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Judgment in Favor of Improperly Validated Inmate Affirmed by Ninth Circuit

*Ninth Circuit Decides that Federal Judge Was Correct in Finding that CDCR
Improperly Validated Ernesto Lira as Gang Member,
Resulting in Eight Years of Solitary SHU Confinement at Pelican Bay*

SAN FRANCISCO Yesterday the United States Court of Appeals for the Ninth Circuit affirmed a judgment by Northern District Court Judge Susan Illston that the California Department of Corrections and Rehabilitation (CDCR) violated former inmate Ernesto Lira's constitutional due process rights by improperly validating him as a prison gang associate, resulting in eight years of solitary confinement in the Security Housing Unit (SHU) at Pelican Bay penitentiary.

Lira, who was in prison for minor theft and drug charges, was validated as a prison gang affiliate based on uncorroborated and inconsistent evidence. At trial he presented testimony disputing his alleged gang status, challenging the reliability of documentation relied upon by CDCR to validate him as well as CDCR's failure to provide him with notice and a hearing, and demonstrating the serious emotional effects of extended SHU confinement.

The matter was tried before Judge Illston in early 2009. Mark A. White and William B. Chapman, of Chapman Popik & White LLP in San Francisco represented Mr. Lira.¹ In affirming Judge Illston's judgment in Lira's favor, the Ninth Circuit unanimously held that the CDCR violated Lira's constitutional rights initially by failing to give him notice of the charges and an opportunity to be heard before validating him as a gang member, and thereafter by failing to reinvestigate or reevaluate the validation evidence during Lira's eight years in SHU. As the Ninth Circuit concluded, "the record overwhelmingly supports the conclusion that Lira was prejudiced" by the due process violations.

The Ninth Circuit's affirmance represents the culmination of over ten years of litigation by Lira to challenge the improper gang validation. "This is an important vindication of Lira's rights," said Attorney Mark White.

A copy of the Ninth Circuit decision, case number 09-17446, as well as a copy of the judgment and the findings of fact in *Lira v. Cate*, Northern District of California case no. C-00-0905 SI, can be obtained on PACER or is available upon request. Contact Thoren@chapop.com or Dbrasher@chapop.com for a copy.

¹National Public Radio provided coverage of the trial at the time. See <http://www.npr.org/templates/story/story.php?storyId=101501841>.

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