidden. A petitioner whose conviction and sentence is lawful, but who is detained in an unlawful fashion—such as in cruel, inhumane, or degrading conditions—is entitled to relief, but only from the unlawful nature of the detainment—not from the conviction itself.

[2] **Criminal Procedure**: Habeas Corpus

If the conditions of imprisonment are what make it unlawful, then this Court is within its authority to inquire into the cause of—and, if necessary, the remedy for—the unlawful element of the restraint.

[3] **Civil Procedure**: Injunctions
Injunctions: Adequacy of Remedy at Law

Were Habeas Corpus inapplicable or unavailable, the Court, faced with grievous constitutional harm, would have no choice but to proceed in equity. But because the Writ shall issue granting Petitioner's requested relief, no injunction needs to issue at this time.

Order Granting Writ of Habeas Corpus

The Honorable R. ASHBY PATE, Associate Justice:

Four days ago, on November 21, 2014, Petitioner McClain Angelino filed an Emergency Application for Writ of Habeas Corpus.[1] In it, the Petitioner alleges that he has been—and continues to be—subjected to uninterrupted isolation and cruel treatment in the solitary confinement quarters of the Koror Jail for more than the past three consecutive weeks, and that the conditions of his impermissibly long confinement constitute a violation of his fundamental rights under the Constitution of the Republic of Palau to be free from "[t]orture and cruel, inhumane or degrading treatment or punishment." Palau Const. Art. IV § 10. The Court promptly conducted both a hearing and a fact-finding visit to the solitary confinement quarters of the Koror Jail, during which the Republic and the Petitioner presented argument and evidence regarding the nature and circumstances of Petitioner's imprisonment.[2] Because the conditions of the solitary confinement quarters fail to meet even the minimum, internationally recognized standards of human decency, and because the manner and duration of the Petitioner's confinement therein violate the Koror Jail's own policies and procedures on solitary confinement, the Petitioner's confinement in the solitary confinement quarters of the Koror Jail constitutes "cruel, inhumane or degrading treatment and punishment" in violation of the Constitution of the Republic of Palau.

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[1] Petitioner is currently serving a sentence for his conviction in Juvenile Case Nos. 11-029 & 11-032. But Petitioner raised this issue first as a request for modification of his conditions of confinement following his arraignment on separate charges stemming from a recent escape attempt from the Koror Jail, captioned as Criminal Case No. 14-191. The next day, through counsel, Petitioner then filed the same request as a motion for a writ of habeas corpus as part of that same case. The law requires that a writ of habeas corpus must be applied for in a separate civil action, but, given the Court's obligation to construe habeas applications liberally, the Court, having evaluated Petitioner's pleading, found that the motion, while improperly filed, fulfilled the purpose of 18 PNC § 1102, because it provided sufficient information for the Court to assess the viability of the petition and for the Republic to intelligently answer. *See* 18 PNC § 1102; *Koror State Government v. Ngiraingas*, 4 ROP Intrm. 15, 18 (1993). As such, the Court, with the consent of the parties, directed the Clerk's office to open a new civil matter and file Petitioner's motion therein as an Emergency Application for Writ of Habeas Corpus.

[2] In addition to BPS officers and staff, the following individuals attended the site visit: Attorney General John Bradley, representing the Republic, and Assistant Public Defender Allison Jackson, representing the Petitioner. Accompanying the Court were Court Counsel Peter Ghattas, Courtroom Clerk Sherwin Yamaguchi, Chief Marshal Johnny Sokau, and Deputy Marshal Raldston Ngirengkoi.

Now, having considered the testimony of the parties at the hearing, and having seen first-hand the cruel and inhumane conditions inside the solitary confinement quarters in the Koror Jail, the Court hereby grants Petitioner's Emergency Application for Writ of Habeas Corpus and issues the following Order in support thereof.[3]

BACKGROUND

I. Site Visit

Although the Court conducted its site visit to inspect the solitary confinement quarters in the Koror Jail after the hearing on Petitioner's Application for Writ of Habeas Corpus, for purposes of this Order, a description of the conditions of Petitioner's confinement is included before a description of the hearing itself, in order to shed light on the testimony of the various parties. Also, before proceeding, the Court notes that, although the Petitioner is a 19-year-old male, who has been incarcerated off and on at least since he was 14 years old for various assaults and burglaries, as well as at least two unlawful escape attempts, he stands at most 5'3 tall and weighs at most 120 pounds. That is, at first glance, the Petitioner could easily pass for a middle school aged boy, no older than 13 or 14 years of age. The following picture of what our team witnessed over the next five minutes will be told—uncharacteristically for this Court's orders—in the first person and will be deliberately descriptive and graphic.

On site, Lieutenant Ricky Ngiraked and other security personnel and BPS officers promptly led us into the solitary confinement quarters, which is a diminutive concrete structure located only a few steps away from the Prisoners' Gift Shop and the reception area, just across a small courtyard. Upon entering the structure, we found ourselves in a dismal anteroom, with three cells on each side, marked by large iron doors, minimal light coming in from the open door behind us, as well as from the high-set rusted fencing dividing the joints in the ceiling between the solitary confinement area and the open-air general population recreation section of the jail. Lieutenant Ngiraked directed us to the first solitary confinement cell on the left, indicating that it was the unit in

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[3] After the site visit and with the consent of the parties, the Court issued a Temporary Writ of Habeas Corpus ordering that Petitioner be immediately removed from solitary confinement and housed in the Koror Jail's general prisoner population until he could be relocated to the confined Level 1 psychiatric care of the Belau National Hospital, Division of Behavioral Health, beginning at 9:00 a.m. November 22, 2014, for a period not to exceed 72 hours. Then, on November 24, 2014, the Court extended the Temporary Writ for an additional 48 hours. These provisional writs were issued, pending the completion of this Order, both because of the Court's finding that the situation presented an emergency warranting immediate relief and because of the mandate of 18 PNC § 1106 that writs of habeas corpus must be ruled upon "without delay or formality."

which Petitioner had been imprisoned, uninterrupted, for the past six full days since his last thirty-minute shower break.

Upon opening the door of the concrete cubicle, which was roughly eight feet by eight feet, I was in a room of near total darkness, illuminated only by the diffuse light coming from the open door behind us. There was no light bulb in the only exposed and broken socket set in the ten-foot ceiling, and the hard concrete floor was strewn with trash, what appeared to be broken glass, dank wet magazine pages, and soiled clothes. The stench of urine and feces was overpowering. There was no sink, no toilet, and no ventilation other than a small grated opening in the iron door, no bed or bedding, no light, and no drain.

I asked Deputy Marshal Raldston Ngirengkoi to lock me inside the cell, alone, in order to assess the intensity of the darkness and the conditions in the cell in a fashion resembling how the Petitioner has experienced them.[4] As the door closed, the heat and the stench combined were so overwhelming that I had to resist the urge to physically be sick. After the door closed, at least eighty-percent of the cell was in total darkness, and only a pale column of diffuse light came in through the narrow grating in the iron door, and that was only because the door to the outside remained ajar as a result of our visit. With the exterior door of the structure closed and locked—as presumably it would routinely be—and certainly between sundown and sunrise, the cage would almost certainly be in utter and complete darkness. The sounds from the outside, prisoners murmuring and clanging doors, weirdly reverberated in the confined space, as they would in an echo chamber. The effect was a disorienting combination of utter sensory deprivation, at least with respect to vision and touch, coupled with a nauseating sensory overload of putrid smell and booming sound. After approximately one minute, I asked to be released.

Lieutenant Ngiraked then showed us the third and last cell on the west side of the anteroom, which he indicated had imprisoned the Petitioner for the first three weeks or more of his most recent confinement. This cell, only slightly larger, was also shrouded in darkness and was marked by a hole in the concrete wall, which the Lieutenant indicated the Petitioner had created by punching the wall continuously. Three or four plastic water bottles lined the floor of the north wall, and the bottles were filled to the lip with a thick yellow liquid, one of which had toppled over and was spilling out onto the floor. I inquired from the Lieutenant about the bottles and he informed me that they contained the Petitioner's urine. The urine bottles had evidently been sitting there in the dark and in the heat for over a week, untouched,

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[4] It is likely that I actually observed the cell in its best possible state—conditions significantly less serious than Petitioner actually has suffered. That is, the door had presumably been open and ventilating during the day while Petitioner was at the courthouse and it is a near certainty that the stench, heat, and general atmosphere would be significantly worse after the cell had been closed for days on end.

since the Petitioner had been relocated to the cell next door. I then inquired whether the Petitioner was allowed out of his cell to defecate, and the Lieutenant informed me that the Petitioner was required to defecate on the floor or into small plastic shopping bags, which presumably remained in the cell with him for long periods of time. I exited the cell, and our group then reconvened in the reception area of the Koror Jail to discuss the Petitioner's temporary relocation.

II. Hearing

At the outset of the hearing, after a brief procedural discussion, Assistant Public Defender, Allison Jackson, clarified for the record that the Petitioner's application alleges that Petitioner's constitutional right to be free from "[t]orture, cruel, inhumane or degrading treatment or punishment," had been violated essentially in three ways: (1) the conditions in the solitary confinement quarters of the Koror Jail, alone, constituted cruel and inhumane treatment, (2) the length of time and the manner in which the Petitioner had been confined in those conditions constituted cruel and inhumane treatment, and (3) the conditions, as particularly applied to this Petitioner, who suffers from psychological issues, both predating and allegedly caused by his extended confinement, constituted cruel and inhumane treatment.

In support of the Petitioner's application, Ms. Jackson first called Dr. Maria Monteforte, whom the Court promptly recognized as a mental health expert from the Division of Behavioral Health at the Belau National Hospital. Dr. Monteforte testified that she had examined the Petitioner, and had questioned him at the Koror Jail for one hour on the morning of November 21, 2014, but she admitted that she had not actually seen the conditions in which Petitioner had been confined. Having reviewed Petitioner's medical records, Dr. Monteforte testified that, in 2008, 2010, and 2012, Petitioner had been consistently diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and, although he had been started on medication, he had been noncompliant in taking it as prescribed. Dr. Monteforte testified that, during her interview with Petitioner, he freely admitted to having tried to escape from the Koror Jail, predominantly because of his fear of the "dark room," which she explained was the term the Petitioner used for his cell in the Koror Jail's solitary confinement quarters. She testified that, because of his ADHD condition, he is prone to restlessness and racing thoughts and that the Petitioner had informed her that, during his confinement, he heard "a voice in his head telling him to escape," a symptom Dr. Monteforte described as consistent with a patient experiencing auditory hallucinations. She testified that, as a result of his confinement, the Petitioner admitted to experiencing extreme mood swings, including anger and depression. She testified that she had performed a mental status exam on the Petitioner and, although she admitted she had not diagnosed the Petitioner with any particular psychosis secondary to these alleged auditory hallucinations, she confirmed that she was considering a diagnosis of bi-polar disorder and that she wanted to evaluate the Petitioner further to determine whether an additional diagnosis might be appropriate. At the time of her

evaluation, other than learning of Petitioner's prior convictions for assault, she was unaware of his criminal history, which also includes a burglary and multiple escape attempts.

Next, Ms. Jackson called Mr. Alex Ngiraingas, an internationally certified counselor and social worker for the Division of Behavioral Health, who testified that he has known the Petitioner "for a long time," since he was first referred to him as a 14 year old, presumably after the Petitioner's first encounter with the criminal justice system. Mr. Ngiraingas testified that Petitioner told him that he had been housed in solitary confinement even while serving his sentence as a juvenile, that is, prior to his most recent incarceration in solitary confinement, and that during the two and a half years that Petitioner has been in the Koror Jail, Petitioner has spent "most of his time" in solitary confinement. Mr. Ngiraingas testified that he has personally seen the "dark room" and that his impression of Petitioner was that he was emotionally and mentally stressed, and showed signs of intense psychological stress.

Petitioner then called Department of Corrections Lieutenant Ricky Ngiraked, who appeared in his capacity as the official designee of the Koror Jail for the hearing. The Court first questioned Lieutenant Ngiraked, after which Attorney General John Bradley and Ms Jackson completed their own examination. During the Court's examination, Lieutenant Ngiraked confirmed that the Petitioner had been allowed no exercise or access to light or the outside in at least three weeks, other than having been allowed to shower approximately once a week for a period of less than thirty minutes each time. He stated that whether Petitioner was allowed out to shower, depended not on Petitioner's needs, but on whether the Koror Jail had the manpower to allow him to shower. He further stated that the last time the Petitioner had been allowed out of his cell for any reason, prior to his November 20, 2014 arraignment before this Court, was on Friday, November 14, 2014, for a thirty minute shower break. During the period of the Petitioner's solitary confinement, Lieutenant Ngiraked confirmed that the Petitioner has had no human contact, other than when his meals are brought to him and other than hearing the other prisoners who may be housed in solitary confinement at that time, which, over the past 30 days, he testified included two other so-called high risk prisoners.

Lieutenant Ngiraked testified that the Petitioner had been placed in solitary confinement immediately following his most recent escape attempt on October 20, 2014. Lieutenant Ngiraked also confirmed that, during Petitioner's time in the Koror Jail over the past two and a half years, which included time during which he was serving as a juvenile, the Petitioner had spent a great deal of time in the "dark room." He clarified that the only reason why a solitary confinement cell is sometimes referred to as a "dark room" is because, according to him, some inmates have broken the light bulbs. So, the officers have simply chosen to leave the room in complete darkness.

Lieutenant Ngiraked further testified that, although the recommended capacity of the Koror Jail is to house between 50 and 60 prisoners, the Koror Jail is currently exceeding

capacity almost by double, housing over 90 inmates. He testified that someone as small and seemingly unimposing as Petitioner can escape as many as three times because "the Koror Jail is not well secured, the building is very old. The only recent improvement is a fence," but the fence is towards the back side of the jail and the front side is not secured, "so basically any inmate can escape when he wants to." To the contrary, he testified that it is not possible to escape from solitary confinement.

After the Court's examination, Mr. Bradley questioned Lieutenant Ngiraked about the Koror Jail's policies and procedures related to solitary confinement. During this examination, he admitted that, although one of the rules requires that a prisoner in solitary confinement shall only be confined for 23 hours each day, and be allowed one hour outside, the Petitioner had only been allowed out once, and only for thirty minutes, in the past week. He admitted that the Koror Jail's treatment of the Petitioner had violated its own rules regarding prisoner treatment, but insisted that they planned on fixing that. Mr. Bradley then asked how long the Koror Jail planned on continuing to house Petitioner in solitary conferment, but he stated that he did not know because the Petitioner is a "high-risk escapee" and the investigation into the Petitioner's escape was ongoing, and he would only be allowed out after a hearing. At this point in the examination, Mr. Bradley then inquired about the hearing procedures outlined in the Koror Jail's policies and procedures, and Lieutenant Ngiraked admitted that the rules require that a hearing take place within 72 hours of the prisoner's confinement in solitary confinement. He admitted that, even after 30 full days, the Petitioner had still not received a hearing and that the Petitioner's solitary confinement, which was now approximately ten times longer than the 72 hour requirement, was a violation of the Koror Jail's own rules. He testified that the Koror Jail intended to start following its own rules and to allow the Petitioner outside at least one hour each day.

Having considered the facts underlying the Petitioner's Emergency Application for Writ of Habeas Corpus, the Court now turns to the controlling law in this Republic governing basic, internationally accepted standards for when confinement constitutes cruel, inhumane or degrading treatment or punishment.

CONTROLLING LAW

Article IV of our Constitution enumerates the fundamental rights of and declared by the people of Palau. Some of these rights belong only to Palauans, such as the right to preferential treatment of citizens and the right to migrate freely. *See, e.g.*, Palau Const. art. IV §§ 5, 9, 12. Some protect certain classes of people from certain government actions, such as the prohibition against governmental impairment of the freedom of the press or the free exercise of religious belief. *See, e.g.*, *id.* §§ 1, 2, 3. But some of these specifically enumerated rights apply universally, regardless of the offender or the protected individual. *See, e.g.*, *id.* §§ 7, 10, 11.

One of those universal rights is the right of people—of *all* people—to be free from "torture and cruel, inhumane or degrading treatment or punishment." Palau Const.

art. IV § 10. Indeed, the people of this great Republic found this universal right to be so crucial as to warrant its specific inclusion in the Constitution; no qualifications are placed on this right, nor are any exceptions recognized. That is, the right attaches by virtue of a person simply being a human being, entitled to dignity and decent treatment, and this right cannot be forfeit by an individual's actions, however insidious, or stripped from him by force of law. Such rights, inalienable and of the utmost importance, must have remedies when their invasion is alleged. *See Kazuo v. ROP*, 1 ROP Intrm. 154, 172 (1984) (quoting *People v. Tanner*, 596 P.2d 328, 359 (1980) (Baird, C.J., concurring in part and dissenting in part) ("As judges, we have taken an oath of office to uphold the Constitution of [the Republic]. Thus, when [an act of government] contravenes the Constitution, this Court cannot defer to [a separate branch of government] and remain true to its constitutional mandate. However controversial the question, the court cannot avoid an issue which goes to 'the very core of our judicial responsibility.' ");[5] s*ee also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 162–63 (1803) ("[I]f he has a right, and that right has been violated, do the laws of his country afford him a remedy? The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury . . . .").

The remedy Petitioner requests is a Writ of Habeas Corpus, another right so fundamental that the Constitution not only guarantees its availability, but also carefully enshrines that it may never be suspended. Palau Const. art. IV § 7. The Great Writ, as it has long been called, empowers a court effectively to exercise appellate review over the nature and circumstances of a person's confinement. *Ex Parte Bollman*, 8 U.S. (4 Cranch) 75, 95–96, 101 (1807). It is further expressly authorized by act of the legislature and procedurally regulated at 18 PNC §§ 1101–08, which allows "[e]very person unlawfully imprisoned or restrained of his liberty under any pretense whatsoever . . . [to] apply for a writ of habeas corpus to inquire into the cause of such imprisonment or restraint."

[1] There are, of course, multiple ways imprisonment or restraint can be unlawful. One is the most classic case: a defendant's very conviction may, itself, have been contrary to

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[5] In *People v. Tanner*, Chief Justice Baird spoke of being bound by his oath to uphold the Constitution of the State of California; the *Kazuo* Court spoke of being bound, as required by Article XV Section 10 of the Constitution of the Republic of Palau, by the laws of the Trust Territory—namely, the Constitution of the United States. Although much has changed in the Republic even since the time of *Kazuo*, this Court, operating within this sovereign Republic, is similarly bound by an absolute oath, first and foremost, to the Constitution of the Republic of Palau. To whatever extent an act of government contravenes the requirements and prescriptions of our Constitution, it is the fundamental responsibility of the Judiciary, when petitioned by one whose constitutional rights have been violated, to grant such relief.

law, and in such cases the writ serves to order his release from imprisonment. *See In re Bonner*, 151 U.S. 242, 256, 14 S. Ct. 323, 325 (1894). But the situation or conditions of a defendant's confinement can also be the subject of a habeas petition, as no government entity—be it law enforcement, the courts, the prisons, or any other state agent—may lawfully detain a defendant in a fashion or in a place that is legally forbidden. *See id*. at 327 (using the writ to transfer a prisoner from a prohibited facility to an authorized one, but not releasing him from custody); *see also Wilwording v. Swenson*, 404 U.S. 249, 249–51, 92 S. Ct. 407, 408–09 (1971) (per curiam) (noting that a prisoner's petition challenging living conditions in a Missouri state penitentiary was concurrently cognizable in federal habeas corpus and under statutory civil rights law); *Johnson v. Avery*, 393 U.S. 483, 484, 490, 89 S. Ct. 747, 748, 751 (1969) (reinstating the district court's writ ordering the petitioner released from disciplinary confinement, but not from prison, when his discipline was based on an unconstitutional rule preventing prisoner legal assistance). Put simply, a petitioner whose conviction and sentence is lawful, but who is detained in an unlawful fashion—such as in cruel, inhumane, or degrading conditions—is entitled to relief, but only from the unlawful nature of the detainment—not from the conviction itself. *Bonner,* 14 S. Ct. at 327.

Addressing the actual substance of the Petitioner's application for relief, no clear standard exists in the Republic defining what sort of confinement constitutes "torture or cruel, inhumane or degrading treatment or punishment." The Appellate Division of this Court has only addressed the meaning of the clause in the context of the *length* of sentencing, determining that the legislatively enacted mandatory minimum sentences for certain drug offenses did not constitute cruel, inhumane or degrading punishment. *See Eller v. ROP*, 10 ROP 122, 131 (2003). But although the Appellate Division has, to date, been silent on defining precisely the kind of conditions that might be considered "cruel, inhumane, or degrading treatment or punishment," it has in fact recognized the source of this language—not, as one might expect, as coming from the United States' prohibition against "cruel and unusual punishment," but rather—as derived from the United Nations *Universal Declaration of Human Rights*. *See Kazuo*, 1 ROP Intrm. at 162 (citing the *Universal Declaration of Human Rights*, 6A Res. 217 (111), Dec. 10, 1948).[6]

[6] At the time of *Kazuo*, Palau was still part of the Trust Territory, and the Court was actually applying the agreement of the United States. Palau, however, having both adopted the language of this clause in its Constitution and having signed—but not yet ratified—the United Nations *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment*, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], has similarly pledged itself "to prevent in any territory under its jurisdiction [] acts of cruel, inhuman or degrading treatment or punishment . . . when such acts are committed by or at the instigation of or with the consent or

Because, apart from the above, there exists scant decisional law in the Republic on the issue of human rights and, specifically, when a prisoner's solitary confinement constitutes "cruel, inhumane or degrading treatment or punishment," the Court will also look to the law of other jurisdictions for guidance. *Kazuo* 1 ROP Intrm. at 172; *see also Mesubed v. Urebau Clan*, 20 ROP 166, 167 & n.1 (2013) (citing 1 PNC § 303, which requires that "[t]he rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Republic in applicable cases . . . .").

The Restatement of the Foreign Relations Law of the United States is particularly instructive, as it requires that "[a] state is obligated to respect the human rights of persons subject to its jurisdiction (a) that it has undertaken to respect by international agreement; (b) that states generally are bound to respect as a matter of customary international law (§ 702); and (c) that it is required to respect under general principles of law common to the major legal systems of the world." Restatement (Third) of the Foreign Relations Law of the United States § 701 (1987). And § 702 goes on to explicitly list the prohibition against "cruel, inhuman, or degrading treatment or punishment" as part of the customary international law of human rights. *See id.* § 702.

Thus, given Palau's explicit statutory directive to apply the rules of the Restatements, to the extent not expressed by Palauan law, and given Palau's constitutional adoption of the language used in the relevant United Nations declarations, and, finally, given Palau's status at least as a signatory to the United Nations *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment*, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], the Court will look to these documents and their attendant obligations and admonishments to guide its decision today.

Of particular note is the Interim Report of the Special Rapporteur of the Human Rights Counsel on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, UN Doc A/66/268 (August 5, 2011) (hereinafter, UN Report), which was recently delivered by the United Nations Secretary General and which reflects serious international concerns regarding the practice of solitary confinement. Indeed, the Court finds this UN Report to be particularly informative and pertinent. Moreover, other international and regional bodies have taken differing approaches in evaluating the propriety of solitary confinement, and, lacking direct precedent under Palauan law, this Court looks to both.

The United Nations Committee against Torture has recommended that solitary confinement be abolished, or at least strictly regulated, as it may *inherently* constitute

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acquiescence of a public official or other person acting in an official capacity." *Id.* art. 16 § 1.

cruel, inhuman, and degrading punishment. UN Report ¶¶ 30–33. "Of particular concern . . . is *prolonged* solitary confinement, [defined] as any period of solitary confinement in excess of 15 days," a length of time after which evidence suggests some psychological effects of solitary confinement become *irreversible*. *Id.* ¶ 26 (citing Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 29 CRIME AND DELINQUENCY v. 1, 124–56) (emphasis added). Solitary confinement of juveniles is also particularly concerning; the Security Council asserted in 1990 that "disciplinary measures constituting cruel, inhuman, or degrading treatment shall be strictly prohibited, *including* . . . solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned." *Id.* ¶ 30. The Committee on the Rights of the Child has emphasized that "disciplinary measures . . . including closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned" "must be strictly forbidden." *Id.* ¶ 33. At a minimum, the Committee recommends regulating the duration and conditions of solitary confinement by requiring that prisoners be given daily access to fresh air for at least an hour, as well as proper beds and mattresses, and regular visits from a medical officer. *See id*; *see also, e.g.*, *Ruiz v. Johnson*, 154 F. Supp. 2d 975, 981 (S.D. Tex. 2001) (citing *Ruiz v. Estelle*, 503 F. Supp. 1265) (S.D. Tex. 1980) (injunctive relief granted "[b]ased on extensive and detailed findings of fact, [holding] that the prisons were grossly overcrowded; that sanitation and recreational facilities were wholly inadequate; that health care was inadequate; that hearing procedures for discipline were inadequate; and that fire safety and sanitation standards were in violation of state law and the constitution.").

The European Court of Human Rights has accepted some security-based justifications for the use of solitary confinement, but insists that statements of such justifications must become "increasingly detailed and compelling as time goes on," and that the more isolated the prisoner is, the more likely such isolation constitutes cruel, inhuman, or degrading punishment. *Id.* ¶¶ 35–36. Even where a prisoner has access to some recreational material *and* a security-based justification exists, the Court nonetheless insists that such detention cannot be indefinite. *Id.* The Inter-American Court of Human Rights has gone further, holding that "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being." *Id.* Notably, despite acknowledging some reasonable state rationales for the limited use of solitary confinement, the UN Report cites dozens of international bodies and international treaties that prohibit or severely restrict the use of solitary confinement—and none that expressly authorize it to the extent it is used throughout the world or even to the extent that it is used here in Palau.

Even where the act of isolation is not, in of itself, cruel or inhumane, the *conditions* of isolation can be inherently cruel or degrading. The United Nations *Standard Minimum Rules for the Treatment of Prisoners*, adopted in 1957 and broadly accepted, set out the

principle physical conditions relevant to solitary confinement: "cell size, presence of windows and light, and access to sanitary fixtures for personal hygiene." *Id* ¶ 48. The Standards call for "sufficient light to enable the detainee to work or read, and windows so constructed as to allow airflow whether or not artificial ventilation is provided," as well as "sufficient sanitary fixtures to allow for the personal hygiene of the detainee"—that is, "a lavatory and wash-basin within the cell." *Id.* ¶¶ 51–52. Duration and severity are always relevant: the UN Report acknowledges that "[w]hen a state fails to uphold the [Standards] during a short period of time of solitary confinement, there may be some debate on whether the adverse effects amount to cruel, inhuman, or degrading treatment or punishment or torture. However, the longer the duration of solitary confinement or the greater the uncertainty regarding the length of time, the greater the risk of serious and irreparable harm to the inmate that may constitute cruel, inhuman, or degrading treatment or punishment or even torture." *Id.* ¶ 58.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

To restate, the Petitioner's Emergency Application for Writ of Habeas Corpus alleges that Petitioner's constitutional right to be free from "[t]orture, cruel, inhumane or degrading treatment or punishment," has been violated during his confinement in the solitary confinement quarters of the Koror Jail in three ways: (1) the current conditions in the solitary confinement quarters, alone, constitute cruel and inhumane treatment, (2) the length of time and the manner in which the Petitioner has been confined in those conditions constitute cruel and inhumane treatment, and (3) the conditions, as particularly applied to this Petitioner, who suffers from psychological issues, both predating and allegedly caused by his extended confinement, constitute cruel and inhumane treatment. Because the Court finds that the current conditions in the solitary confinement quarters of the Koror Jail, alone, constitute cruel, inhumane and degrading treatment and punishment under the controlling law, the Court need not address the Petitioner's second and third arguments at length, but will rather make reference to them as the facts allow.

For the following reasons, the Court finds that the conditions in the solitary confinement quarters of the Koror Jail fail to meet even the minimum standards of internationally recognized human decency, and that they flagrantly violate Petitioner's constitutional and human rights. The Writ of Habeas Corpus will issue according to the orders and conditions included below.

I. The conditions in the solitary confinement cells are cruel and inhumane

At the hearing, Dr. Monteforte testified that the Petitioner had been diagnosed with ADHD since as early as 2008, and, although the Petitioner had been voluntarily noncompliant in taking his prescribed medications, his solitary confinement likely exacerbated the symptoms of this illness. She also speculated—but could not confirm or diagnose—that the conditions to which the Petitioner had been subjected could

have potentially caused or at least revealed additional psychiatric problems present in the Petitioner. What is certain is that Lieutenant Ricky Ngiraked testified unequivocally that the Petitioner had been confined in the two cramped, unlighted cells, both of which were observed first-hand by this Court, for roughly 30 consecutive days with only nominal release. He testified that the Petitioner had not been allowed to leave the first cell, for any reason, for at least six full days prior to his arraignment on Thursday, November 20, 2014, at 1:30 p.m. before this Court, when the issue of Petitioner's conditions of confinement was first raised by Ms. Jackson. Lieutenant Ngiraked testified that, prior to that hearing date, the last time the Petitioner had been removed from the cell was on Friday November 14, 2014, for a shower, of which the entire process lasted less than 30 minutes.

Coupling this testimony with the Court's own first hand observation, the Court finds that the Petitioner, a 19 year old male, with an ADHD diagnosis that has likely been exacerbated by his prolonged confinement, and who may, in fact, have suffered additional psychological harm by his confinement, has been subjected to near total and uninterrupted darkness, has been forced to sleep on a hard concrete floor, strewn with trash, broken glass, dank wet magazine pages, and soiled clothes, among his own urine and fecal matter, in a room with no sink, no toilet, and no ventilation other than a small grated opening in the iron door, no bed or bedding, no light, and no drain, for a period of 30 days, with only minimal release for, at most, two or three intervals of thirty minutes or less. Under any conceivable definition of the phrase, under the internationally recognized standards outlined above, and under the Constitution of this great Republic, this is cruel, inhumane, and degrading punishment or treatment.

II. Petitioner's confinement violates the Koror Jail's own policies

Commendably, Lieutenant Ngiraked, through Attorney General Bradley, offered candid testimony that Petitioner's treatment was, in fact, a violation of the Koror Jail's own policies and procedures on solitary confinement, which plainly require that "[e]ach inmate in Solitary Confinement must be released into the Privileged Confinement area for a shower, exercise and or relaxation for one hour each day unless the Chief, in his written Incident Report, has specifically denied the privilege,"[7] and which also require that no prisoner shall be held in solitary confinement for longer than 72 hours without a hearing. This latter rule is presumably designed to assess the prisoner's well being and/or ability to be relocated back into the general population of the Koror Jail at the earliest possible time. Lieutenant Ngiraked testified unambiguously that the Koror Jail had failed to follow its own policies and procedures

[7] The Court recognizes that the Koror Jail's policies and procedures allow for this privilege to be restricted if the Chief, in his written report, specifically denies the privilege. But Lieutenant Ngiraked testified unambiguously, and with candor, that the Chief had not done so.

on both counts, having only released him for 30 minutes in the past week, instead of the required one hour every day, and having held the Petitioner ten times longer (30 full days instead of 72 hours) in solitary confinement without having held any hearing whatsoever on Petitioner's continued confinement. Lieutenant Ngiraked also made no mention of any access to visitors or physicians, both of which are also required by the Koror Jail's own policies and procedures.

Based on this testimony, and the Court's own observation, the Court finds that the Koror Jail flagrantly violated its own policies and procedures with respect to the Petitioner's solitary confinement. And although Lieutenant Ngiraked testified that the officials at the Koror Jail intend to start following the policies and procedures in the future with respect to the Petitioner's and other inmates' solitary confinement, the Court finds that, given the inhumane conditions of the solitary confinement quarters in general, even had the Koror Jail followed its policies and procedures and allowed the Petitioner one hour of release each day and granted him a hearing after 72 hours , the conditions of his confinement would still have amounted to cruel, inhumane and degrading punishment.

III. Although the Koror Jail may be fundamentally unsafe, using the solitary confinement quarters as a stop-gap measure to prevent Petitioner's escape is impermissible

During his testimony, Lieutenant Ngiraked insisted that the reason the Petitioner was held in these confined spaces for so long and without any release was that he presented "a constant escape threat." He testified that the current capacity of the Koror Jail is between 50 and 60 prisoners at most, but that, at present, it is operating at nearly double capacity, with more than 90 prisoners packed into the structure at any given time. Disturbingly, Lieutenant Ngiraked testified that escape from the Koror Jail was apparently so easy and commonplace that, "**any prisoner could essentially walk out of the front of the jail at anytime**."[8]

The Court finds Lieutenant Ngiraked's characterization of the Petitioner as "a constant escape threat" to be both wholly unsurprising and almost comically shocking—all at once. It is unsurprising because this Court suspects that any human being, even lawfully imprisoned, who is packed into the inhumane conditions of the particular solitary confinement under which Petitioner found himself, would likely, out of sheer self-preservation instinct, feel biologically compelled to attempt escape at all costs, fearing either insanity or death as a result of the conditions. It is shocking because the Petitioner is no larger than most middle school boys, and doubtless no stronger. Each of the BPS personnel the Court encountered were larger by more than

[8] Coincidentally—or not—on the very day of the Court's site visit, the front page of the Island Times carried a headline that read: "Three Inmates Charged for Escape." Notably, none of the three inmates listed included the Petitioner here.

half of Petitioner's diminutive size, and the suggestion that any of them, alone and half-asleep, could not physically prevent the Petitioner from moving even an inch, much less escaping the entire facility, belies either a fundamental disregard of the need for adequate human resources on behalf of the Department of Corrections, or a fundamental failure of the Koror Jail to perform the only structural task it is charged with performing—that of simply keeping the prisoners locked inside and away from the public.

With the location of the jail situated squarely in the heart of Koror's commercial and tourist center, where over 75% of Palau's local population reside and nearly 100% of its tourist population—small children, families, the elderly—routinely shop, sight-see, and run daily errands, the matter of fact, dead-pan manner in which Lieutenant Ngiraked testified to these troubling facts about the Petitioner's chances for escape was itself shocking. Suffice it to say, the Court at least commends Lieutenant Ngiraked for his candor.

Putting it bluntly, the Court would actually be shocked to learn if there is *any* inmate whosoever in the jail that is smaller and weighs less than this Petitioner, and if the officers at the Koror Jail honestly believe that this child, for lack of a better description, could simply escape at *any* time, then the general public of the Republic of Palau, as well as any and all tourists who might come here, are, in no uncertain terms, at constant risk, especially from the much larger, more criminally violent, and physically imposing prisoners this Court knows are imprisoned there. If this Petitioner can escape, they all can escape, as Lieutenant Ngiraked actually confirmed when he said, "**any prisoner could essentially walk out of the front of the jail at anytime**." And when the Assistant Public Defender inquired of him—"Is there not a guard who can keep my 110 pound client from running away"—in order for the Koror Jail to abide by its own policies and procedures and let the Petitioner out for one hour each day from solitary confinement, Lieutenant Ngiraked again reemphasized that "he could escape at any time. When he is out there, he is a danger to the public."[9]

Based on this testimony, and the Court's own observation, the Court finds that the Koror Jail, as a whole, must be fundamentally unsafe, and that, rather than address the actual problem of the Koror Jail's porous inability to perform its essential function of keeping the inmates inside, some officials there have taken the extreme measure of simply placing problem inmates into a solitary confinement area that is, as Lieutenant Ngiraked testified, much harder to escape from, but which, this Court personally

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[9] Despite the Petitioner's youth and diminutive size, the Court does not wish to minimize the nature and severity of his past crimes, which have included at least one assault, a burglary, and numerous escapes. However, even this rap sheet and history of bad behavior within the Koror Jail does not justify his prolonged placement in the cruel and inhumane conditions of the solitary confinement quarters of the Koror Jail.

witnessed, is comprised of cruel, inhumane, degrading, filthy, and nauseatingly degenerate conditions.

[2] Before concluding, it must be said again as a matter of judicial prudence that this Court recognizes that the Writ of Habeas Corpus is traditionally used actually to release a prisoner from confinement. And the Court recognizes that the enabling legislation of this inherently constitutional writ, located at 18 PNC § 1101, could potentially be read to limit the habeas corpus inquiry exclusively to the "cause" of a petitioner's imprisonment—that is, the reason for his arrest or imprisonment, and not the conditions. But this is a distinction that elevates form over substance. The statute states that a petitioner may inquire into "the cause of such [*unlawful*] imprisonment or restraint" under "any pretense whatsoever." *Id.* If the conditions of imprisonment are what make it unlawful, then this Court is within its authority to inquire into the cause of—and, if necessary, the remedy for—the unlawful element of the restraint. To whatever extent the statute could be read to limit the writ and deprive petitioners of a remedy to protect their right to be free from unconstitutional punishment, the Court strongly suspects such a reading would be in derogation of the constitutional prohibition of suspension of the writ. *See* Palau Const. Art. IV § 7.

Moreover, the traditional use of the writ actually to release a prisoner from imprisonment has not been exclusive throughout history, and it has largely been confined to that purpose in modern United States case law based on the relationship between the state and federal courts—a relationship that does not exist in Palau—as well as based on the existence of a separate federal statutory remedy in the form of what are commonly called prisoner civil rights suits, under 42 U.S.C § 1983. While the Court recognizes that different remedies are appropriate in different situations, there can be no doubt that, because Petitioner's constitutional rights have been, and absent relief from this Court will continue to be, violated, Petitioner is absolutely entitled to a remedy. *See Kazuo*, 1 ROP Intrm. at 172; *Marbury*, 5 U.S. at 162–63.

[3] What form that relief takes, while legally significant, does not limit this Court's authority to grant it. In the United States, limited jurisdiction limits which remedies a court may issue, and consequently which courts may address different grievances—an often dispositive element of legal claims. But in Palau, the jurisdiction and authority of this Court extends to *all* matters in law and equity, so whether the appropriate remedy is a writ of habeas corpus, an injunction against further use of the facility, or a declaration or order of some unknown and speculative scope, the remedy—which must exist—is necessarily within this Court's jurisdiction to order. Because of the emergency nature and circumstances of the application, the Court believes that the Writ of Habeas Corpus—traditionally ordering the release of a prisoner from custody, but in this case ordering the release of a prisoner only from his custody in solitary confinement—is the most appropriate, prudent, and limited remedy available, as it confines the scope of this decision exclusively to the Petitioner and his situation. Were it inapplicable or unavailable, the Court, faced with grievous constitutional harm,

would have no choice but to proceed in equity. Because the Writ shall issue granting Petitioner's requested relief, no injunction needs to issue at this time.

IV. Conclusion

To say that the solitary confinement conditions in the Koror Jail are sub-human is actually to put it rather mildly, for this Court knows of no species, human or not, that sleeps and eats in the same confined area in which it defecates and urinates, and in which that excrement is allowed to remain unmoved and festering for extended periods of time. To subject any human, regardless of his or her crime, to the sustained, lightless and squalid conditions in the solitary confinement quarters of the Koror Jail, located right in the heart of Koror's downtown commercial hub, is a violation of the Constitution of this great Republic, a violation of international standards of human decency, and, indeed, a violation of the fundamental laws of nature and of God.[10] Thomas Jefferson's great lament on slavery, the barbarous practice that was ignored by so many outwardly virtuous and presumably Christian people in the United States for so long, is woefully called to mind here—"Indeed, I tremble for my country when I reflect that God is just: that his justice cannot sleep forever."

There is no place—none—in this great Republic for the conditions currently present in the solitary confinement cells in the Koror Jail.

But despite all of this, the Court is not unsympathetic to the scarcity of resources available to the Republic to modernize, or, at the very least, constitutionalize, its jail facilities, and recognizes that renovations or replacement will require significant investment of time, effort, and funding on behalf of the Republic and its elected officials. The Constitution, however, does not condition its prohibition of cruel, inhumane, and degrading treatment or punishment on the availability of funds, nor does it allow the abdication of this responsibility on fiscal grounds. The Republic cannot cease to be a nation of laws and principles when the enforcement of those laws and principles simply becomes fiscally difficult, and frankly, if even the *minimum*

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[10] For an example from the Christian tradition, which is both known and venerated by many in this great Republic, *see e.g.,* The Gospel of Matthew, 25:34-40 (NIV) ("'Then the King will say to those on his right, 'Come, you who are blessed by my Father; take your inheritance, the kingdom prepared for you since the creation of the world. For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in, I needed clothes and you clothed me, I was sick and you looked after me, I was in prison and you came to visit me.' Then the righteous will answer him, 'Lord, when did we see you hungry and feed you, or thirsty and give you something to drink? When did we see you a stranger and invite you in, or needing clothes and clothe you? When did we see you sick or in prison and go to visit you?' The King will reply, 'Truly I tell you, whatever you did unto one of the least of these brothers and sisters of mine, you did unto me.' ").

standards of human habitability, including basic sanitation, bedding, ventilation, and lighting were made available to the prisoners in solitary confinement in the Koror Jail, the Court would be willing to reconsider many of the conditions of this Order.

Nonetheless, the Court unequivocally finds that these conditions alone, endured for any period of time and as applied to any Petitioner, even of ordinary psychological disposition, constitute "cruel, inhumane and degrading treatment or punishment," under any conceivable construction of that term. Having determined that the conditions of confinement, alone and in and of themselves, constitute a flagrant violation of the prohibitions of the Constitution, the Court need not consider—and expressly does not reach—any question regarding the propriety of solitary confinement in general, that is, solitary confinement that is more in accordance with basic human sanitation and the minimal daily release required by the Koror Jail's own polices. When and whether it is legal and moral to impose solitary confinement on a prisoner is an ongoing debate throughout the world, but this question is not before the Court at this time. It is sufficient to find, and the Court does find, that the Petitioner's constitutional right to be free from cruel, inhumane or degrading punishment or treatment has been violated time and again, consistently and continuously, for at least the past 30 days as a result of the current conditions of his confinement, as well as the manner and duration of his confinement, in the solitary confinement cells of the Koror Jail.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Petitioner's Application for Writ of Habeas Corpus is hereby **GRANTED** without reservation;

2. A hearing is hereby scheduled for tomorrow, Wednesday, November 26, 2014 at 3:00 pm. in Courtroom 104, at which the Court will hear testimony from Petitioner's treating psychiatrist, Dr. Maria Monteforte, and Petitioner's case coordinator, Alex Ngiraingas, regarding the outcome of Petitioner's psychological evaluation, including any diagnoses and treatment recommendations;

3. After the hearing, the Court will determine whether the Petitioner should be relocated from the confined Level 1 psychiatric care of the Belau National Hospital, Division of Behavioral Health, to the Koror Jail, or whether he should remain under psychiatric observation for an additional term;

4. If the Court determines that the Petitioner is psychologically fit to return to the Koror Jail to serve the remainder of his sentence, he shall not, in any event, be placed in the solitary confinement quarters of the Koror Jail for any period of time without express leave of this Court amending or vacating this Order;

5. The present conditions of the solitary confinement quarters of the Koror Jail are a flagrant violation of the Constitution of the Republic of Palau;

6. Although the Court recognizes that its particular jurisdiction here is confined within the four corners of this particular Petitioner's Emergency Application for Writ of Habeas Corpus, the Court strongly urges and recommends the Director of the Bureau of Public Safety, the Warden of the Koror Jail, and all those acting on their behalf, to immediately **CEASE AND DESIST** from the use of the solitary confinement quarters **FOR ANY REASON**, until such time as the facility is equipped to be operated in a humane and constitutional fashion and reviewed by a competent constitutional authority;

7. Pursuant to this Court's discretion under 18 PNC § 1108, this Order shall take effect immediately and no stay shall be considered.