



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

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RE: Human Rights Defense Center – Individual Submission for UPR (USA)

The Human Rights Defense Center (HRDC) is a U.S. based non-profit organization that advocates on behalf of the human rights of people held in U.S. detention facilities. This includes people in state and federal prisons, local jails, immigration detention centers, civil commitment facilities, Bureau of Indian Affairs jails, juvenile facilities and military prisons. HRDC is one of the few national opponents to the private prison industry and is the foremost advocate on behalf of the free speech rights of publishers to communicate with prisoners and the right of prisoners to receive publications and communications from outside sources. HRDC also does significant work around government transparency and accountability issues by filing and litigating public records and Freedom of Information Act requests at the state and federal levels.

HRDC was originally founded in 1990 in Washington State as *Prisoners' Legal News* (later *Prison Legal News*). The initial purpose of the organization was to publish a monthly newsletter of the same name to give a voice to prisoners, their families and others affected by criminal justice policies in Washington. Today, HRDC distributes around 50 different criminal justice, legal and self-help titles, and continues to publish *Prison Legal News*, which has become a 64-page monthly publication with subscribers in all 50 states and internationally. PLN distributes its publication to prisoners and law librarians in approximately 2,200 correctional facilities across the United States, including institutions within the Federal Bureau of Prisons and all thirty-three adult prisons of the California Department of Corrections and Rehabilitation. HRDC engages in litigation, media campaigns and outreach, public speaking and education, and testimony before legislative and regulatory bodies. HRDC also works to reform regulation governing intrastate prison and jail phone calls. Lowering the costs of calls from prisons, jails, juvenile facilities and other detention centers eases the burden on prisoners' families, who are disproportionately poor, people of color and members of communities already hit hard by mass incarceration. Moreover, for prisoners who are functionally illiterate or suffer from mental disorders and cannot rely on written correspondence, phone calls are the primary means of maintaining family ties and parental relationships.

Very Truly Yours,
HUMAN RIGHTS DEFENSE CENTER

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I. EXECUTIVE SUMMARY

1. Over the past thirty years, the U.S. prison population has ballooned to 2.3 million – the highest incarcerated population in the world – engendering reports of prisoner abuse, systemic indifference to medical or mental health needs, and dangerous, even life-threatening, housing conditions. A disproportionate number of these prisoners are from historically marginalized or vulnerable communities - the poor, people of color, or individuals with mental and developmental disabilities. Consequently, the need for prisoners to understand legal issues relevant to their confinement, such as the operations of corrections facilities, jail and prison conditions, and prisoner health and safety, is essential.

2. Many U.S. prisons, however, have institutional barriers preventing prisoners from receiving such information. Publishers have their books and magazines censored, and their right to communicate with prisoners stifled. Under the pretext of enhancing prison security and promoting efficiency, these policies were crafted to save funds by streamlining the mail screening process and limiting opportunities to introduce contraband into correctional facilities. However, by censoring prisoner access to information, these policies in effect further marginalize prisoners from the community at large, obstruct their ability to stay apprised of their rights and undermine constitutional and human rights norms and standards. Over the past five years, an increasing number of jails have initiated policies mandating that all personal written correspondence to or from the jail take place via postcard - radically restricting a prisoner's ability to communicate with the outside world. In practice, they have the perverse effect of deterring written communication between incarcerated people and their communities, straining connections that are essential for both successful reintegration and for preventing reoffending.

3. The imposition of exorbitant user fees and costs for phone calls underscores the troubling trend within U.S. prisons to isolate prisoners from their social and familial networks. In the prison phone market, state and local government entities grant monopolies to telephone companies by entering into exclusive contracts in exchange for commissions or “kick-backs” from the revenue collected. These commission payments result in fees and surcharges that can significantly increase the cost of making even a single phone call. Consequently, prisoners - many of whom are poor and cannot afford to pay these costs - are further isolated from their families and community. Moreover, for prisoners who are functionally illiterate or suffer from mental disorders and cannot rely on written correspondence, phone calls are the primary means of maintaining family ties and parental relationship, or to communicate about issues related to their confinement

4. The Human Rights Defense Center (HRDC) publishes *Prison Legal News* (PLN), a monthly journal of corrections news and analysis, and disseminates books about the criminal justice system, legal reference books, and self-help books of interest to prisoners. PLN has approximately 9,000 subscribers in the United States and abroad, including prisoners and law librarians in approximately 2,200 correctional facilities across the United States, including institutions within the Federal Bureau of Prisons. HRDC is the foremost advocate on behalf of the free speech rights of publishers to communicate with prisoners and the right of prisoners to receive publications and communications from outside sources. HRDC's attorneys bring First Amendment cases against prison and jail officials who use illegal mail policies to censor *Prison Legal News* or other literature mailed to prisoners by *Prison Legal News* such as PLN's books and letters. As a result, it has been successful in overturning a number of postcard-only policies and other publication bans. Through advocacy and legislative reform efforts, HRDC also works to lower the costs of prison phone calls and ease the financial burden on prisoners and their families.

5. Nevertheless, many U.S. prisons continue to censor books and magazines to prisoners, limit correspondence to and from prison facilities to postcards, and impose exorbitant and cost-prohibitive fees and surcharges to phone calls.

II. ADVOCACY AND LITIGATION EFFORTS

a. U.S. Constitutional Framework – The Right to Send and Receive Publications and Other Correspondence under the First and Fourteenth Amendment to the U.S. Constitution.

6. “Prison walls do not form a barrier separating prison inmates from the protections of the Constitution,”ⁱ nor do they bar others “from exercising their own constitutional rights by reaching out to those on the ‘inside.’”ⁱⁱ The U.S. Constitution requires government actors to ensure that its policies, practices, and actions do not violate the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. While prisoners are not entitled to full First Amendment rights, any encroachment on their freedom of speech must be “reasonably related to legitimate penological objectives.” When prisons censor publications and correspondence sent to prisoners, it violates these fundamental principles.ⁱⁱⁱ Moreover, many prisons fail to provide adequate notice to publishers or other senders of correspondence that their mail is being censored or provide an opportunity to appeal the censorship.

7. A publisher’s right to send publications and other correspondence is clearly established. “[T]here is no question that publishers who wish to communicate with those who...willingly seek their point of view have a legitimate First Amendment interest in access to prisoners.”^{iv} When the speech covers topics of great public concern, moreover, it “occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.”^v

8. In determining whether the free speech rights of publishers have been violated, the U.S. Supreme Court has set forth a four-pronged balancing test: (1) “there must be a ‘valid, rational connection’ between the prison regulation and the legitimate governmental interest put forward to justify it.”^{vi} The first factor is “sine qua non: if the prison fails to show that the regulation is rationally related to a legitimate penological objective, [the Court] do[es] not consider the other factors.”^{vii} (2) “whether there are alternative means of exercising the right that remain open,” allowing “other avenues” for the “asserted right.”^{viii} (3) “the impact accommodation of the asserted constitutional right will have on guards and other prisoners, and on the allocation of prison resources generally.”^{ix} (4) whether “the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an ‘exaggerated response’ to prison concerns.”^x

b. The Censorship of Publications and Other Correspondence First Amendment Rights

i. No Rational Relation to Legitimate Penological Objective

9. Although security concerns can be a valid penological interest, the postcard-only policy or blanket bans are not rationally related to meeting that penological objective. In fact, cutting prisoners off from meaningful communications with the outside actually undermines public safety. The U.S. Supreme Court has recognized that “the weight of professional opinion seems to be that inmate freedom to correspond with outsiders advances rather than retards the goal of rehabilitation.”^{xi} Such restrictions are harmful because prisoners are often easier to manage in custody when they are connected with friends and family in the outside world. Similarly, such a policy undermines public safety because it keeps prisoners from developing the relationships with the outside world they need to prepare themselves for a productive life beyond bars.

10. Additionally, any limited improvements in staff time do not justify the sweeping restrictions on First Amendment rights caused by such policies. Prior challenges to unduly restrictive correctional mail policies have held that any minimal savings of staff time here would not be enough to uphold the policy.^{xii} Rather

than demonstrably improving staff efficiency or time management, these policies do little more than limit a publisher's First Amendment rights and dissuade outsiders from corresponding with prisoners due to the extra effort required under the policy.

ii. There Are No Alternative Means of Exercising PLN's First Amendment Rights

11. These censorship policies prevent publishers from sending informational brochure packs, subscription renewal letters, and copies of case law that are relevant to prisoners. It also prevents third parties from sending copies of articles or legal material to prisoners. Moreover, sending subscription renewal letters and informational brochure packs to prisoners allows publishers to fulfill their mission by communicating with prisoners about the services and resources they offer. These communications generate revenue to allow publishers to further their mission. Similarly, by sending copies of recent case law to prisoners, publishers further their mission to provide the public with access to important legal materials. Consequently, publishers have no other reasonable, alternative ways to ensure prisoners receive this information. As it relates to postcard only policies, it is not feasible for publishers to print an entire legal decision, or all the information contained in their brochures, forms, and book lists, on postcards. This would require a large volume of postcards, and a corresponding increase in cost to purchase postcards and have staff print them.

iii. Accommodating First Amendment Rights by Delivering Publications and Other Correspondence Would Impose No Significant Burden on Jail Officials, Other Prisoners, or Allocation of Resources

12. This factor considers the impact that "accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally."^{xiii} Because of the high likelihood that even the smallest changes will have some "ramification of the liberty of others or on the use of the prison's limited resources[.]" this factor weighs most heavily when "accommodation of an asserted right will have a significant 'ripple effect' on fellow inmates or on prison staff."^{xiv} Also, "the policies followed at other well-run institutions [are] relevant to a determination of the need for a particular type of restriction."^{xv}

13. Allowing enveloped mail creates no significant burden on jail officials. Numerous prison and jail systems that do not enforce a publication ban or postcard-only policy, but instead perform general mail inspections. The prevalence of the alternative policies allowing for enveloped mail among such "well-run institutions" suggests that these policies do not increase efficiency enough to result in their widespread adoption. As to the impact on prisoners, censoring publisher's materials only hinders rehabilitative efforts, as prisoners are deprived of reading material that would educate them and provide a constructive use of time.

iv. A Ban on Publications or a Postcard Policy is an Exaggerated Response to Perceived Security Concerns

14. Even if a publisher's material or correspondence presented a genuine threat to institutional security or staff time management – which most do not – Jail staff could remove the correspondence from its envelope, review its contents for contraband, and deliver the items to their intended recipients. This alternative fully addresses a publisher's First Amendment rights at little to no cost to a prison's penological interests in safety and staff efficiency. Moreover, the fact that systems like the Federal Bureau of Prisons and large county jails all accommodate enveloped mail without compromised security evidences that such policies are an exaggerated response to the potential dangers^{xvi} that accompany the postal service.

c. The Failure to Provide Publishers with Notice and an Opportunity to Challenge Censorship Violates the Due Process Clause of the Fourteenth Amendment

15. The Due Process Clause requires that jails must provide both the prisoner and sender with notice and opportunity to challenge a correctional facility's censorship and refusal to deliver an incoming publication.^{xvii} Providing notice and an opportunity to be heard is important because it allows publishers to investigate and to challenge violations of their First Amendment rights, as well as to assist subscribers in filing challenges to such violations within the correctional grievance system.^{xviii} Conversely, if correctional facilities are allowed to simply throw away items that they choose not to deliver, it is impossible for publishers and prisoners to know what materials are not being delivered and subsequently challenge the basis for the refusals.^{xix} Correctional facilities in other jurisdictions provide due process to publishers and prisoners when refusing to deliver publications and correspondence. For instance, the Federal Bureau of Prisons promptly notifies prisoners and publishers, identifying the specific articles or materials rejected and allowing independent review of a rejection decision.^{xx} This policy was upheld by the Supreme Court and acts as a model for other correctional facilities.^{xxi}

d. Exorbitant Prison Phone Fees and Surcharges is a Financial Barrier that Frustrates Meaningful Contact with Friends and Family

16. Up to 70% of the costs of telephone calls from prisons and jails have nothing to do with the cost of the phone service provided. Detention facilities across the country have exclusive contracts with prison phone companies like Securus, Global Tel*Link and CenturyLink. Most of these contracts guarantee a substantial "commission" kickback to the state or county agency that is usually based on a percentage of the gross revenue from phone calls made by prisoners. As a result, contracts often go to the company that offers the highest kickback, not the lowest calling rates. Prisoners' families end up paying inflated rates due to these unfair contracts. Most states profit handsomely from prison phone kickbacks, receiving around \$128.3 million in 2012. Only 8 states do not accept prison phone kickbacks, and they have some of the lowest phone rates in the nation.

17. Studies show that prisoners who maintain contact with their families while incarcerated are less likely to reoffend after they are released; that is, they have lower recidivism rates. Our communities benefit when prisoners and their families maintain contact that will help them succeed post-release – but inflated prison and jail phone rates post a financial barrier that frustrates such contact.

18. The national Campaign for Prison Phone Justice achieved success in August 2013 when the FCC voted to cap interstate (long distance) prison and jail phone calls to \$.21/minute for debit and pre-paid calls and \$.25/minute for collect calls. These rates went into effect on February 11, 2014. While the FCC's unprecedented order helps many families, much more remains to be done. An estimated 85% of calls from detention facilities are made within the same state (intrastate). Thus, the focus must now shift to extending similar reforms and rate caps to intrastate prison and jail phone calls. Lowering the costs of calls from prisons, jails, juvenile facilities and other detention centers will ease the burden on prisoners' families, who are disproportionately poor, people of color and members of communities already hit hard by mass incarceration.

III. RECOMMENDATIONS

a. *Recommendations as to censorship of publications and other correspondence to prisons:*

- i. All jails should allow personal communication via letter and envelope. Jails that currently enforce postcard-only restrictions should revoke their postcard requirements and instead use the predominant mail screening methods implemented by prisons and the vast majority of jails;

- ii. State regulatory agencies that are responsible for jail oversight should prohibit postcard-only mail policies;
- iii. State and local commission boards should restrict funding to jails and other detention facilities that continue to enforce unconstitutional mail censorship policies;
- iv. Correctional associations should refuse to accredit correctional facilities with unconstitutional mail censorship policies.

b. *Recommendations as to regulating prison phone calls:*

- i. Prisons or other detention facilities should refuse to accept commissions from contracts with prison telephone companies;
- ii. Prisons or other detention facilities should refuse to contract with any company that is not fully transparent about how fees and commissions are calculated;
- iii. The FCC should impose reasonable rate and fee caps on all prison and jail telephone calls;
- iv. The FCC should ban commission payments in all prison and jail telephone contracts;
- v. Audit legitimate fee collection by prison and jail phone companies to ensure compliance with FCC policy.

ⁱ *Turner v. Safley*, 482 U.S. 78, 84 (1987).

ⁱⁱ *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989)

ⁱⁱⁱ HRDC has successfully challenged numerous censorship policies nationally. See e.g., *Prison Legal News v. Lewis County, et. al.*, No.: 14-cv-05304 (W.D.Wa. Sept. 10, 2014)(enjoining jail from enforcing post-card only policy); *Prison Legal News v. County of Ventura, et. al.*, No. cv 14-0773 (C.D. Cal. May 19, 2014)(enjoining jail from refusing to deliver PLN); *Prison Legal News v. Mascara*, No. 13-cv-14481 (S.D. Fla., Apr. 8, 2014)(enjoining jail from not delivering PLN’s correspondence); *Prison Legal News v. Columbia Cnty.*, 942 F. Supp. 2d 1068 (D.Or. 2013); *Prison Legal News v. Chapman*, 2013 WL 1296367 (M.D.Ga. 2013)(enjoining jail from refusing to provide PLN’s *Prison Legal News* periodical to inmates); *Prison Legal News v. Betterton*, No. 2:12-cv-00699 (E.D. Tex., Sept. 30, 2013)(enjoining jail from publication ban and lack of due process); *Prison Legal News v. Jones*, No. 2:11-cv-00907 (E.D. Cal., Mar. 8, 2012) (enjoining refusal to deliver PLN publications and mailings); *Prison Legal News v. Lehman*, 397 F.3d 692 (9th Cir. 2005)(granting summary judgment and permanent injunctive relief on prison’s ban of non-subscription bulk mail and catalogs unconstitutional); *Prison Legal News v. Cook*, 238 F.3d 1145, 1151 (9th Cir. 2001)(concluding that mail restriction was not rationally related to a legitimate penological objective and declining to consider the other *Turner* factors).

^{iv} *Id.*

^v *Connick v. Myers*, 461 U.S. 138, 145 (1983) (internal quotation marks omitted); see also *Pell v. Procunier*, 417 U.S. 817, 830 n.7 (1974) (“[T]he conditions in this Nation’s prisons are a matter that is both newsworthy and of great public importance”).

^{vi} *Turner*, 482 U.S. at 89 (quoting *Block v. Rutherford*, 468 U.S. 576, 586 (1984)).

^{vii} *Hrdlicka v. Reniff*, 631 F.3d 1044, 1051 (9th Cir. 2011) (quoting *Ashker v. Cal. Dep’t of Corr.*, 350 F.3d 917, 922 (9th Cir. 2003)); *Prison Legal News v. Cook*, 238 F.3d 1145, 1151 (9th Cir. 2001) (concluding that mail restriction was not rationally related to a legitimate penological objective and declining to consider the other *Turner* factors).

^{viii} *Turner*, 482 U.S. at 90 (internal quotation marks omitted).

^{ix} *Id.*

^x *Id.* (quoting *Block*, 468 U.S. at 581)

^{xi} *Procunier v. Martinez*, 416 U.S. 396, 412–13 (1974), overruled on other grounds by *Abbott*, 490 U.S. at 413–14.

^{xii} See *Prison Legal News v. Lehman*, 397 F.3d 692, 700 (9th Cir. 2005) (rejecting regulation designed to reduce volume of mail); *Cook*, 238 F.3d at 1151 (rejecting administrative burden justification where lifting the ban would result only in “the addition of 15 to 30 pieces of mail” each day); *Clement v. Cal. Dept. of Corr.*, 364 F.3d 1148, 1152 (9th Cir. 2004) (prohibiting a certain type of mail to reduce total volume “is an arbitrary way to achieve a reduction in mail volume”).

^{xiii} *Turner*, 482 U.S. at 90.

^{xiv} *Id.*

^{xv} *Martinez*, 416 U.S. at 414 n.14 ; see also *Morrison v. Hall*, 261 F.3d 896, 905 (9th Cir. 2001) (citing *Martinez*, 416 U.S. at 414 n.14).

^{xvi} See *Morrison*, 261 F.3d at 905 (finding that alternative “policies followed at other well-run institutions” evidenced that easy and obvious alternatives existed to the challenged regulation) (citations omitted).

^{xvii} See *Procunier*, 416 U.S. at 418 (requiring that “an inmate be notified of the rejection of a letter written by or addressed to him, that the author of that letter be given a reasonable opportunity to protest that decision, and that complaints be referred to a prison official other than the person who originally disapproved the correspondence”); *Cook*, 238 F.3d at 1152–53 (violation of due process where correctional institution “fail[s] to provide notice and administrative review” in rejecting mail); *Krug v. Lutz*, 329 F.3d 692, 697–98 (9th Cir. 2003) (noting that “this circuit has repeatedly acknowledged . . . the right to appeal the exclusion of incoming publications.”); *Prison Legal News v. Lehman*, 272 F. Supp. 2d 1151, 1159, 1164 (W.D. Wash. 2003) (granting injunction in favor of PLN on due process issue), *aff’d*, 397 F.3d 692 (9th Cir. 2005).

^{xviii} See *Montcalm Publ’g. Corp. v. Beck*, 80 F.3d 105, 108–09 (4th Cir. 1996).

^{xix} *Id.* at 109 (stating that notice to the prisoner alone is insufficient because “[a]n inmate who cannot even see the publication can hardly mount an effective challenge to the decision to withhold that publication”)

^{xx} See *Abbott*, 490 U.S. at 406.

^{xxi} *Id.*