

## LEGAL ANALYSIS OF THE PROPOSED CENSORSHIP REGULATIONS

1. Contraband: Expands the definition of contraband to include “written materials or photographs that indicate an association with validated STG members or associates.” Section 3006(c)(19).

Possession of contraband is a disciplinary violation resulting in specific punishments. Also it can contribute to a prisoner being validated as a member or associate of a security threat group, which can result in placement in solitary confinement. This section is constitutionally vague and overbroad on several levels.

- a. This definition does not include anything about the nature of the writing or photo except that it is “associated” with a person who is validated as a STG member/associate. It does not require that the photo or writing constitute a gang communication, let alone a criminal or misconduct-related communication. Thus, newspaper articles showing that the son or daughter of an STG member/associate was admitted to college on full scholarship would be contraband even if in the possession of the proud parent. Writings about pending or resolved lawsuits brought by or against an STG member/associate would be contraband. It is one thing to ban documents about criminal activity; but banning writings or pictures simply because they are associated with a human being who happens to be validated, no matter how innocuous the item is, is unjustifiable.
- b. Under the new, pending Security Threat Group regulations, CDCR will be able to validate non-prisoners and non-parolees. This means that family members and activists are not immune from being validated as STG members/associates. Further, under those proposed regulations, the number of groups that can be validated as STGs is expanded. In combination, the STG regs and the contraband regs greatly expand the sheer number of items that will be deemed contraband.
- c. The word “association” is vague and could be interpreted very broadly. If an STG member is from the Fruitvale section of Oakland, then technically any material that concerns the Fruitvale is “associated” with that STG member and is therefore “contraband”. CDCR has a track record of interpreting its regulations expansively.
- d. Because these censorship regulations are so broad and vague, they do not provide fair notice to prisoners or their families as to what written material or photos are disallowed. These regulations will have a chilling effect on family relationships, when maintaining strong family ties is a hallmark of any prison rehabilitation program.
- e. The Initial Statement of Reasons (page 4) states that the purpose of this amendment is to “disallow[] publications that indicate an association with groups that are oppositional to authority and society.” This ominous language reveals political underpinnings: a broad mandate to censor social change organizations.

2. Processing publications in the mail: Modifies a procedure for the prisons to follow when they withhold or disallow publications incoming or outgoing mail.

The original section authorizes a prison to withhold temporarily incoming books, magazines or publications. The prison must notify the publisher and the prisoner, and refer the matter to the Division of Adult Institutions for a final determination. Section 3134.1(d).

- a. The proposed regulation changes the name of the list of disallowed publications from “centralized list of banned publications” to “Centralized List of Disapproved Publications,” making it both more formal and more benign-sounding. A ban is a ban.
- b. A related section describes the nature of the prohibited publications to include “STG recruitment material.” CDCR views political and historical writings, particularly about African American history, as “STG recruitment material.” Section 3134.1(e).
- c. The regulation is ambiguous whether the disapproval of a “publication” refers to the current issue of that publication or refers to all future issues of that publication.
- d. The regulation requires the prison to deliver a publication to the prisoner within 15 days of the DAI’s denial of the request to put the temporarily withhold writing. However, there are no other time limits in the new regulations, which can mean lengthy delays in the return of approved materials.
- e. This list should be published on CDCR’s website so that family members, publishers, the media, advocates and the general public can see which publications are being banned by CDCR.

3. Correspondence: Adds “written materials or photographs that indicate an association with validated STG members or associates” to a list of “Disturbing or Offensive Correspondence” which may be disallowed. Section 3135(c)(14).

- a. This section is constitutionally vague and overbroad, like the contraband section.
- b. This section specifically concerns any writings or photos, going in or out of the prison, not just publications.
- c. The Initial Statement of Reasons (page 5) states that this change is being made to “disallow[] publications containing propaganda of groups deviant in nature, opposed to authority and society, and to provide clarity to CDCR staff and inmates concerning the specific items . . . that staff will review when making a determination about an inmate’s association with a validated member or associate of a Security Threat Group.” This ominous language is vague as to which group might be considered “opposed to authority and society” – is any group who opposes solitary confinement “opposed to authority”? And this language threatens a gang validation finding against anyone in possession of such a writing.