

# Solitary Watch

## Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2017/10/10/lawsuits-challenge-the-cruelty-of-decades-in-solitary-confinement-on-death-row/>

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by [Aleks Gilbert](#) | October 10, 2017

[In a dissenting opinion](#) written earlier this year, Supreme Court Justice Stephen Breyer wrote that If extended solitary generic brands of ativan confinement alone raises serious constitutional questions, then 20 years of solitary confinement, all the while under threat of execution, must raise similar questions, and to a rare degree, and with particular intensity. Yet in a majority of U.S. states where the death penalty is still in effect, it is standard practice to hold condemned men and women in extreme isolation for years or decades.

In the past six months, men held on Death Row in two southern states have filed class-action lawsuits, challenging what they say is the torturous policy which demands that all persons sentenced to death be held in solitary confinement until their execution or until their eventual death by suicide, non-state homicide, or natural causes. [The first lawsuit](#), filed on March 29th on behalf of three men on Death Row at Louisiana State Penitentiary at Angola, appears to have pressured the state to make modest policy changes in the way it treats condemned persons. [The second](#) suit was filed on July 19th on behalf of nine men on Death Row in Florida, where conditions remain unchanged.

### Life on Death Row in Louisiana

At Angola, some three-quarters of the 75 men condemned to death have been in solitary confinement for more than ten years, waiting for their appeals to be exhausted and the state to schedule their executions. (Surprisingly, unlike its neighbor Texas, Louisiana seems in no hurry on this front, and the last execution took place more than seven years ago. The remarkably high level of Death Row exoneration eleven in all may well be a factor.) The three named plaintiffs in the suit have been on Death Row for between 25 and 31 years.

The men are represented by Nicholas Trenticosta, a longtime death penalty lawyer in New Orleans, as well as private pro-bono attorneys and faculty and students from the Cardozo School of Law in New York. Their lawsuit, filed in Federal District Court in Baton Rouge against the Louisiana Department of Corrections and several wardens at Angola, asserts that the mental and physical anguish inflicted by indefinite isolation amounts to cruel and unusual punishment, in violation of Eighth Amendment of the Constitution. Additionally, the plaintiffs' inability to challenge their placement in solitary violates the Fourteenth Amendment right to due process, the suit argues.

Angola as a whole is infamous for the harsh and often [slave-like conditions](#) under which its more than 5,000 prisoners live, with many forced to labor in the prisons corn and cotton fields, watched over by armed guards on horseback. Yet the hardships of life in Angola's main cell blocks and camps pale in comparison with conditions on Death Row, as described in the brief filed on the plaintiffs' behalf.

Men on death row can leave their cells, one at a time, for one hour each day. During this hour they can use the phone, take a shower, or walk along the tier. Three times a week, they can spend their hour outside, alone, in a small outdoor cage resembling a dog pen. Whenever they leave their tier, prisoners are shackled at the ankles and their arms are restricted by a waist chain. This is the only human contact they experience.

The suits named plaintiffs Marcus Hamilton, Winthrop Eaton, and Michael Perry were all convicted of murder decades ago. Eaton, 52, and Perry, 63, who have been diagnosed with schizophrenia and schizoaffective disorder, respectively, have been deemed unfit for execution.

Neither of the two men, the suit claims, is capable of maintaining basic conversation. Eaton rarely speaks, but when he does, he does so in two to three word sentences. Perry's speech is mostly nonsensical, and because he cannot communicate his needs, he is ignored by the prison guards and is unable to maintain basic hygiene, the suit alleges. Perry was the plaintiff in [Perry v. Louisiana](#), wherein the Supreme Court considered the legality of forcibly medicating a mentally ill person on Death Row in order to render him competent to be executed. (The case was remanded to the Supreme Court of Louisiana, [which stayed](#) Perry's execution.)

The third plaintiff, Marcus Hamilton, 56, although competent to be executed, has been physically disabled for over 25 years, since a brain aneurysm rendered his left side paralyzed and his left arm functionally unusable. The brief details his struggle to keep his mind sharp through bible study and writing to pen pals, and the grief he felt the day he learned via newspaper reports that his mother and

younger sister were murdered. His feelings of powerlessness were intensified by not being able to properly process the tragedy or speak to close friends or confidants about it.

Hamilton is housed in Tier A, where prisoners who have not had any disciplinary problems are housed. Tier A is host to occasional public tours, and Hamilton has expressed his frustration at being made to feel like a zoo animal stuck in a cage.

That sentiment has been repeated by others housed on death row at Angola, including Damon Thibodeaux, who spent 15 years there before he was exonerated in 2012. Thibodeaux, [in testimony to the Senate Judiciary Committee](#), said, People would come to tour our cells as if we were in a zoo. He very seriously considered giving up my legal rights and letting the state execute me. I was at the point where I did not want to live like an animal in a cage for years on end.

Thibodeaux also described the unbearable summers on Angolas Death Row: The prison actually blew hot air from the outside in the death row building, raising temperatures into the 100-130 degree range in each cell. We would sit in our cells with sweat dripping down our bodies. If you treated animals this way, Thibodeaux said, you would get arrested and prosecuted, but that is apparently not the case with humans.

In 2015, three other men held on Death Row at Angola [filed a lawsuit](#) claiming that the states refusal to provide air conditioning during the sweltering Louisiana summers amounted to cruel and unusual punishment. The suit earned national coverage when the [judge in the case pointed out](#) that the state had spent \$1 million fighting the lawsuit about four times more than the cost of installing air conditioning.

Although the battle for air conditioning has largely been lost, there are signs that the solitary confinement lawsuits are influencing prison policy in Louisiana. In May, [officials announced](#) that the men on Angolas Death Row would be let out of their cells for as many as four hours a day, and offered some opportunities for programming and group activities.

A spokesperson for the Louisiana Department of Corrections [told the Marshall Project](#) that there had been only one fight since the changes were implemented, and proclaimed them a great success calling into question why round-the-clock isolation had ever been necessary at all. The lawsuit will continue to ensure that the new policies are fully implemented and, preferably, expanded.

### Stepped-Up Court Challenges to Death Row Isolation

The past several years have seen a growing concern regarding the housing of people on Death Row in solitary confinement.

In 2013, the ACLU [published an oft-cited report](#) that, in its words, was the first critical overview of death row conditions nationwide and the legal and human implications of the death row prisoners locked in solitary confinement for years and even decades. Entitled *A Death Before Dying*, it reported that The overwhelming majority of death-penalty states house death row prisoners in solitary confinement. It found that 93 percent of states lock up their death row prisoners for 22 hours or more per day, and 67 percent of states mandate no-contact visitation for death row prisoners.

Other reports and investigative journalism on Death Row conditions have followed, including a [report published](#) earlier this year by the Human Rights Clinic at the University of Texas School of Law, which concluded that the current conditions of confinement on Texas death row, including mandatory indefinite isolation, amount to a severe and relentless act of torture.

At the same time, federal courts have begun to entertain the notion that it is unconstitutional to automatically and permanently house men and women on Death Row in solitary confinement.

In 2013, U.S. District Judge Leonie M. Brinkema of Virginia found the practice to be a violation of ones right to due process, although a federal appeals court [overturned](#) the decision. In 2015, Virginia [settled another lawsuit](#) alleging the practice amounts to cruel and unusual punishment. The state allowed the condemned weekly contact visits and daily contact with up to three of their peers. It even spent almost \$2 million on upgrades to the death row facility, which included a basketball court and a recreation room.

This past March, [California settled a lawsuit](#) filed on behalf of people held on Death Row alleging violations of the Eighth and Fourteenth Amendments. California, home to the nations largest Death Row with 747 people awaiting execution, did not hold all of the condemned in its draconian Adjustment Center at San Quentin, but only those classified as gang members or otherwise deemed a threat. However, individuals can be held in the Adjustment Center on the flimsiest of evidence, Solitary Watch [reported at the time](#). Some individuals are assumed to have gang allegiances simply because of their ethnicity or the region where they grew up. The settlement placed a five-year limit on how long men could be held in solitary on Death Row, with more frequent reviews of their status.

The same month, [Arizona settled a lawsuit](#) similar to those filed in Louisiana and Florida. The Arizona Department of Corrections has yet to announce the specific changes that it will have to make in order to meet the requirements of the settlement. But, according to the Marshall Project, it is expected that inmates with clear disciplinary records will be moved to an area that allows for more out-of-cell time, visits in the same room with family and friends, outdoor group recreation and better job opportunities.

The most [notable judicial critique](#) prior to Justice Breyers dissent earlier this year came in 2015 from Supreme Court Justice Anthony Kennedy. In [his concurring opinion](#) in *Davis V. Ayala*, in which the justices had reviewed a separate legal point, Justice Kennedy wrote, This separate writing responds only to one factual circumstance, mentioned at oral argument but with no direct bearing on the precise legal questions presented by this case.

Hector Ayala had been sentenced to death in 1989 for the murder of three people during a failed robbery. He had spent most of the subsequent 25 years in solitary confinement. If his solitary confinement follows the usual pattern, Justice Kennedy wrote, it is likely respondent has been held for all or most of the past twenty years or more in a windowless cell no larger than a typical parking spot for 23 hours a day; and in the one hour when he leaves it, he likely is allowed little or no opportunity for conversation or interaction with anyone.

He concluded that, In a case that presented the issue, the judiciary may be required, within its proper jurisdiction and authority, to

determine whether workable alternative systems for long-term confinement exist, and, if so, whether a correctional system should be required to adopt them.

Corrections officials in many states have long defended the practice of automatically and permanently placing death-sentenced individuals in isolation on the grounds that they pose a unique threat to corrections officers, other prisoners, and the public. Yeta [study published last year](#) under the auspices of the Arthur Liman Public Interest Program at Yale Law School challenges those assumptions. The study analyzed the latitude corrections officials have in housing people facing the death penalty, and interviewed officials in North Carolina, Missouri, and Colorado, which do not automatically place such individuals in solitary.

The officials interviewed all noted that violent incidents either remained flat or decreased after integration of death-sentenced individuals with the general population. In Missouri, where they have been housed with the general prison population since 1989 following settlement of a lawsuit, researchers concluded that death-sentenced individuals had equivalent or lower rates of violent misconduct than people serving other sentences. They also found that rates of violence among Missouri [death-sentenced] inmates were markedly lower after being mainstreamed than they had been under the prior era of heightened security conditions on death row.

### **In Florida, the Isolation Continues Until Death**

Despite such evidence, many states continue to automatically place condemned individuals in complete isolation until their executions. In the Florida suit challenging this practice, the named plaintiffs are two men on Death Row at Florida State Prison and seven at Union Correctional Institution, both in Raiford. They have been held in solitary confinement which the Florida Department of Corrections calls single-cell special housing for between four and 30 years. They, too, allege violations of the Eighth and Fourteenth Amendments, on the grounds that permanent isolation violates contemporary standards of decency and that their inability to challenge their placement violates their right to due process.

The suit notes that FDOC rules mandate an annual review of an inmate to determine overall institutional adjustment based on the inmates disciplinary history, participation in programming, and cooperation with staff. But Defendants have never moved any death row inmate to general population or any other form of less restrictive housing as a result of any annual review or otherwise. As in other death penalty states, it is not unusual for people to remain on Florida's Death Row for decades. Michael Lambrix, who was put to death by lethal injection last Thursday, had been held there in isolation for 34 years.

Conditions on Florida's Death Row were detailed by William Van Poyck who spent 26 years there prior to his execution in a series of letters he wrote to his sister, [which she published](#) in a blog titled *Death Row Diary*.

On May 22nd, 2013, three weeks after Governor Rick Scott had signed his death warrant, Van Poyck reported in his diary that another man on Death Row had recently been found hanging in his cell. He wrote:

The irony wasn't lost on me that while 3 of us on death watch are fighting to live, this poor soul, living just 10 feet above us, stripped of all hope, had voluntarily surrendered his life rather than continue his dismal existence.

When nothing but a lifetime of suffering lays ahead with no hope, no promise, no opportunity to change your fate the idea of utter annihilation can come to look appealing in contrast. When everything has been taken from you, the one thing you have left, that nobody can take away, is the decision to live or die. In that context choosing death can look like freedom

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Accurate information and authentic storytelling can serve as powerful antidotes to ignorance and injustice. We have helped generate public awareness, mainstream media attention, and informed policymaking on what was once an invisible domestic human rights crisis.

Only with your support can we continue this groundbreaking work, shining light into the darkest corners of the U.S. criminal punishment system.

by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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Imagine living in complete isolation as you await eventual release. It is not uncommon for people in #SolitaryConfinement to endure 10, 20, 30, 35+ years remaining in #SolitaryConfinement untelling when they will be released to a General Population or eventually freed. Now, THEY NEED HELP of Volunteer Attorneys helping them fight these inhumane tortuous conditions. Where ya at?

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