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August 3, 2021

VIA EMAIL AND OVERNIGHT DELIVERY

Paul O'Brien, Executive Director
Amnesty International USA Headquarters
311 W 43rd Street, 7th Floor
New York, NY 10036
Email: report@aiusa.org

Anthony D. Romero, Executive Director
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, NY 10004

RE: EMERGENCY REQUEST TO INVESTIGATE MISTREATMENT OF PRE-TRIAL DETAINEES FROM THE JANUARY 6, 2021 U.S. CAPITOL PROTEST

Dear Messrs O'Brien and Romero:

The undersigned lawyers who are representing certain defendants charged with various misdemeanor and felony offenses in connection with the protest at the U.S. Capitol on January 6, 2021 (hereafter referred to as "January Sixers"), urgently call upon Amnesty International and the American Civil Liberties Union to investigate the mistreatment and torture of pre-trial detainees held in the District of Columbia jail over the last six months. This letter is an emergency request to help us put an end to the human rights violations taking place at what has been called "DC-GITMO"—violations which without question meet the definition of torture.

Initially, it should be noted that none of the detainees or those released pending trial have been charged with insurrection, despite the media, leaders in Congress, and the President of the United States calling it an insurrection. However, even if all January Sixers were charged with insurrection, our call for help and immediate action would remain the same. This is because pretrial detainees are being tortured while in federal custody in violation of Supreme Court precedent, as well as the United Nations Standard Rules for the Treatment of Prisoners, otherwise known as the Nelson Mandela Rules,¹ which were recently incorporated by reference and codified as law, in New York State.²

¹https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf.

²<https://www.nysenate.gov/legislation/bills/2019/s8622>

A. THE UNITED STATES SUPREME COURT PROHIBITS PUNISHMENT OF PRETRIAL DETAINEES

The Supreme Court of the United States has ruled that pretrial detainees, unlike convicted persons, cannot be punished at all, never mind maliciously and sadistically.³ Despite this legal standard, the harsh reality is that January Sixers are being held in DC-GITMO in violation of their constitutional and human rights. January Sixers are routinely denied the right to confer with their counsel, as well as obtain and maintain their legal paperwork. They are also being beaten, sleep deprived, denied medical care, regular shower access, haircuts⁴, shaves, and held in solitary confinement for long periods of time. This is unprecedented, unconstitutional, un-American, offensive to all standards of common decency, illegal, and wrong.

B. SOLITARY CONFINEMENT IS TORTURE UNDER STANDARDS SET FORTH BY THE UNITED STATES AND THE UNITED NATIONS

The United Nations' Nelson Mandela Rule defines solitary confinement as "the confinement of prisoners for 22 hours or more a day without meaningful human contact."⁵ The ACLU's Federal Anti-Solitary Taskforce (FAST) classifies Solitary confinement as torture because it (1) causes immense suffering, (2) devastating mental, physical, and emotional harm, and (3) has directly caused the deaths of far too many people.⁶

United States Senator Elizabeth Warren, in her October 31, 2019 letter to the Department of Homeland Security's Officer for Civil Rights and Civil Liberties, used the United Nations' finding that solitary confinement is torture,⁷ as justification to call for an investigation into the Federal Government's use solitary confinement against pretrial detainees. As well as the government's hinderance of previous investigations examining the abuse of detainee civil rights and liberties.⁸

³ *Kingsley v. Hendrickson*, 576 U.S. 389 (2015).

⁴ Upon information and belief, as of August 2, 2021, January Sixers must be vaccinated to obtain a haircut, and professional appearance in Court, where 2 of the 40 individuals on the Patriot Unit are vaccinated.

⁵<https://www.solitaryconfinement.org/un-nelson-mandela-rules>

⁶<https://www.aclu.org/report/blueprint-ending-solitary-confinement-federal-government>

⁷ United Nations Report, "Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees," https://www.weiI.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf.

⁸ See U.S. SENATOR ELIZABETH WARREN, letter to Department of Homeland Security's Office of Civil Rights and Civil Liberties addressing the improper use of solitary confinement on detainees, (October 31, 2019), attached as AI ACLU 1.

On June 16, 2021, I published an article on LinkedIn Pulse Titled “*American citizens are being tortured right now within five miles of the White House. Tell me... are you okay with this?*”⁹ The purpose of that article was to sound the alarm on the very real fact that pretrial detainees are being tortured while in federal custody in violation of their constitutional and human rights.¹⁰

On July 24, 2021, the following four members of Congress: Rep. Paul A. Gosar, D.D.S., Rep. Matt Gaetz, Rep. Louie Gohmert, and Rep. Marjorie Taylor Green wrote a letter to Attorney General Merrick Garland requesting a meeting on July 27, 2021, during which the conditions of confinement that pretrial detainees are enduring at DC-GITMO would be discussed.¹¹ Their requests have yet to be answered.

Since that time, these same members of Congress held a press conference outside of DC-GITMO on July 29, 2021, where they were harassed and publicly shouted down. These members of Congress attempted to enter the facility and demanded to inspect it, or at least discuss their concerns with prison officials. DC-GITMO officers responded by locking the doors and barring entrance into the facility.

These events are deeply troubling. Those currently seated in the highest positions of power in the United States Federal Government have refused to investigate or acknowledge the human rights violations taking place in DC-GITMO.¹² As such, we are turning to both your organizations for immediate help.

The purpose of this correspondence, therefore, is to urgently request an immediate investigation into the Federal Government’s use of solitary confinement and various human rights violations against pretrial detainees charged with January Sixth related crimes.

⁹ See JOSEPH MCBRIDE, ESQ., *American citizens are being tortured right now within five miles of the White House. Tell me... are you okay with this?*, (June 16, 2021), attached as Exhibit 2.

¹⁰The aforementioned article was widely circulated across the Internet for over a month before being banned by LinkedIn for violating community guidelines on July 20, 2021, directly after McBride’s appearance on CNN’s New Day with John Avalon, during which, McBride informed the public that January Sixers were being tortured in DC-GITMO. McBride asked the nation the following question: “. . . are you okay with pretrial detainees being tortured?”.

¹¹ Letter to A.G. Garland addressing status of investigations related to conditions of confinement at D.C. Jail, attached as Exhibit 3

¹²<https://www.politico.com/news/2021/04/19/capitol-riot-defendants-warren-483125>

C. THE NELSON MANDELA RULES

The Nelson Mandela Rules¹³ state that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subject to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as justification. (Rule 1). There shall also be no discrimination on the grounds of race, religion, or political opinion. (Rule 2).

The Rules also state that in order to maintain a good appearance and self-respect, facilities shall provide for the proper care of the hair and beard, and men shall be able to shave regularly. (Rule 18) Sanitary installations shall be adequate and regular shower access given. (Rule 16). And all parts of the prison shall be kept clean at all times. (Rule 17).

Every prisoner shall be given wholesome food of nutritional value at normal hours for health and strength. And drinking water shall be made available to the prisoner whenever he or she needs it. (Rule 22). All prisoners shall be given access to regular health care services. (Rules 26 & 27).

General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air, physical exercise, personal hygiene, health care, and adequate personal space, shall apply to all prisoners without exception. (Rule 42).

In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhumane or degrading treatment or punishment. Prolonged solitary confinement is prohibited. Placement of a prisoner in a dark cell is prohibited. Discipline shall not include a prohibition against family contact. Corporal punishment and collective punishment are prohibited. (Rule 43).

Solitary confinement is defined as the confinement of a prisoner for 22 hours or more a day absent meaningful human contact. Prolonged solitary confinement is defined as a period of solitary confinement for more than 15 days. (Rule 44).

Solitary confinement shall be used only in exceptional cases as a last resort, for the shortest possible time, and subject to independent review. (Rule 45). The imposition of solitary confinement is prohibited against prisoners with mental or physical disabilities when their conditions would be exasperated by such measures. (Rule 45)

¹³ Nelson Mandela Rules, Attached as Exhibit 4

**D. THE HORRIBLE CIRCUMSTANCES UNDER WHICH JANUARY SIXERS
ARE BEING HELD VIOLATE THEIR CONSTITUTIONAL AND HUMAN
RIGHTS**

January Sixers are regularly being held in solitary confinement for 22 or 23 hours a day in DC-GITMO. Dubbed the Patriot Unit, this previously defunct part of DC-GITMO, was reopened specifically to house January Sixers. To put it mildly the facility is disgusting. Black mold, brown drinking water, and poor ventilation are but a few of the problems with the facility itself.

The way that staff treats the detainees is brutal and denies them their civil rights. If a detainee speaks up, the guards lock everyone down. If a lawyer speaks out against the jail or the government, the guards lock everyone down. And when the jail really wants to punish, it uses COVID-19 as a cover to lock everyone down for weeks at a time. This means, at best, detainees have 1 hour each day out of their cells to attend to their personal needs.

The detainees are also regularly harassed, publicly abused, and threatened by the guards during their “recreational time.” Those January Sixers who have the courage to speak up about the conditions of confinement are immediately sent to “The Hole” where they are locked up in a small cell for 24-hours per day, cut off from all meaningful human contact, their families, and their counsel for weeks and even months at a time. They are also denied the right to regularly shower, shave, and cut their hair. Even timely access to medical care is weaponized and denied as a means to punish, control, and break down pretrial detainees being held in DC-GITMO’s Patriot Unit.

My client, Richard Barnett, who did not assault any Capitol Police or destroy any property, was detained by the federal government for 109 days before being released over the objections of the Justice Department since he was neither a danger to society nor risk of flight. His crime was putting his feet on one of Nancy Pelosi’s desks at the request of a press photographer.

Richard spent the entirety of his time at DC-GITMO in solitary confinement enduring disgusting unsanitary conditions that include the presence of black mold inside the cell where he was being held in solitary confinement, as well as beatings, sleep deprivation, getting robbed of his belongings, and various psychological and emotional abuses— including the denial of timely medical care, and threats toward his wife. Barnett filed ten grievances against staff for these offenses, none of them were unanswered, and each one resulted in swift punishment and retaliation by the guards.¹⁴

¹⁴ See March 1, 2021 grievance filed by Richard Barnett against an officer that “refused to give his name but he identified himself as, Nebo’s cousin. He said he was going to make me his bitch. Said I had a pretty mouth and called my wife by name and said he was getting on a plane to go sexually assault her and we were inbreeds from Arkansas”, attached as Exhibit 5.

E. SPECIFIC INCIDENTS OF TORTURE

Richard Barnett was regularly tortured during his time in DC-GITMO. TORTURE INCIDENTS 1-3 illustrate the seriousness of these allegations with respect to Richard Barnett, but do not account for the multiple other incidents which have not been recorded in this document.

TORTURE INCIDENT #1:

A prison guard approached Richard and made a sexually threatening comment, one that could easily be construed as a threat to sexually assault Richard. The guard then called Richard's wife by her first name and told Richard that he was going to get on a plane to Arkansas where he would sexually assault her as well. Richard filed a Prison Rape Elimination Act (PREA) complaint. Richard's complaint was not properly considered. He was instead retaliated against in three different ways.

First, Richard was taken to SMU A, which is separate 24-hour lock down area known as "the hole." Second, at some point, Richard was taken through an underground tunnel to an area of the Jail where local DC prisoners are held. There the inmates threatened to assault, slash, and murder Richard for three days. Third, Richard was taken to SMU, B, also known as the second hole, where he remained in prolonged solitary confinement for the next several weeks.

TORTURE INCIDENT #2:

Richard's time at DC-GITMO was filled with anxiety, uncertainty, and a high level of stress. One day, Richard began to feel tightness in his chest, pain in his left arm, and thought that he was having a heart attack, as such, he called for "help!" A guard came over to his cell, looked at Richard, and then proceeded to mock and laugh at him. Richard, thinking he was dying called out for a female staff member that was within screaming distance. She heard Richard's screams and said she would get help. Richard laid there for a significant period of time— certainly enough time for him to die. Richard eventually received medical attention and was given an EKG. Richard still does not know to this day whether or not he had a heart attack.

Richard was still ill when he was returned to his cell. He asked the guards to check in on him to make sure he was okay. Richard eventually fell asleep. The guard who laughed at him earlier, decided to pound on the glass door to Richard's cell for no other reason than to harass him. This startled Richard so badly that he stood up fast, but because he was still not well, he fainted and hit his head on the sink. The guard saw this happen and left Richard a second time. Richard woke up with massive swelling and was bleeding from his head. Richard once again found himself screaming for medical attention for almost an hour until help came.

Richard filed a grievance against the abovementioned officer who had been treating him badly and that officer was removed from Richard's area. However, and for reasons we still do not understand, that officer returned to Richard's area about a month later, and on his very first day back falsely accused and charged Richard with misconduct. Richard was thrown in the hole and robbed of his personal belongings as a result. Richard stayed in the hole for approximately 2 weeks.

TORTURE INCIDENT #3:

DC-GITMO has been using COVID-19 as a justification to keep January Sixers in 23-hour lockdown for months at a time. Because of COVID, both officers and detainees are supposed to stay masked in the common areas. One day Richard asked an officer who was in close proximity to him to wear his mask. That officer responded by verbally abusing and threatening Richard publicly in front of many witnesses, including family members who heard the commotion on the other end of the phones. Richard was ordered back to his cell where he opened a book and began to read.

Richard's cell door opened at some point and a group of approximately nine officers told Richard to exit his cell. Richard told them he had done nothing wrong and extended his hands to be cuffed. Richard was cuffed and shackled. He was verbally abused and threatened with mace. The guards jerked Richard back and forth with great force. Richard objected to the way he was being treated. One of the guards yelled "Take him down!" And in that moment, Richard Barnett, a sixty-year-old pretrial detainee with no criminal record was lifted off of his feet by his shackles and slammed shoulder and head first into the concrete floor.

Richard was then charged by the officers with inciting a riot. Richard asked for a hearing. He won the hearing, and was ordered back to the Patriot Unit as a result. The guards disregarded this order and kept Richard in the hole for multiple additional weeks up until the day he was released.¹⁵

TORTURE INCIDENT #4:

Edward Jacob Lang, a January Sixer, has been held in the hole in 24-hour a day solitary confinement on three separate occasions, totaling more than three months. Lang's physical abuse includes being dragged, shoved, denied regular shower access, and getting an entire can of mace in his face, while standing inside of cell with photos and a bible in his hand. Lang's other abuses include sleep deprivation, verbal abuse, and being denied the right to counsel. Just recently, Lang was taken to The Hole, where he remained for two straight months, without a single disciplinary ticket. After being taken out of The Hole, he received a hero's welcome upon returning to the Patriot Unit. Within 14 hours of being back on the Patriot Unit, the guards opened his' cell door, and maced him directly in his eyes. When Lang was maced he was standing in his cell with a bible in one hand and family photos in the other. He then was brought back to The Hole, where he remains today.

This is torture.

¹⁵ See April 19, 2021, grievance filed by Richard Barnett marked SMU-B asking why he is still being held in solitary despite winning his hearing and being ordered back to the Patriot Unit, Attached as Exhibit 6.

TORTURE INCIDENT #5:

What about the case of Scott Fairlamb, the New Jersey Gym owner, who has been reported to have been in federal custody since January, 2021, and “stays 23.5 hours daily in his cell”.¹⁶ Newsweek reported that Fairlamb “was diagnosed with leukemia shortly after his MMA debut at Ring of Combat 31 in September 2010 [and] [i]n 2014, Fairlamb opened Fairlamb Fit, a gym in Pompton Lakes, New Jersey.”¹⁷ Fairlamb has been detained since January 22, 2021, and during such time he has yet to see his family, lost his business which is his family’s main source of income.¹⁸ While in jail, he suffered a heart attack, has to continue to fight Leukemia with daily chemo pill treatment, all while being locked in my cell for more than 23 hours straight every other day.¹⁹ This is torture.

TORTURE INCIDENT #6:

Has the world forgotten Emmanuel Jackson, who according to court filings “was a homeless, 20-year-old high school student. . . with Autism, an IQ of 75, and a processing speed index of 62.5.”²⁰ The D.C District Court eventually granted Jackson pretrial release after finding Jackson to have severe “intellectual disability”.²¹

Jackson was repeatedly being tortured by the guards while detained in DC-GITMO because he is a Black January Sixer. One time in particular he was ferociously maced and dragged to the hole after asking for some kind of assistance. According to Richard Barnett, Jackson was maced so intensely that the overflow of the chemical agent poured into Barnett’s cell, resulting in Barnett choking as well. This is torture.

¹⁶ See JENNIFER JEAN MILLER, *NJ Gym Owner Charged In Capitol Riot Spends 23.5 Hours in Cell*, available at <https://patch.com/new-jersey/hopatcong-sparta/nj-gym-owner-charged-capitol-riot-spends-23-5-hours-cell> (last visited August 3, 2021).

¹⁷ See JEFFERY MARTIN, *Former MMA Fighter Scott Fairlamb Charged With Punching Cop in Capitol Riots*, available at, <https://www.newsweek.com/former-mma-fighter-scott-fairlamb-charged-punching-cop-capitol-riots-1563847> (last visited August 3, 2021).

¹⁸ See <https://www.givesendgo.com/j6patriotrelief>

¹⁹ See <https://www.givesendgo.com/j6patriotrelief>

²⁰ See *US v. Jackson*, 1:21 – CR- 00395 (TJK) at ECF Doc. 10, p. 3

²¹ See BREAKING: Judge Beryl A. Howell releases mentally-ill Capitol insurrectionist Emanuel Jackson pending trial. His severe "intellectual disability" was a key factor in her decision, available at, https://www.reddit.com/r/CapitolConsequences/comments/lwdhrm/breaking_judge_beryl_a_howell_releases

TORTURE INCIDENT #7:

Has the world also forgotten about the multiple news reports of the beating Ryan Samsel took while in DC-GITMO? Samsel's allegations include the claim that DC-GITMO guards zip-tied his hands behind his back and beat him so badly that he will never again be the same. As corroborated in court documents which state:

Mr. Samsel is to undergo a major surgery and is concerned about his recovery where he is currently housed. Currently, Mr. Samsel is detained and locked down for 24 hours a day. While on lockdown, it is common for Ms. Samsel to not have contact with a corrections officer for several hours. The concern arises regarding Mr. Samsel's safety post-surgery for the lack of care and Central Virginia Regional can provide.

(*See US v. Samsel*, 1:21-MJ-00188(ZMF) at ECF Doc. 41, p. 2).

The D.C. District Court has recognized Samsel's medical concerns for months now, and recently ordered that: "the court will continue to work with the parties to locate the best available medical care for the defendant."²² Despite this, Samsel alleges that he remains in solitary confinement to this day.

THIS IS TORTURE.

F. APPLICATION OF THE NELSON MANDELLA RULES

Application of the Nelson Mandela Rules to these troubling facts leads to one conclusion. January Sixers are being held in solitary confinement for extended periods of time on a regular basis. DC-GITMO has cleverly used COVID-19 as a pretext to justify the indefinite 23-hour per day lockdown of January Sixers in their cells. The Mandela Rules, however, clearly state that there is no justification whatsoever for prolonged solitary confinement. Therefore, under the standards set forth by the ACLU and United Nations, it is clear that January Sixers are being tortured at DC-GITMO, within five miles of the White House.

²² On or before July 9, the Court will issue further guidance as to the requested transportation of the defendant." *See* 07/01/2021 Minute Order. Over a month later "The Court request a representative from the USMS and the jail's medical unit appear at the hearing." *See* 08/02/2021 Minute Order.

G. APPLICATION OF SUPREME COURT PRECEDENT

The Supreme Court of the United States has ruled that pretrial detainees, unlike convicted persons, cannot be punished at all, never mind maliciously and sadistically.²³ Despite this legal standard, and as demonstrated by the specific instances above, the reality is that in addition to prolonged solitary confinement, January Sixers are being beaten, denied medical treatment, denied regular shower access, as well as reasonable access to personal hygiene items. Therefore, under the standards set forth by the United States Supreme Court, it is clear that January Sixers constitutional rights are being violated at DC-GITMO, within five miles of the White House.

H. REQUEST FOR IMMEDIATE ASSISTANCE

Attorney General Merrick Garland, whose office is a few blocks from the DC Jail, has failed to take any corrective action to stop the use of solitary confinement and other inhumane acts against January Sixers despite the multitude of voices, except from the main stream media, complaining about the plight of these American citizens. Make no mistake about it, Attorney General Garland's silence is an endorsement of these malicious and sadistic practices.

Moreover, these practices are being used to intimidate and extract cooperation and information from January Sixers for the benefit of the FBI's investigation and the benefit of DOJ's prosecution of January Sixers. And just last week, federal prosecutors announced that the trials in these cases won't begin until 2022, further punishing these detainees, whose sentence, if convicted, may be less than their time served if they were released pending trial.

We note that the Secretary of State Antony Blinken has recently called upon the United Nations to investigate racism in America,²⁴ yet Attorney General Garland has turned a blind eye to the rampant civil rights abuses occurring just a few blocks from his office.

Originally intended to be an "island outside the law" where terrorism suspects could be interrogated without restraint, the ACLU has reported that Guantánamo Bay has become an international symbol of injustice, abuse, and disregard for the rule of law.²⁵ Yet, the detainees at GITMO who are suspected terrorists responsible for the horrific attack on our country on September 11, 2001, seem to be treated much better than the detainees at DC-GITMO.

We therefore request your immediate assistance to investigate the inhumane conditions of confinement in DC-GITMO, as well as the use of torture against citizen detainees, which is unprecedented, unreasonable, unconstitutional, and wrong.

Nelson Mandela said that no one truly knows a nation until one has been inside its jails. And that a nation should not be judged by how it treats its highest citizens, but its lowest ones.

²³ *Kingsley v. Hendrickson*, 576 U.S. 389 (2015).

²⁴ <https://www.worldtribune.com/biden-secretary-of-state-blinken-invites-un-to-set-up-racial-truth-commission-in-america/>

²⁵ <https://www.aclu.org/issues/national-security/detention/guantanamo-bay-detention-camp>

We look forward to your prompt response to this urgent request.

Respectfully Submitted,

/s/ Joseph D. McBride, Esq.

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/s/ Steven A. Metcalf, Esq

STEVEN A. METCALF, ESQ.
Counsel for Edward Jacob Lang

/s/ Martin H. Tankleff, Esq.

MARTIN H. TANKLEFF, ESQ
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Attachments: Exhibits 1-6

Cc: Merrick Garland

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