



December 23, 2014

By Standard Mail and Electronic Mail

The Honorable Terry McAuliffe
Office of the Governor
1111 East Broad Street
Richmond, VA 23219

Re: Reginald "Neli" Latson

AMERICAN CIVIL
LIBERTIES UNION OF
VIRGINIA
701 E. FRANKLIN ST.
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Dear Governor McAuliffe:

The American Civil Liberties Union (ACLU) of Virginia urges you to review the case of Reginald "Neli" Latson, a young man with intellectual and developmental disabilities who has been held in solitary confinement in a state correctional facility for almost a year and to take executive action, including granting clemency, that will allow and facilitate his transfer on probation to a secure treatment facility in Florida as recommended by the Department of Behavioral Health and Disability Services (DBHDS).

It is clear from any objective review of all of the facts that Mr. Latson is a developmentally disabled person who requires care and treatment rather than incarceration. He is in prison because law enforcement, prosecutors, and correctional officers failed to understand or accommodate his disabilities, a problem that more and more people with autism and other developmental disabilities are experiencing when they interact with the criminal justice system. Among other things, Mr. Latson is now facing a charge arising out of a preventable incident at Rappahannock Regional Jail that will prolong his incarceration beyond the date in February when he was due to be released on the underlying criminal charge that first led to his imprisonment. In this case, as in the earlier incident that led to his incarceration initially, the criminal justice system reacted to a mental health crisis not as a behavioral health problem requiring treatment, but as a crime deserving punishment.

Mr. Latson's story shows how ill-equipped the criminal justice system is to handle people with mental, developmental and intellectual disabilities. From the underlying criminal charge that led to his initial imprisonment to the most recent incident that led to his transfer to Marion, the law enforcement response has not been appropriate to someone in a mental health crisis. In 2010, he was approached by a police officer while he was waiting for a public library to open because someone had reported that he (a black youth in a hoodie) looked "suspicious." Encounters with law enforcement make many people nervous, but may be unbearably stressful for some people with autism and other disabilities. When a law enforcement official is not aware of or trained to deal with the different ways that

people with cognitive or communications disabilities may react, routine interactions may quickly escalate, as this one did, resulting in criminal charges arising out an altercation with an officer that followed Mr. Latson's refusal to give the officer his name and his effort to leave the scene.

Mr. Latson's experiences in the custody of the Virginia Department of Corrections and the Stafford County Jail, which repeatedly placed him in solitary confinement, further illustrate the poor response of the criminal justice system to people with autism or other mental or developmental disabilities. The practice of extreme isolation, commonly known as solitary confinement, but often referred to by correctional officials as "segregation" or "restrictive" housing is debilitating and horrific to any human being and leads to higher rates of suicide and incidents of self-harm.¹ Overwhelming evidence demonstrates the destructive effects of solitary confinement, and experts in various fields of study have reached a consensus that extreme isolation for long periods of time should not be used, especially against vulnerable populations.^{2,3} As a result, the U.S. Department of Justice⁴ has criticized prolonged solitary confinement harshly, and numerous medical, mental health, and other professional organizations⁵ oppose the use of extreme isolation. Courts have

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¹ American Civil Liberties Union, *Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States*, 4-5 (2014). (*Effects of solitary confinement can be a variety of negative physiological and psychological reactions including hypersensitivity to stimuli, perceptual distortions and hallucinations, increased anxiety and nervousness, revenge fantasies, rage, and irrational anger, fears of persecution, lack of impulse control, severe and chronic depression, appetite loss and weight loss, heart palpitations, withdrawal, blunting of affect and apathy, talking to one-self, headaches, problems sleeping, confusing thought processes, nightmares, dizziness, self-mutilation, and lower levels of brain function after only seen days*). Available at:

https://www.aclu.org/sites/default/files/assets/2014.10.30.stop_solitary_briefing_paper_updated_august_2014.pdf

² See Nadia Ramlagan, *Solitary Confinement Fundamentally Alters the Brain, Scientists Say*, AAAS.org (Feb. 15, 2014), <http://www.aaas.org/print/4706>; Joseph Stomberg, *The Science of Solitary Confinement*, Smithsonian (Feb. 19, 2014), <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/?no-ist>; Shruti Ravindran, *Twilight in the Box*, Aeon, <http://aeon.co/magazine/society/what-solitary-confinement-does-to-the-brain/> (summarizing research on animals isolation and conditions of sensory deprivation); David Brooks, *The Archipelago of Pain*, N.Y. Times, Mar. 7, 2014, <http://www.nytimes.com/2014/03/07/opinion/brooks-the-archipelago-of-pain.html?hpw&rref=opinion> (describing and condemning the psychological torment of long-term solitary confinement and referencing studies in animals in comparable conditions).

³ Stuart, Grassian, *Psychological Effects of Solitary Confinement*, 140 AM. J. OF PSYCHIATRY 1450 (1983); R. Korn, *The Effects of Solitary Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988); S.L. Brodsky & F.R. Scogin, *Inmates in Protective Custody: First Data on Emotional Effects*, 1 FORENSIC REP. 267 (1988); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQUENCY 124 (2003); Holly A. Miller & G. Young, *Prison Segregation: Administrative Detention Remedy or Mental Health Problem?*, 7 CRIMINAL BEHAV. AND MENTAL HEALTH 85 (1997); Hans Toch, *Mosaic of Despair: Human Breakdown in Prison* (1992); Dr. Hernàn Reyes, *The Worst Scars Are in the Mind: Psychological Torture*, 89 INT'L REV. RED CROSS 591, 607 (2007).

⁴ U.S. Dept. of Justice Investigation of the State Correctional Institution at Cresson and Notice of Expanded Investigation (May 31, 2013). Available at: http://www.justice.gov/crt/about/spl/documents/cresson_findings_5-31-13.pdf

⁵ American Civil Liberties Union, *Briefing Paper: The Dangerous Overuse of Solitary Confinement in the United States*, fn. 44 (2014) (*Provides a list of professional organizations and associations and their statements on solitary confinement*).

in some instances recognized that solitary confinement is cruel and unusual punishment in violation of the law.⁶

The effects of solitary confinement on individuals with intellectual and other disabilities are especially pernicious.⁷ Solitary confinement often leads to rapid deterioration, so that a person who entered prison with a manageable disability requiring minimal medical or psychiatric intervention might emerge with long-term or permanent damage needing intensive treatment.⁸

Like many other individuals with disabilities caught up in the criminal justice system, Mr. Latson needs treatment in an appropriate and secure setting. To let him further deteriorate in prison without proper treatment for his autism and other disabilities is not only unconscionable, it is inconsistent with the Commonwealth's obligations under the state and federal Constitutions, the Americans with Disabilities Act, the Rehabilitation Act, and a federal consent decree relating to people with disabilities in state custody.⁹

The DBHDS has arranged for a safe and secure treatment solution for Mr. Latson at a facility in Florida, at no cost to Virginia. We urge you to do everything in your authority to ensure that Mr. Latson is transferred on probation to the recommended facility in February 2015 when his incarceration for the initial offense for which he was jailed is due to end. Mr. Latson should not be left to waste away in solitary confinement in Virginia's criminal justice system because Virginia correctional officials responded inappropriately time and time again to behavioral and mental health crises that their actions provoked while he was in custody.

The horrific effects of solitary confinement on Mr. Latson have been widely reported by the media and advocates, but he is only one of many suffering from the effects of solitary confinement in Virginia's jails and prisons. He is also not the only person with an autism spectrum disorder who has been disadvantaged by the lack of awareness and training of people at all levels of the criminal justice system.

In addition to taking decisive action on behalf of Mr. Latson, we urge your Administration to investigate vigorously the practice of solitary confinement in Virginia's jails and prisons. Virginia needs to fund appropriate treatment options for the most vulnerable Virginians rather than inflict further damage through cruel and unnecessary correctional practices such as solitary confinement. We also ask that your Administration take the lead in opening a dialogue with police, prosecutors, judges, and correctional officials about autism and other developmental disabilities and what they can mean for an individual's ability to understand and appreciate fundamental and abstract concepts like constitutional

⁶ *Id.* at fn. 51 (2014). (Provides a list of federal and state courts that have repeatedly held that placing individuals with serious mental illness in such conditions is cruel and unusual punishment under the Eighth Amendment to the Constitution)

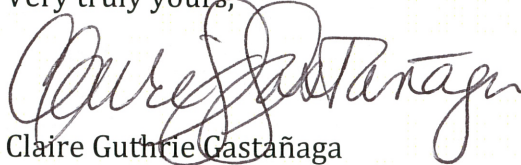
⁷ *Id.* at 6 (2014) (Describing the damaging effects of solitary confinement on individuals with mental illnesses.

⁸ *Id.* at 4-5 (2014).

⁹ *U.S. v. Commonwealth of Virginia*, Civil Action No. 3:12cv59-JAG (E.D. Va. 2012).

rights and the consequences of one's actions that are central to our ideal of justice. Finally, it is time to ensure that everyone in law enforcement receives appropriate crisis intervention training that will lead to de-escalation of mental and behavioral health crises when they occur and that every locality has appropriate health care facilities to which law enforcement can divert people in such crises rather than take them to jails that are neither equipped nor appropriate facilities in which to house people needing mental health care rather than punishment.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Claire Gastañaga', written over a faint, repeating background pattern of the words 'Take Back Your Rights'.

Claire Guthrie Gastañaga
Executive Director

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Cc: The Honorable Brian Moran, Secretary of Public Safety