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Your Responsibility When Using the Information Provided Below:

When we wrote this Informational Material we did our best to give you useful and accurate information because we know that prisoners often have difficulty obtaining legal information and we cannot provide specific advice to all the prisoners who request it. The laws change frequently and are subject to differing interpretations. We do not always have the resources to make changes to this material every time the law changes. If you use this pamphlet it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in your institution law library.

INFORMATION RE: *HINOJOSA V. DAVEY* **(federal court case on credit-earning status of validated prison gang members in SHU)** May 2016

We have received your letter asking for information, advice, or assistance in regards to a recent court case on credit-earning for validated prison gang members or associates who are in a Security Housing Unit (SHU). We are unable to write individual responses to everyone who has contacted us about that case. We hope that the general information in this letter will help answer your questions.

In September 2015, the federal Ninth Circuit Court of Appeals examined the 2010 amendment to Penal Code § 2933.6, which changed the law so that prisoners who are in SHUs as validated prison gang members or associates cannot earn any good behavior credits (“D-2 status”). The court held that the change violated the Ex Post Facto Clause of the United States Constitution because it increased the punishment for a prisoner whose underlying criminal offense was committed before the amendment took effect (January 25, 2010). The court defined the underlying crime as the original commitment offense and not the misconduct that resulted in the gang validation. (*Hinojosa v. Davey* (9th Cir. 2015) 803 F.3d 412.)

On May 16, 2016, the United States Supreme Court reversed the Ninth Circuit’s *Hinojosa* decision. The Supreme Court observed that the California state courts have rejected the same ex post facto argument that was presented in the *Hinojosa* case, and that the Ninth Circuit court had previously held that those state court decisions were not contrary to clearly established federal law. The Supreme Court ruled that the Ninth Circuit was required to defer to the state court decisions and did not have authority to independently re-consider the ex post facto issue in the *Hinojosa* case. (*Kernan v. Hinojosa* (May 16, 2016) 578 U.S. __ [15-833].) The prior cases in which the ex post facto argument was rejected include *In re Sampson* (2011) 197 Cal.App.4th 1234, *In re Efstathiou* (2011) 200 Cal.App.4th 725, and *Nevarez v. Barnes* (9th Cir. 2014) 749 F.3d 1124.) **Thus, the current law is that validated prison gang members or associates who are housed in a SHU do NOT earn any good conduct credits, regardless of the date of their underlying criminal offenses, the dates on which they were involved in gang activity, or the dates on which they were validated and placed in a SHU.**

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