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Criminal Justice Issues and Prisoners' Rights

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by [Jean Casella and James Ridgeway](#) | March 2, 2012

Prison walls do not form a barrier separating prison inmates from the protections of the Constitution, wrote Judge Shira A. Scheindlin, quoting the U.S. Supreme Court, when she ruled last week that a federal prisoner should be released from solitary confinement. On February 24, Scheindlin, a U.S. District Court Judge for the Southern District of New York, ordered the federal Bureau of Prisons (BOP) to remove inmate Viktor Bout from fifteen months of solitary in the Special Housing Unit of the Metropolitan Correctional Center (MCC), a federal jail in lower Manhattan, and placed in the general population.

The story made the [mainstream press](#), presumably because Russian-born Viktor Bout is a notorious international arms dealer known as the merchant of death. It is also noteworthy, however, for the judges refusal to defer to the BOP in determining whether there was justification for holding Bout in indefinite isolation.

Arrested in Thailand in 2008 and extradited to New York in November of 2010, Bout was immediately placed in solitary at MCC while awaiting trial. A year later, he was convicted of participating in conspiracies to acquire and sell weapons, provide material support to foreign terrorists, and kill American nationals. But the nature of his offenses, as Judge Scheindlin pointed out, does not exempt him from Constitutional protections. So when his lawyers challenged his solitary confinement, she weighed the facts and the law carefully, and decided in his favor.

In her opinion, which [can be read in full here](#), Scheindlin begins by describing Bout's prison conditions at MCC:

Essentially, Bout is in solitary confinement residing in a one-man cell in which he eats, sleeps, and washes. He spends 23 hours a day in this cell and is taken out for one hour of exercise per day in a room only slightly larger than his cell. He is alone for his exercise period. The cell has two small frosted glass windows that allow very little natural light or fresh air. Other than visits with counsel, trips to court, a family visit once a week, or trips upstairs to access electronic evidence (during trial preparation), he does not leave his cell. While he has some limited access to commissary, it is far more restrictive than the commissary privileges available to general population prisoners. He is only allowed one telephone call a month, which is an SHU limitation. He has no interaction with other prisoners. When transported off the SHU, he is placed in full restraints.

In making her decision, the judge references the 1987 Supreme Court case [Turner v. Safley](#), which outlined a four-factor test for evaluating whether a prison order prescription xanax online regulation that allegedly violates a constitutional right is reasonably related to a valid correctional objective:

The court must consider first whether there is a valid, rational connection between the regulation and the legitimate governmental interest used to justify it; second, whether there are alternative means for the prisoner to exercise the right at issue; third, the impact that the desired accommodation will have on guards, other inmates, and prison resources; and fourth, the absence of ready alternatives.

Judge Scheindlin proceeded to apply these standards to Bout's case. Even showing judicial restraint and giving due deference to prison authorities, she concluded, there was no legitimate justification for holding Bout in such harsh conditions indefinitely.

In conducting this rational basis review, deference is accorded to the BOP's determination. The Supreme Court has noted that courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform and that separation of powers concerns counsel against policy of judicial restraint.

However, as previously noted, [p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution and [w]hen a prison . . . practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights.

I conclude that there is no valid, rational connection between the BOP's decision to keep Bout in the SHU for more than fourteen months and any legitimate governmental interests put forward to justify it. Solitary confinement is generally intended as short term housing, yet the Government here seeks to hold Bout indefinitely with hardly any human contact or mobility. [I]t is well documented that long periods of solitary confinement can have devastating effects on the mental well-being of a detainee.

The Government has put forward no legitimate justification for holding Bout in such harsh conditions indefinitely, and there is no rational basis for concluding that Bout presents a greater danger in general population than that posed by many other inmates at the MCC. Considering the *Turner* factors together, I find that Bout's placement in the SHU is not reasonably related to legitimate penological objectives but rather is an exaggerated response to [the BOP's] concerns.

Although I recognize that courts are loathe to interfere with questions of prison administration, an area in which the BOP is best suited to make decisions, I cannot shirk my duty under the Constitution and *Turner* to ensure that Bout's confinement is not arbitrarily and excessively harsh.

If all judges were similarly unwilling to shirk their duty under the Constitution, and if all inmates in prolonged isolation had good lawyers with the resources to represent them, there would be a lot fewer prisoners in solitary confinement.

James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, *Blood in the Face*. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book *Hell Is a Very Small Place: Voices from Solitary Confinement*. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

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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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I suppose that is good for him but my fiance has been in solitary confinement now longer than that because they are trying to say he is a gang member and is not! So how does a terrorist get out of solitary when a man of God who has had exemplary behavior for the last three years get stuck in solitary in the Texas prison where he is??

@Holt: Are today's inmates so different then in the past? How do other countries deal with incorrigible inmates? And the BOP thought they had good reason to hold Bout in isolation. Do low level gang members present more of a threat than this man? Why the difference? Someone with this man's money can get others to take care of anything too messy and have a clean record inside.

Excerpt from the case:

The reasons for placement in the SHU were provided by the warden. These included: (1) the nature of the charges; (2) his ability to acquire vast resources, which could easily affect an escape or harm a lot of people. His connectivity to his associates; (3) and his alleged leadership . . . [and] his

ability to lead the other inmates and control what they can do with the outside. . . . His ability to control and influence people. The Government also produced an

administrative detention order dated January 20, 2011. This order provided the following reasons for Bout's detention in the SHU.

You have been placed in administrative detention due to your having been charged with serious criminal charges, including conspiring with terrorists organizations to kill U.S. nationals and officers and providing material support to a terrorist organization. You reportedly have access to mass amounts of money and weapons and to a large criminal organization. You are reported [to have] a leadership role [which] can result in undue influence among other inmates. Your case received broad publicity, which

could place you at risk and abuse by other inmates.

http://solitarywatch.com/wp-content/uploads/2012/03/viktor_bout_opinion_and_order_february_24_2012.pdf

I see no reason why Bout is let out when a snitch's word can land someone else in the hole without do process for decades.

I believe that solitary confinement is a necessary evil in the prison system there are some convicts for whom there's no other option, having shown incorrigibility that can be dealt with in no other way.

But this man didn't seem to meet any standard by which solitary confinement is imposed, and so he won his freedom in being assigned to regular population. This, after reading the piece, is as it should be.

wow so you have to be a foreigner to get a fair shake at constitutional rights. Is anyone else sick to death at this?

The desired accommodation is based on the unique facts of this case and will not create a ripple effect it does not require the transfer of a category of prisoners from the SHU to general population, nor does it impact BOP's ability to place terrorists with a history of violence in the SHU. It simply requests Bout's transfer to general population, which should not require any extra attention or resources from prison officials.

Money talks bullshit walks.

Or rather having big money raises your chances of walking.

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