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Applying International Human Rights Laws to Force-Feeding Prisoners: Effort to Create Domestic Standards in the United States

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Applying International Human Rights Laws to Force-Feeding Prisoners: Effort to Create Domestic Standards in the United States

Heidi G. Kim*

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*"I will never forget the first time they passed the feeding tube up my nose. I can't describe how painful it is to be force-fed this way. As it was thrust in, it made me feel like throwing up. I wanted to vomit, but I couldn't. There was agony in my chest, throat and stomach. I had never experienced such pain before."*¹

—Samir Naji al Hasan Moqbel

—Guantanamo Bay hunger-striker

I. INTRODUCTION

A prisoner is taken into a cold room where he is strapped onto a restraint chair.² His hands, legs, and head are tied down with belts, and there is no way to break loose.³ The doctor approaches the conscious prisoner and applies lubricant into one of his nostrils.⁴ Slowly, the doctor inserts a two-foot long clear plastic tube into the lubricated nostril in attempt to get the tube down his throat and into the stomach.⁵ The prisoner cringes in pain and refuses to take the tube.⁶ He screams and tears start to drip down his face uncontrollably.⁷ After many attempts and difficulties, the tube finally passes the esophagus, and into the stomach.⁸ A liquid diet is then delivered through the tube.⁹

The aforementioned procedure is commonly known as force-feeding, specifically nasogastric feeding,¹⁰ and is one of two ways force-feeding is conducted, the other being intravenous treatment.¹¹ Force-feeding is routinely employed when a prisoner goes on a hunger strike;¹² however, the force-feeding

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1. Samir Naji al Hasan Moqbel, *Gitmo Is Killing Me*, N.Y. TIMES (Apr. 14, 2013), <http://www.nytimes.com/2013/04/15/opinion/hunger-striking-at-guantanamo-bay.html>.

2. See Kent Sepkowitz, *The Writhing, Miserable Reality of Force Feeding at Guantánamo Bay*, THE DAILY BEAST (May 2, 2013), <http://www.thedailybeast.com/articles/2013/05/02/the-writhing-miserable-reality-of-force-feeding-at-guant-namo-bay.html>.

3. See *id.*

4. *Id.*

5. See *id.*

6. See generally *id.*

7. See *id.*

8. Sepkowitz, *supra* note 2.

9. *Id.*

10. Amanda Gordon, *The Constitutional Choices Afforded to a Prisoner on Hunger Strike: Guantánamo*, 9 SANTA CLARA J. INT'L L. 345, 353 (2011).

11. *Id.* at 349.

12. *Hunger Strike Definition*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com> (last visited Nov. 25, 2013) ("refusal to eat enough to sustain life"); see also Sepkowitz, *supra* note 2.

procedure has been described as “barbaric.”¹³ The procedure is disturbing and stressful, and can cause physical and mental discomfort to prisoners for weeks, even months.¹⁴ Although prisoners have the right to refuse medical treatment,¹⁵ including nasogastric feeding,¹⁶ they are still being force-fed.¹⁷ The international community has labeled this practice a violation of international human rights laws, specifically the ban on torture, cruel, inhuman and degrading punishment.¹⁸ Despite this label, the United States continues to sanction force-feeding regardless of whether international law actually allows force-feeding.¹⁹ Domestic standards and procedures to implement these standards are needed to ensure the United States is complying with international human rights laws.

This Comment will discuss the issue of force-feeding in the United States, and is specifically prompted by the recent federal court order that authorized the force-feeding of California prisoners.²⁰ It will examine the applicable international law and provide an overview of the domestic standards that should be implemented to ensure U.S. compliance with international law pertaining to the force-feeding of prisoners.²¹

Part II begins with background information on major hunger strikes that have occurred around the world and the circumstances that preceded them.²² It describes how force-feeding was and still is one of the main mechanisms in ending hunger strikes and examines how this mechanism has created an international outcry against the United States.²³ Part III addresses the relevant international human rights treaties to which the United States is a party, specifically the International Covenant on Civil and Political Rights (“ICCPR”) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”).²⁴ This section also examines how the torture or cruel, inhuman, or degrading treatment or punishment (“CIDT”) provisions in both treaties apply to force-feeding prisoners.²⁵ In addition, Part III discusses a case from the European Court of Human Rights (“ECHR”) that created a test

13. Sepkowitz, *supra* note 2.

14. *Id.*

15. *Right to Refuse Treatment*, PRISONERS’ LEGAL SERVICES OF MASSACHUSETTS, <http://www.plsma.org/prisoner-self-help/pro-se-materials/medical-mental-health/right-to-refuse-treatment/>.

16. Geoffrey Cowley, *Gitmo dilemma: Force-feeding violates international law*, MSNBC (May 3, 2013), <http://www.msnbc.com/up-with-steve-kornacki/gitmo-dilemma-force-feeding-violates-interna>.

17. Sepkowitz, *supra* note 2.

18. Joe Nocera, *Is Force-Feeding Torture?*, N.Y. TIMES (May 31, 2013), http://www.nytimes.com/2013/06/01/opinion/nocera-is-force-feeding-torture.html?_r=0.

19. *See* Cowley, *supra* note 16.

20. *See infra* Part II.C.

21. *See infra* Part III.D.

22. *See infra* Part II.A.

23. *See infra* Part II.B.

24. *See infra* Part III.A.

25. *See infra* Part III.A.

(which this Comment will suggest the U.S. state courts adopt) to determine whether the force-feeding at issue violated the CIDT provision of its own Convention.²⁶ Lastly, this section analyzes the California prison hunger strike incident using the test developed in the case.²⁷

Part IV examines the issues the United States has with implementing the international human rights treaties into domestic law.²⁸ It also discusses the specific constraints the United States has set forth when signing the treaties, which limits the effect of the treaties in the United States.²⁹ Part V provides possible resolutions to the federalism issue and recommendations for implementing the proper standards discussed in Part III as a process for analyzing force-feeding under the CIDT provisions of the ICCPR and CAT.³⁰

II. BACKGROUND

A. History of Hunger Strikes

A hunger strike occurs when “a mentally competent person. . .has refused to take food and/or fluids for a significant interval.”³¹ The Code of Federal Regulations explains that a prisoner is on a hunger strike when he or she abstains from eating in excess of seventy-two hours.³² When a prisoner’s hunger strike advances to a certain stage, normally when a prisoner is near death,³³ both state and federal prison officials are faced with the issue of whether to intervene.³⁴

Hunger strikes in prisons have occurred throughout history³⁵ and differ from other types of protest because it is the protesters who directly suffer rather than the intended target.³⁶ The protesters depend on the “moral force of their actions” to accomplish their objective.³⁷ Hunger strikes can occur anywhere and for any political or social reason, but they are prevalent in prisons throughout the world because they are often perceived as the only way prisoners can protest the harsh conditions to which they are subjected to in solitary confinement.³⁸

26. See *infra* Part III.C.

27. See *infra* Part III.D.

28. See *infra* Part IV.

29. See *infra* Part IV.

30. See *infra* Part V.

31. Gordon, *supra* note 10, at 349 (defined by the World Medical Association).

32. 28 C.F.R. § 549.61 (2006); *Id.* at 350.

33. See Gordon, *supra* note 10, at 356 (describing the government’s interest in preserving life).

34. *Id.* at 350.

35. Tracey M. Ohm, *What They Can Do About It: Prison Administrators’ Authority to Force-Feed Hunger-Striking Inmates*, 23 WASH. U. J.L. & POL’Y 151, 154-55 (2007).

36. Alizeh Kohari, *Hunger Strikes: What Can They Achieve?*, BBC NEWS (Aug. 16, 2011), <http://www.bbc.co.uk/news/magazine-14540696>.

37. *Id.*

38. Nocera, *supra* note 18.

Beginning in the twentieth century, a women's suffrage movement arose in the United Kingdom.³⁹ The women, known as the Suffragettes, partook in protest.⁴⁰ While in prison, the Suffragettes went on a hunger strike and government officials became extremely concerned with the women's health.⁴¹ The prison officials decided to force-feed the Suffragettes, which led to a public outcry because force-feeding was traditionally used to feed mentally unstable people.⁴²

Partly influenced by the British Suffragettes, a similar hunger strike occurred among suffragists in the United States in 1917.⁴³ Many women were sent to prison where they deployed hunger strikes to protest their confinement.⁴⁴ Prison officials force-fed the suffragists hoping to end the hunger strikes.⁴⁵

Other major hunger strikes occurred later in the twentieth century, including the Irish Republican Army hunger strike led by Bobby Sands.⁴⁶ While confined in a British prison, Sands and nine other prisoners went on a hunger strike because the government refused to recognize them as "special category status"⁴⁷ prisoners.⁴⁸ However, the authorities failed to intervene, resulting in death for all ten prisoners.⁴⁹

Currently, well into the twenty-first century, hunger strikes remain prevalent in prisons.⁵⁰ In 2002, the U.S. Naval Base located at Guantanamo Bay, Cuba, opened as a detention center.⁵¹ Shortly after the opening, detainees began protesting their confinement through hunger strikes, which resulted in force-feeding.⁵² The Guantanamo Bay hunger strikes caused a huge public outcry due to the U.S. government's long-term use of force-feeding these detainees.⁵³ Such outcry is depicted in descriptions of the force-feeding process as "disgusting."⁵⁴

39. *The Suffragettes*, HISTORY LEARNING SITE, <http://www.historylearningsite.co.uk/suffragettes.htm>.

40. *Id.*

41. *Id.*

42. *Id.*

43. Ohm, *supra* note 35, at 154.

44. *Id.*

45. *Id.*

46. *Bobby Sands Biography*, <http://www.biography.com/people/bobby-sands-20941955> (last visited Oct. 24, 2013); Gordon, *supra* note 10, at 350.

47. The British government gave prisoners "special category status," which was a status similar to prisoner of war for carrying out "scheduled terrorist-type" crimes. Ohm, *supra* note 35, at 154–55 n.17.

48. Gordon, *supra* note 10, at 350; Ohm, *supra* note 35, at 154–55.

49. Ohm, *supra* note 35, at 155.

50. *See generally* Gordon, *supra* note 10, at 351.

51. *Id.*

52. *Id.*

53. Thomas Gaist, *Force-feeding Continues at Guantánamo with Approval of Obama Administration*, WORLD SOCIALIST WEB SITE (July 15, 2013), <http://www.wsws.org/en/articles/2013/07/15/gitm-j15.html>.

54. THE TIMES EDITORIAL BD., *A Force-feeding Disgrace at Guantanamo*, LOS ANGELES TIMES (July 14, 2013), <http://articles.latimes.com/2013/jul/14/opinion/la-ed-force-feeding-guantanamo-bay-prisoners-20130714> ("Food is forced through a 2-foot-long nasal tube down the throat and into the stomach while the prisoner is

Another recent hunger strike occurred in response to the guards' abusive treatment toward the detainees as well as detainees being held indefinitely and without any indication of when they would be released.⁵⁵ Notably, force-feeding has caused public scrutiny from international human rights groups who have demanded that justice be served and for the government to stop the force-feeding⁵⁶ because forcing people to eat raises many issues and is seen as cruel punishment.⁵⁷

B. The Issue of Force-Feeding

Force-feeding is used when a prison official needs to intervene in a hunger strike because the strike becomes life threatening.⁵⁸ Prisoners who refuse such treatment are forcefully restrained.⁵⁹ Force-feeding may be conducted either through nasogastric feeding or intravenous treatment.⁶⁰ Nasogastric feeding involves forcing liquid nutrients down a nasal tube, which runs down the esophagus and into the stomach.⁶¹ Intravenous feeding, on the other hand, provides nutrients through a catheter that is injected into the blood stream.⁶² In either case, the process of force-feeding is invasive, painful, and dangerous.⁶³ There have also been claims about medically unsafe force-feeding by untrained guards who "forc[e] greased tubes down the throat into the stomach. . . [and] have forced 'finger-thick' tubes into prisoner's noses without anesthetic."⁶⁴ The physiological methods of force-feeding prisoners has resulted in strong opposition among the international community who regard such methods as a severe physical infringement of an individual's right to bodily integrity.⁶⁵

immobilized. It requires an enormous commitment of medical personnel: 140 Navy doctors, nurses and corpsmen, including 37 reinforcements dispatched in April to accommodate the spreading hunger strike").

55. Gaist, *supra* note 53.

56. Dennis Sadowski, *Guantanamo Bay Prison Poses Moral Dilemma For White House*, NATIONAL CATHOLIC REPORTER (June 29, 2013), <http://ncronline.org/news/peace-justice/guantanamo-bay-prison-poses-moral-dilemma-white-house>.

57. *Id.*

58. Gordon, *supra* note 10, at 353.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 353-54.

63. *Id.* (discussing the medical risks of force-feeding through nasogastric feeding, such as suffocation and aspiration).

64. Gordon, *supra* note 10, at 354.

65. *Id.* at 353.

C. *California Prison Hunger Strike and Looking to the Future of Force-Feeding*

On July 8, 2013, over 30,000 inmates⁶⁶ imprisoned in two-thirds of California's penitentiaries went on a hunger strike.⁶⁷ The prisoners were protesting the state's use of maximum-security prisons and solitary confinement.⁶⁸ This was California's largest prison protest.⁶⁹ As the prisoners' health deteriorated, prison officials obtained a federal court order to allow them to force-feed the prisoners, despite the fact that some prisoners previously signed a "do-not-resuscitate" order.⁷⁰ The court order permitted physicians to make the determination of whether a prisoner should be force-fed, regardless of the "do-not-resuscitate" orders.⁷¹ Medical experts on prison hunger strikes claim that force-feeding prisoners against their will and ignoring the "do-not-resuscitate" order are medically inappropriate.⁷² The World Medical Association ("WMA") underscores that the prisoner's conscious decision to refuse food and medical treatment must be considered before any intervention occurs by the physician.⁷³

The hunger strike ended two months after it started and before any force-feeding was conducted;⁷⁴ however, there is still the looming question of whether certain force-feeding methods in the United States violate international law, specifically the ICCPR and CAT. Prisoners have the right to refuse medical treatment under international law,⁷⁵ yet the California federal court order ignored this fundamental right and allowed prison officials to proceed with force-feeding.⁷⁶ This historical event raises the issue of what standards are appropriate for determining whether the force-feeding order violated international law.

66. Paige St. John, *Inmates End California Prison Hunger Strike*, LOS ANGELES TIMES (Sept. 5, 2013), <http://articles.latimes.com/2013/sep/05/local/la-me-ff-prison-strike-20130906>.

67. Ian Lovett, *Inmates End Hunger Strike in California*, N.Y. TIMES (Sept. 5, 2013), http://www.nytimes.com/2013/09/06/us/inmates-end-hunger-strike-in-california.html?_r=1&.

68. St. John, *supra* note 66.

69. *Id.*

70. *California Hunger Strike: Judge Approves Force-Feeding of Prisoners*, THE GUARDIAN (Aug. 20, 2013), <http://www.theguardian.com/world/2013/aug/20/california-hunger-strike-force-feeding>.

71. Paige St. John, *Prison hunger strike: Medical chief says order allows key decisions*, LOS ANGELES TIMES (Aug. 20, 2013), <http://www.latimes.com/local/political/la-me-ff-prison-medical-chief-says-court-order-allows-lifesaving-decisions-20130820,0,4267105.story#axzz2sO0YZ8wd>.

72. *Id.*

73. World Med. Ass'n., *WMA condemns all forced feeding*, WORLD MEDICAL ASSOCIATION (Oct. 16, 2006), http://www.wma.net/en/40news/20archives/2006/2006_10/.

74. Lovett, *supra* note 67; Don Thompson & Paul Elias, *California Prison Hunger Strike Ends After Nearly Two Months*, HUFFINGTON POST (Sept. 5, 2013), http://www.huffingtonpost.com/2013/09/05/california-prison-hunger-strike_n_3874024.html (no prisoners suffered serious health problems due to starvation).

75. Gordon, *supra* note 10, at 368.

76. *See supra* Part II.C.

III. THE APPLICABLE INTERNATIONAL HUMAN RIGHTS LAWS ON FORCE- FEEDING

A. *The ICCPR and CAT Applied to Force-Feeding*

World War II proved the necessity of international protection for individual human beings.⁷⁷ The barbarity committed against certain racial/ethnic groups demonstrated that national governments failed to provide their citizens with the basic minimum of liberty and life.⁷⁸ Since national governments could not provide the necessary safeguards for their citizens, it became evident that there was a need for international principles to guarantee human rights protection.⁷⁹

The ICCPR encompasses many crucial human rights, and the Human Rights Committee (“Committee”) enforces these rights.⁸⁰ Article 7 of the ICCPR states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁸¹ The purpose of this provision is “to protect both the dignity and the physical and mental integrity of the individual.”⁸² Article 7 is also complemented with Article 10, which states, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁸³

Article 7 is absolute, meaning there can be “no derogation from the provision.”⁸⁴ Article 7’s prohibition of torture or, cruel, inhuman or degrading treatment or punishment applies to both physical pain and acts that lead to mental suffering.⁸⁵ State parties should notify the Committee of their efforts to prevent and punish acts prohibited by Article 7 and which are within their jurisdiction.⁸⁶ The Committee also emphasizes the importance of training and instructing all personnel who participate in the custody or treatment of arrested or detained individuals.⁸⁷ State parties must also notify the Committee on these trainings and identify how Article 7 is an important part of the rules and ethical guidelines

77. Christian Tomuschat, *International Covenant on Civil and Political Rights*, UNITED NATIONS (2008), <http://legal.un.org/avl/ha/iccpr/iccpr.html>.

78. *Id.*

79. *Id.*

80. *Id.*

81. International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

82. Human Rights Comm., General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 44th Sess., HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10, 1992) [hereinafter Human Rights Comm., General Comment No. 20, Article 7].

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

these personnel follow.⁸⁸ The Committee imposes additional stringent standards on safeguards for the protection of detained persons.⁸⁹ The Committee further requires State parties to give detailed information on interrogation practices, conditions of detentions, and the treatment to which detainees are subjected to.⁹⁰ It is clear that the protection of the detainees is extremely important and the Committee strives to ensure the detainees will receive the fairest treatment.⁹¹

Another source of international human rights law is the CAT.⁹² The CAT is similar to the ICCPR in that it bans torture.⁹³ However, the CAT is distinguishable from the ICCPR in that it specifically defines “torture.”⁹⁴ The CAT also differs from the ICCPR in regard to how “other cruel, inhuman, or degrading treatment or punishment” is defined and treated.⁹⁵ Unfortunately, the provision lacks any definition of what constitutes cruel, inhuman, or degrading treatment or punishment, and it does not clearly prohibit such treatment.⁹⁶ The CAT only states that State parties “shall undertake to prevent” such acts and continues to define cruel, inhuman, or degrading treatment or punishment as something that does “not amount to torture.”⁹⁷ Nonetheless, force-feeding has been established as degrading treatment amounting to torture.⁹⁸ Specifically, it amounts to torture under Article 1 of the CAT because the prisoner undergoes extreme pain and suffering.⁹⁹

88. Human Rights Comm., General Comment No. 20, Article 7, *supra* note 82.

89. *Id.*

90. *Id.*

91. *See id.*

92. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment pmbl., Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 [hereinafter Convention Against Torture].

93. *Id.* at art. 2.

94. “Torture” is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” *Id.* at art. 1.

95. “Each State Party shall under take to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” *Id.* at art. 16 para., 1.

96. John T. Parry, *Torture Nation, Torture Law*, 97 GEO. L.J. 1001, 1036–37 (2008-2009).

97. *Id.*

98. World Organization for Human Rights USA, *ICCPR Shadow Report*, at 2 (June 15, 2006).

99. Chairman of the Working Group on Arbitrary Detention to the U.N. Human Rights Comm’n, *Situation of Detainees at Guantánamo Bay*, ¶ 37, U.N. Doc. E/CN.4/2006/120 (Feb. 27, 2006).

B. Medical Ethics of Health Professionals in the Context of Force-Feeding

Health professionals play a vital role in the force-feeding process.¹⁰⁰ The World Medical Association (“WMA”) strongly condemns force-feeding and views it as unethical and unjustifiable.¹⁰¹ The WMA has adopted two documents that delineate the medical ethics of treating prisoners who partake in hunger strikes.¹⁰² The 1975 Declaration of Tokyo provides guidelines for physicians regarding treatment of prisoners and practices amounting to torture and other cruel, inhuman or degrading treatment or punishment.¹⁰³ It states “where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such voluntary refusal of nourishment, he or she shall not be fed artificially.”¹⁰⁴ In addition to this document, the 1991 Declaration of Malta on Hunger Strikers emphasizes that “[f]orcible feeding is never ethically acceptable.”¹⁰⁵ And although the feeding is done to prevent death, if it is done either by threat or force, or with physical restraints, the feeding constitutes inhuman and degrading treatment.¹⁰⁶

C. The European Court of Human Rights Judgment on Force-Feeding

Nevmerzhitsky v. Ukraine is a case from the European Court of Human Rights (“ECHR”).¹⁰⁷ Although the ECHR has its own convention (European Convention on Human Rights), some of the provisions are similar to the ICCPR.¹⁰⁸ Article 3 of the Convention states, “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹⁰⁹ This is analogous

100. *Id.* at ¶ 32.

101. World Med. Ass’n, *supra* note 73.

102. Center for Victims of Torture, *The United States’ Compliance with the International Covenant on Civil and Political Rights with Respect to the Continued Detention Without Charge or Trial of Prisoners for an Undefined Duration at the Guantánamo Bay Detention Facility*, SHADOW REPORT SUBMISSION COMPILED BY THE US HUMAN RIGHTS NETWORK (ON BEHALF OF MEMBER AND PARTNER ORGANIZATIONS) TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE [USHRN JOINT SUBMISSION] 255, 257 (Sept. 2013), available at <http://www.ushrnetwork.org/resources-media/iccpr-shadow-report-guantanamo-bay>.

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Nevmerzhitsky v. Ukraine*, 2005-II Eur. Ct. H.R. 1 [hereinafter *Nevmerzhitsky*].

108. *See id.*

109. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222.

to Article 7 of the ICCPR, in that both prohibit torture, and inhuman or degrading treatment or punishment.¹¹⁰

In *Nevmerzhitsky*, the applicant, a Ukrainian national, was detained in a temporary isolation unit to await his conviction.¹¹¹ Nevmerzhitsky's detention was extended five times and during his detention, he was treated inhumanely.¹¹² At times, he was placed in extremely small cells with twelve other detainees with no access to drinking water.¹¹³ He contracted microbic eczema and scabies due to the bug-infested cells.¹¹⁴ Nevmerzhitsky went on a hunger strike and was eventually force-fed.¹¹⁵ He was handcuffed, his mouth was forcibly opened, and a rubber tube was inserted into his body, all of which he resisted.¹¹⁶ Approximately three years later, he was finally convicted of forgery and was sentenced to over five years in prison.¹¹⁷ Due to this temporary detention before his conviction, he was exempted from serving the five years and was immediately admitted to the City Hospital where he received medical treatment.¹¹⁸

Nevmerzhitsky claimed the Ukrainian Government violated Article 3 and complained of the inhumane conditions in the isolation units and the force-feeding conducted during his hunger strike.¹¹⁹ The Court emphasized the medical necessity of force-feeding to save a human being's life, and the burden is on the State to prove that such measure is a medical necessity.¹²⁰ The Court developed a test to determine whether the force-feeding at issue was necessary, and thus not a violation of Article 3.¹²¹ The test requires that the State prove force-feeding is a medical necessity, meaning it must be essential to save the prisoner's life;¹²² however, if there is no medical necessity, the procedural safeguards set in place for the prisoner should be respected, including the right to refuse such treatment and having the State act in the prisoner's best interest.¹²³ In addition, the manner in which the prisoner is force-fed cannot be cruel, inhuman, or degrading.¹²⁴

110. *See id.*; International Covenant on Civil and Political Rights, Dec. 16, 1966, S. TREATY DOC. NO. 95-20, 999 U.N.T.S. 171; Elizabeth Wicks, *The Right to Refuse Medical Treatment Under the European Convention on Human Rights*, 9 MED. L. REV. 17, 22 (2001).

111. *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 1-2.

112. *See id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 4.

117. *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 1-2.

118. *Id.*

119. *Id.*

120. *Id.* at 4.

121. *Id.*

122. *Id.*

123. *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 4.

124. *Id.*

However, the Court will give prison officials more discretion in the manner of the force-feeding when the force-feeding is a medical necessity.¹²⁵

The Ukrainian government failed to meet this burden.¹²⁶ No evidence existed of any medical necessity in force-feeding Nevmerzhitsky.¹²⁷ The government was obligated to provide a medical report or a report from the head of the detention center, which described the necessity of the force-feeding as well as the procedure of how the force-feeding was to be conducted.¹²⁸ The government failed to prove that force-feeding was medically necessary, and it disregarded the procedural safeguards guaranteed to Nevmerzhitsky by force-feeding him after his deliberate refusal to eat food.¹²⁹ The Ukrainian authorities did not act in Nevmerzhitsky's best interest when they decided to force-feed him.¹³⁰ With regard to the manner in which he was force-fed, the Court determined that handcuffing Nevmerzhitsky and forcing a tube into his stomach with his forceful resistance was torture and a violation of Article 3 of the European Convention of Human Rights.¹³¹

D. Analyzing the California Prison Hunger Strike under the Nevmerzhitsky Standards

The standard the Court developed in *Nevmerzhitsky* can be useful in determining whether certain instances of force-feeding violate international law and constitute torture or cruel, inhuman, or degrading treatment or punishment. In regard to the California prison hunger strike, the federal court order that authorized the force-feeding of the California state prisoners would likely have constituted cruel, inhuman, or degrading treatment or punishment.¹³² Since the hunger strike was terminated before any force-feeding was implemented,¹³³ medical experts can only speculate what the procedures of the force-feeding would have been.¹³⁴

125. *Id.* (explaining that the manner of the force-feeding must not breach the minimum level of severity set by case law under Article 3).

126. *Id.*

127. *Id.*

128. *Id.*

129. *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 4.

130. *Id.*

131. *Id.*

132. See BLACK'S LAW DICTIONARY 1429 (10th ed. 2014) (Cruel and unusual punishment); *infra* Part II.C.

133. Thompson & Elias, *supra* note 74.

134. Don Thompson, *California Prisons Can Force-Fed Inmates on Hunger Strike, Rules Federal Judge*, HUFFINGTON POST (Aug. 20, 2013, 9:53 AM), http://www.huffingtonpost.com/2013/08/20/california-force-feeding_n_3784899.html.

1. *Medical Necessity and Procedural Safeguards*

The California federal court order authorized the force-feeding for prisoners who were near death,¹³⁵ which would seemingly meet the medical necessity requirement. However, Dr. Steven Tharratt, director of medical services who oversees medical care for California's prisons, claimed that no prisoner was near death at the time the court order was obtained.¹³⁶ State authorities requested the court order as a blanket permission to allow prison doctors to make the judgment of whether a prisoner should be force-fed without requesting orders case-by-case.¹³⁷ To prove medical necessity, *Nevmerzhitsky* made it clear that a written report either by the physician or head of the detention center must adequately indicate why the force-feeding is necessary.¹³⁸ The court order was obtained prior to any evidence of such medical necessity, and it was obtained as a general order to allow force-feeding of any prisoners under the prison doctor's discretion. Thus, there was no medical necessity when the state authorities obtained the federal court order.¹³⁹

In addition, the California prison officials initially sought the federal court order to disregard the prisoners' "do-not-resuscitate" order,¹⁴⁰ which is a procedural safeguard that should be respected according to *Nevmerzhitsky*.¹⁴¹ Before the federal court order, California policy banned force-feeding of prisoners if they had signed a "do-not-resuscitate" order.¹⁴² The California prison officials claimed they were concerned with prisoners being coerced into signing these orders by gang leaders; however, there are claims that the officials were "exaggerating" and that the state should not ignore these "do-not-resuscitate" orders.¹⁴³

Although there is a possibility that some of the do-not-resuscitate orders were obtained through coercion,¹⁴⁴ the invalidation of the orders that were voluntarily signed violates the prisoners' right to refuse such medical treatment.¹⁴⁵ The federal court order also gives prison officials discretion in determining whether the prisoners were coerced into signing the "do-not-resuscitate" orders.¹⁴⁶

135. *Id.*

136. *Id.*

137. Chris Fisher, *Judge OKs Force-Feeding California Inmates*, WIBW (Aug. 20, 2013, 5:26 AM), <http://www.wibw.com/home/nationalnews/headlines/Judge-OKs-Force-Feeding-California-Inmates-220324571.html>.

138. *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 4.

139. See Thompson & Elias, *supra* note 74.

140. *California Hunger Strike*, *supra* note 70.

141. See *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 4.

142. *California Hunger Strike*, *supra* note 70.

143. *Id.*

144. *Id.*

145. Gordon, *supra* note 10, at 360.

146. Thompson, *supra* note 134.

Nonetheless, it is possible that the prison officials will be likely to claim the signed orders were coerced when they were actually signed voluntarily because they have a strong interest in preserving life and preventing suicide.¹⁴⁷ Given the circumstances, it is difficult to conclude that the California federal court order did respect the procedural safeguards necessary for the prisoners.

2. *The Manner of the Force-Feeding*

There are conflicting statements on how the force-feeding procedure would have been implemented if the prisoners in California had not ended their hunger strike.¹⁴⁸ One source states the force-feeding could have been performed either through intravenous treatment or nasogastric feeding.¹⁴⁹ Another source contends the force-feeding method would have been less invasive than methods used on detainees at Guantanamo Bay.¹⁵⁰ The Director of Medical Services of California prisons stated the force-feeding would have most likely been implemented through intravenous feeding,¹⁵¹ and that prisoners would have been unconscious,¹⁵² and therefore unable to feel any pain.¹⁵³ Nevertheless, for the prisoner to be in an unconscious state, the medical personnel would need to restrain the resisting prisoner by strapping him onto a restraint chair, and forcibly inserting the needle into his blood vessel.¹⁵⁴ Although the prisoner would be unconscious, this would be a synthetically unconscious state, which doctors view as medically and morally unethical.¹⁵⁵ Intravenous treatment, compared to nasogastric feeding, is less intrusive;¹⁵⁶ but introduces problems including infections¹⁵⁷ and complications from line placement.¹⁵⁸ Intravenous treatment must also be monitored closely and carefully.¹⁵⁹

147. See *California Hunger Strike*, *supra* note 70; Thompson, *supra* note 134.

148. See *California Hunger Strike*, *supra* note 70; Thompson, *supra* note 134; Thompson & Elias, *supra* note 74.

149. Richard Ansbacher, *Force-Feeding Hunger-Striking Prisoners: A Framework For Analysis*, 35 U. FLA. L. REV. 99, 124 (1983); see Staff and agencies in Sacramento, *supra* note 70.; but see Thompson, *supra* note 134.

150. See Thompson, *supra* note 134 (explaining that the “U.S. military officials . . . snaked feeding tubes through the noses and into the stomachs of terror suspects who refused to eat”).

151. *Id.*

152. *Id.*

153. See *id.*

154. See Ansbacher, *supra* note 149, at 124.

155. *Id.*

156. See *id.*

157. Mara Silver, *Testing Cruzan: Prisoners and the Constitutional Question of Self-Starvation*, 58 STAN. L. REV. 631, 638 (2005-2006).

158. Laurie Beebe, *Intravenous Feeding Benefits and Side Effects*, LIVESTRONG (Oct. 24, 2013), <http://www.livestrong.com/article/40454-intravenous-feeding-benefits-side-effects/>.

159. *Id.*

Although Nevmerzhitsky was force-fed through nasogastric feeding, conducting force-feeding intravenously to an unconscious prisoner is inherently invasive because it is conducted against the prisoner's will.¹⁶⁰ In addition, since the federal court order was obtained without evidence of a specific medical necessity, the manner of the force-feeding could amount to cruel, inhuman, or degrading actions.¹⁶¹ The burden should be on California to prove that there was a medical necessity when obtaining the federal court order, the procedural safeguard of the prisoners were fully respected, and the manner in which the force-feeding would have been conducted would not have been cruel, inhuman, or degrading. However, there was no medical necessity at the time the federal court order authorized the force-feeding;¹⁶² but even if there was such necessity, forcing the prisoners to undergo intravenous treatment by inducing unconsciousness would have heightened the level of severity of the intrusion into the prisoner's right to refuse food. Therefore, under the *Nevmerzhitsky* standards, the California federal court order authorizing the force-feeding of the hunger-striking prisoners would likely constitute cruel, inhuman, or degrading treatment or punishment and possibly amounting to torture depending on the severity of the method of force-feeding.¹⁶³

IV. THE U.S. FEDERALISM RESTRAINTS IN EXECUTING THE ICCPR AND CAT

Before a similar standard to *Nevmerzhitsky* can be adopted in the United States to examine whether a specific force-feeding situation violates the ICCPR and CAT, the United States must implement the treaties domestically through legislation.¹⁶⁴ The United States has ratified both the ICCPR and CAT.¹⁶⁵ The Senate approved the treaties with the understanding that U.S. law already conformed with the treaties.¹⁶⁶ The ICCPR and CAT have had very little effect in domestic American courts.¹⁶⁷

The United States included reservations, understandings, and declarations ("RUDs") into both the ICCPR and CAT, thus making the treaties non-self-executing.¹⁶⁸ A non-self-executing treaty requires Congress to pass legislation

160. See Ansbacher, *supra* note 149, at 124.

161. See *id.*

162. Thompson, *supra* note 134.

163. See *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 4.

164. See *infra* Part V.

165. David Kaye, *State Execution of the International Covenant on Civil and Political Rights*, 3 U.C. IRVINE L. REV. 95, 95 (2013); Amnesty Int'l, *USA: The Edge of Endurance, Prison Conditions in California's Security Housing Units*, at 9, AI Index AMR 51/060/2012 (Sept. 2012).

166. Kaye, *supra* note 165, at 111.

167. *Id.* at 96; see Parry, *supra* note 96, at 1043.

168. Kaye, *supra* note 165, at 96; see Convention Against Torture, *supra* note 92; U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 CONG. REC. S4781-01 (daily ed. Apr. 2, 1992).

before the treaty can be binding in domestic courts.¹⁶⁹ The treaties are ratified and are considered the “supreme law[s] of the land,” but they cannot be invoked in American domestic courts.¹⁷⁰ Therefore, there is no way for a victim to petition for relief from a violation of the treaties since there is no legal mechanism to ascertain whether the United States is fulfilling its obligations under the ICCPR or CAT.¹⁷¹

The RUDs are criticized because they restrict the United States’ obligation under the treaties and prohibit any expansion upon the established substantive rights and protections presented in the Constitution and statutes.¹⁷² The United States has limited the definition of “torture”¹⁷³ under the CAT to require a specific intent element, denoting there must be an express purpose to cause pain.¹⁷⁴ This would make it more difficult to bring a claim against state officials since they can claim their purpose was to maintain prison order, and not cause pain.¹⁷⁵ Both the ICCPR and CAT contain reservations that state, “[T]he United States considers itself bound by Article 7 [of the ICCPR and Article 16 of the CAT] to the extent that CIDT means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States.”¹⁷⁶ By adding this reservation, the United States restricts the definition of the term CIDT to its own constitutional interpretation of it from under the U.S. Constitution.¹⁷⁷ CIDT under the treaties differs from “cruel and unusual punishment” under the Eighth Amendment because it is interpreted much more broadly than “cruel and unusual punishment.”¹⁷⁸ Thus the RUDs prevent Article 7 of the ICCPR and Article 16 of the CAT from being applied domestically.¹⁷⁹

Since the United States has limited the domestic applicability of the ICCPR and CAT, prisoners may only bring a claim under U.S. constitutional standards.¹⁸⁰ The Eighth Amendment of the U.S. Constitution bans cruel and unusual

169. Kaye, *supra* note 165, at 96.

170. *Id.*

171. *Id.*

172. Brad R. Roth, *Understanding the “Understanding”: Federalism Constraints on Human Rights Implementation*, 47 WAYNE L. REV. 891, 892 (2001).

173. “In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering.” Parry, *supra* note 96, at 1043–44 (2008-2009) (explaining one of the understandings that limit the definition of torture applied in the United States).

174. *Id.* at 1044.

175. *See generally id.*

176. U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 CONG. REC. S4781-01 (daily ed. Apr. 2, 1992); *Id.* at 1044; USA: *The Edge of Endurance, Prison Conditions in California’s Security Housing Units*, *supra* note 165, at 11–12.

177. Parry, *supra* note 96, at 1044–45.

178. *Id.* at 1047.

179. *Id.*

180. *See id.*

punishment.¹⁸¹ However, it will be difficult for a prisoner to bring a claim against force-feeding under this amendment because the U.S. Supreme Court declared that force-feeding would not prevail as a medical mistreatment to prisoners unless prison officials were deliberately indifferent to the nature of the force-feeding.¹⁸² Conversely, under the Fifth and Fourteenth Amendment, federal case precedents have established that prisoners have the right to refuse medical treatment, which expands from the fundamental right to privacy under the Fifth and Fourteenth Amendment Due Process Clause.¹⁸³ However, this right can be overridden when the state has a strong interest in preventing suicide.¹⁸⁴ Therefore, the U.S. Constitution does not have the same effect as the ICCPR and CAT would have in the context of force-feeding due to the many limitations the U.S. Supreme Court has set forth regarding prisoners' right to reject medical treatment.¹⁸⁵ Although the U.S. Supreme Court has limited prisoners' ability to prevail on their claim against force-feeding, a few state courts have ruled against the state intervening in prison hunger strikes, favoring the prisoner's right to bodily integrity under state law.¹⁸⁶ Having U.S. state courts interpret the cruel and unusual punishment provision of their own constitution to comply with international human rights laws could prove to be more successful than trying to circumvent the U.S. Supreme Court decisions that have already limited prisoners' rights to not be force-fed.¹⁸⁷

In *Hamdan v. Rumsfeld*, the U.S. Supreme Court stated that international human rights treaties can be a source of law, but the issue of whether the treaties will be interpreted to constitute individual rights in U.S. courts still remains unclear.¹⁸⁸ Although the United States has acknowledged international law standards on torture and cruel, inhuman, or degrading treatment, it eludes the standards' full implications.¹⁸⁹

In its General Comment No. 20, the Human Rights Committee addressed the goal of Article 7 of the ICCPR and interpreted the provision in furtherance of that goal, including what the States' duties are regarding this provision.¹⁹⁰ But the

181. Gordon, *supra* note 10, at 359.

182. *Id.* (discussing multiple U.S. cases concerning prison official's duty to provide prisoners with medical care).

183. *Id.* at 359–60.

184. *Id.* at 360.

185. *Id.* (discussing the prison officials' ability to overrule a competent prisoners right to refuse medical treatment and food when they have a "legitimate penological interest," which includes maintaining prison order).

186. *Id.*

187. See generally Rachel A. Van Cleave, *State Constitutional Interpretation and Methodology*, 28 N.M. L. REV. 199 (1998); see generally Gordon, *supra* note 10.

188. Parry, *supra* note 96, at 1051.

189. *Id.*

190. Human Rights Comm., *supra* note 82. ("The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures

Committee explicitly stated it was unnecessary for it to list all the acts prohibited by Article 7 and to differentiate between what constitutes cruel and inhuman treatment and what does not.¹⁹¹ The Committee gave the State parties discretion in deciding what constitutes torture and cruel, inhuman or degrading treatment,¹⁹² but the major issue revolves around whether the States are complying with their duties under this provision as well as what the legal consequences should be if they violate it.¹⁹³

This issue is difficult for the United States to resolve.¹⁹⁴ The last understanding in the ICCPR attached by the United States recites:

That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.¹⁹⁵

There are different perspectives on what this understanding means.¹⁹⁶ One legal scholar stated there is no legal purpose for the understanding, meaning it does not restrict the United States' legal responsibility under the treaty.¹⁹⁷ Yet on the domestic front, some legal scholars view the understanding as a way for state and local governments to implement the treaty themselves.¹⁹⁸ Others have rejected this theory and state that the understanding reiterates Congress' power in implementing this treaty through legislation for it to become binding.¹⁹⁹

The first part of the understanding is interpreted to mean that the federal government may or may not implement the treaty.²⁰⁰ The second part emphasizes that issues that are already reserved to the state and local government will remain

as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity").

191. *Id.*

192. *Id.*

193. *See generally id.*

194. *See infra* Part V.

195. U.S. Reservations, Declarations, and Understandings, International Covenant on Civil and Political Rights, 138 CONG. REC. S4781-01 (daily ed. Apr. 2, 1992).

196. *See* Roth, *supra* note 172, at 903-05.

197. *Id.* at 903.

198. *Id.* at 905.

199. *Id.* (discussing the Understanding to mean the treaty is non-self-executing).

200. *Id.* at 905-06 ("That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein").

within their jurisdiction.²⁰¹ As such, state and local governments may take all necessary means to achieve the objectives of the ICCPR if they have jurisdiction over the related matters.²⁰²

Although state and local governments are aware of the pressing need to adopt the principles from these human rights treaties, the federal constitution may prevent them from circumventing the federal government when doing so.²⁰³ Both the federal and state government are given a limited amount of authority in what they can actually govern.²⁰⁴ There are two theories regarding the distribution of authority between the two governments.²⁰⁵ The traditional theory expresses a more limited view on state power and believes only Congress can implement treaties.²⁰⁶ The revisionist theory states that there is more power reserved to the states based on the separation of powers principle.²⁰⁷ These two theories establish that either the federal or state has the sole authority in implementing human rights treaties into legislation.²⁰⁸ However, there is a way for both views to co-exist without creating a conflict.²⁰⁹

V. RECOMMENDATIONS AND CONCLUSION

Although state execution of the human rights treaties would help the United States comply with the treaties,²¹⁰ the U.S. reservation on Article 7 of the ICCPR and Article 16 of the CAT will remain an obstacle to overcome.²¹¹ It will be even more difficult to bring an injunction against torture due to the limiting definition the United States has set forth under the CAT.²¹² As prison hunger strikes continue to be prevalent in the United States, there needs to be a way to implement the norms of international human rights into domestic law. The reservations attached to Article 7 of the ICCPR and Article 16 of the CAT limited the definition of torture, cruel, inhuman, or degrading treatment or

201. *Id.* at 906 (“[A]nd otherwise by the state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant”).

202. Roth, *supra* note 172, at 906.

203. Catherine Powell, *Dialogic Federalism: Constitutional Possibilities For Incorporation of Human Rights Law in the United States*, 150 U. PA. L. REV. 245, 245-46 (2001); *see also* Kaye, *supra* note 165, at 122-24 (discussing potential arguments against state execution).

204. *Id.* at 248-49.

205. *Id.* at 246.

206. *Id.*

207. *Id.* at 247.

208. *Id.* at 248.

209. Powell, *supra* note 201, at 249; *see infra* Part V.

210. Kaye, *supra* note 165, at 117.

211. *See supra* Part IV.

212. *See supra* Part IV; Parry, *supra* note 96, at 1044.

punishment to the language of the Eighth and Fifth/Fourteenth Amendment.²¹³ However, the U.S. state courts have the power to interpret their own constitutions²¹⁴ and decide whether, under state law, force-feeding should be conducted.²¹⁵ The state courts should adopt standards, similar to the one from *Nevmerzhitsky*,²¹⁶ to help determine whether the specific force-feeding at issue is so invasive as to constitute torture or cruel, inhuman, or degrading treatment or punishment under international human rights laws. State courts should interpret their own constitutions and laws to conform to international human rights laws. Having the courts adopt the *Nevmerzhitsky* standard will help each state as well as the United States as a whole comply with the objectives of the human rights treaties, regardless of state or federal execution. This standard will also help emphasize the importance of human rights laws within the United States.

If a similar standard to *Nevmerzhitsky* is adopted, the courts should weigh the evidence and determine whether the state provided sufficient evidence in support of force-feeding the prisoners.²¹⁷ As stated in *Nevmerzhitsky*, the state must prove with sufficient evidence that force-feeding is medically necessary.²¹⁸ This includes medical reports that will describe the condition the prisoner is in as well as evidence of the prisoner's deteriorating state of health.²¹⁹ If there is no medical necessity, the state must respect the procedural safeguards guaranteed to prisoners, such as the "do-not-resuscitate" orders California prisoners signed.²²⁰ Thus, without a medical necessity, force-feeding will likely almost never be allowed.

By its nature, force-feeding will almost always be extremely invasive.²²¹ Nasogastric feeding is the most common method of force-feeding,²²² and it is extremely intrusive.²²³ The ECHR condemned the procedure of nasogastric feeding as torture when conducted without a medical justification.²²⁴ Though intravenous treatment is a less intrusive method of force-feeding,²²⁵ it is still invasive and may still constitute torture or cruel, inhuman or degrading treatment or punishment when conducted without any medical necessity. However, when force-feeding is medically necessary and the prisoner is near death, the

213. See *supra* Part IV.

214. See Van Cleave, *supra* note 187.

215. See Gordon, *supra* note 10, at 360–61.

216. See *supra* Part III.C.

217. See *supra* Part III.C.

218. See *supra* Part III.C.

219. *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 4.

220. Staff and agencies in Sacramento, *supra* note 70.

221. Gordon, *supra* note 10, at 353 (discussing the medical risks of force-feeding through nasogastric feeding, such as suffocation and aspiration).

222. Ansbacher, *supra* note 149, at 125.

223. See *supra* Part II.B.

224. *Nevmerzhitsky*, 2005-II Eur. Ct. H.R. at 4.

225. Ansbacher, *supra* note 149, at 124.

government should be given more discretion as to how the force-feeding is conducted because of strong interests in preventing death, preserving life, and maintaining prison safety, that cannot be ignored.²²⁶ The government does not want to be scrutinized by the public for allowing a prisoner to die in its custody.²²⁷ Indeed, the methods of force-feeding currently employed by the United States will need to be modified to limit the pain and severity of the intrusion into the prisoner's bodily integrity.²²⁸

The issue of force-feeding becomes especially difficult to assess when the government has a strong interest in preventing death yet at the same time must respect the prisoner's right to refuse unwanted medical treatment.²²⁹ Adopting a standard similar to *Nevmerzhitsky* will help the United States in achieving the human rights objectives of respecting the physical and mental integrity and dignity of the prisoners as well as ensuring safety for the prisoners when it is medically necessitated.²³⁰ State authorities can avoid force-feeding overall by targeting the specific issues the prisoners are protesting from the onset.²³¹ The California prisoners were protesting the state's use of maximum-security imprisonment and the conditions of solitary confinement.²³² The California Department of Corrections and Rehabilitation issued a response during the hunger strike regarding the demands set forth by the prisoners.²³³ The California hunger strike was subsequently terminated by the prisoners due to the legislators' willingness to hold public hearings on the conditions of the prisons.²³⁴ Nonetheless, the two-month hunger strike could have ended sooner or been completely avoided if the requests of the prisoners were taken into consideration from the beginning.

States and cities have already begun taking a proactive approach to incorporating the human rights treaties into their local law.²³⁵ Constituents are also raising their voices and insisting their local governments to enact laws pursuant to the human rights treaties.²³⁶ Having state courts develop standards that comply with international human rights laws will help the United States meet

226. *Id.* at 102; Silver, *supra* note 157, at 642–43.

227. *See* Silver, *supra* note 157, at 643.

228. *See supra* Part II.B.

229. *See supra* Part II.

230. *See supra* Part III.A.

231. *See generally* USA: *The Edge of Endurance, Prison Conditions in California's Security Housing Units*, Amnesty Int'l, *supra* note 165, at 52–54.

232. *See supra* Part II.C; Victoria Law, *California Prison Hunger Strike Ends after 60 Days*, TRUTHOUT (Sept. 6, 2013), <http://www.truth-out.org/news/item/18649-california-prison-hunger-strike-ends-after-60-days> (describing the five demands set out by the prisoners involved in the California hunger strike).

233. Victoria Law, *supra* note 230.

234. St. John, *supra* note 66.

235. *See* Powell, *supra* note 201, at 245–46 (San Francisco has included the Convention on the Elimination of All Forms of Discrimination against Women into their local law).

236. *Id.* at 246 (Cities have requested their states and the federal government to ratify and support the Second Option Protocol to the ICCPR, which abolishes the death penalty).

its obligation under the treaties, despite its reservations.²³⁷ Force-feeding is grotesque, disturbing, and painful,²³⁸ and imposing an invasive treatment on a competent prisoner can do more harm than good; thus the United States should highly consider the true necessity of the force-feeding before infringing into the prisoner's bodily and physical integrity.

237. Kaye, *supra* note 165, at 117–19.

238. Gordon, *supra* note 10, at 353–54 (discussing the medical risks of force-feeding through nasogastric feeding, such as suffocation and aspiration).